

CLAIMS RESOLUTION TRIBUNAL

In re Holocaust Victim Assets Litigation
Case No. CV96-4849

Certified Award

to Claimant Paul Schwarzkopf

in re Account of Robert Schwarzkopf

Claim Number: 203118/AH

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Paul Schwarzkopf (the “Claimant”) to the accounts of Robert Schwarzkopf (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his father, Robert Schwarzkopf, who was born on 16 April 1889, in Iglau, Czechoslovakia, and was married to Selma Wolkenfeld on 10 October 1915 in Vienna, Austria. Robert and Selma had two children: the Claimant, who was born on 29 October 1922 in Vienna, and his sister, Marion Taussik, née Schwarzkopf, who was born on 13 July 1916 in Vienna. The Claimant stated that his father, who was Jewish, lived in Vienna and was a bank manager. The Claimant stated that he thought his father owned stocks and bonds in Swiss bank accounts. In a telephone conversation with the Claims Resolution Tribunal (“CRT”), the Claimant stated that his father was forced to flee Austria in 1940, and he first fled to England and later immigrated to the United States. The Claimant indicated that his father died on 8 September 1981, his mother died on 20 February 1990, and his sister died on 28 July 1998, all in New York, New York, the United States.

In support of his claim, the Claimant submitted copies of documents from the Surrogate’s Court of New York indicating that the Claimant had been named executor for the wills of Robert and Selma Schwartzkopf.

Information Available in the Bank Records

The bank records consist of excerpts from the Bank's ledger of numbered accounts and a printout from the Bank's database. According to these records, the Account Owner was Robert Schwarzkopf. The bank records indicate that the Account Owner resided in Vienna, Austria. The bank records do not indicate what type of account that the Account Owner held, nor do they indicate when the account was opened. The records indicate that the account was numbered 60104. According to the bank records, the account was transferred and closed on 30 March 1938 to an unknown entity. The amount in the account on the date of its closure is unknown. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Robert Schwarzkopf. These documents include a census form numbered 6044, which was signed and submitted by Robert Schwarzkopf on 14 July 1938, and the letters and documents that were attached thereto. According to these documents, Robert Schwarzkopf, who was Jewish, was born on 16 April 1889, owned a house in Iglau, Czechoslovakia, resided with his wife Selma Schwarzkopf, née Wolkenfeld, at Neubaugasse in Vienna VII, Austria, and worked as a bank manager. The records indicate that Robert Schwarzkopf owned various bonds, including bonds of the City of Vienna and an Hungarian coal mining company, both of which were denominated in Swiss Francs. The census form gave no indication that any of these assets were held in a Swiss bank. The records further indicate that Robert Schwarzkopf was fired from his job on 29 April 1938 and lost his pension rights. The Austrian census records include a report of the Vienna police regarding a search of Robert and Selma Schwarzkopf's office and apartment, which was carried out by the police on 12 March 1938, for assets to be reported. Among the items discovered in the search were the Swiss Franc-denominated City of Vienna bonds with a par value of 18,000.00 Swiss Francs, which were confiscated by the police.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's name, city, and country of residence match the published name and place of residence of the Account Owner. In addition, the Claimant's mother's name matches the name of the Account Owner's spouse contained in the Austrian census records. The Claimant identified his father's date of birth, place of residence, and occupation, which match information about the Account Owner contained in the Austrian census records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and lived in Nazi-controlled Austria. The Claimant further stated that his father was forced to flee Austria in 1940.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by describing his family history in detail and providing New York court documents noting that he was the executor of his parents' estate.

The Issue of Who Received the Proceeds

The claims that have been considered by the CRT indicate that coincident with the *Anschluss* on March 12, 1938, the Nazis initiated a concerted plan to seize and confiscate the wealth of Austrian Jews. In pursuance of this plan, the search of the Account Owner's office and apartment took place on 12 March 1938, together with the seizure of his financial assets. His Swiss account was closed 18 days later on 30 March 1938. Given the existence of the asset confiscation program and its vigorous discriminatory application, both informally by a campaign of state terrorism, and formally through legislative action, the search for and confiscation of the Account Owner's assets, the Account Owner's flight from Austria, and the application of Presumption (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to assist in the determination of whether or not account owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

Neither the type of account nor the value of the account is indicated in the bank records. Pursuant to Article 35 of the Rules, when the value of an account is unknown, the average value of the same or a similar type of account in 1945 is used to calculate the present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs. The present value of this amount is

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total of 47,400.00 Swiss Francs.

Initial Payment Amount

In this case, the Claimant is age 75 or older and is therefore is entitled to 100% of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal

November 26, 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); see also Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999)

(hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; see also ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, see Albers v. Credit Suisse, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, see Bergier Final Report at 450 -51, and possibly Romania as well, see Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. See Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." Id. at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. See In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).