

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Denise Amédée-Mannheim
also acting on behalf of Hélène Kayser and Henriette Léon

in re Account of Pierre Seligmann and Adèle Seligmann

Claim Numbers: 215112/MBC; 215119/MBC

Award Amount: 207,360.00 Swiss Francs

This Certified Award is based upon the claims of Denise Amédée-Mannheim, née Michel-Lévy (the “Claimant”) to the accounts of Pierre Seligmann (“Account Owner Pierre Seligmann”) and Adèle Seligmann (“Account Owner Adèle Seligmann”) (together “the Account Owners”) at the Geneva branch of 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 two Claim Forms identifying the Account Owners as her paternal aunt, Adèle Rebecca Seligmann, née Michel-Lévy, and her aunt’s spouse, Pierre Isidore Paul Seligmann. The Claimant stated that her aunt was born in Paris, France on 29 May 1883, and that her uncle was born in Paris on 2 January 1878. The couple had no children. The Claimant further indicated that her aunt had no profession and her uncle was an industrialist and the administrator of a company named *Société de Mécanique de Gennevilliers*. The couple resided in Paris at boulevard Andrin from 1907 until 1913 and at rue de la Faisanderie 90 as of 1914. According to the Claimant, her relatives were Jewish and had to flee to southwestern France, where they lived in hiding during the German occupation of France. The Claimant further stated that her aunt passed away in Paris on 24 October 1963 and that her uncle died in Paris on 18 March 1970. The Claimant indicated that she was born in Paris on 25 January 1918 and that her sisters, Hélène Kayser and Henriette Léon, whom she is representing in these proceedings, were also born in Paris on 16 November 1909 and 11 August 1914, respectively.

In support of her claim, the Claimant submitted documents, including a document issued by the French Tax Administration showing that the Claimant and her sisters are Pierre Seligmann’s heirs.

Information Available in the Bank Records

The bank records consist of account opening cards. According to these records, the Account Owners were Pierre Seligmann and his spouse Adèle Seligmann, née Michel-Levy, who resided in Paris at rue de la Faisanderie 90. The bank records indicate that the Account Owners held two demand deposit accounts, one in Swiss Francs and the other in United States Dollars, and a custody account.

The demand deposit account in Swiss Francs was closed to profit and loss on 1 March 1953. The amount in this account on the date of its closure was 6.70 Swiss Francs.

The demand deposit account in United States Dollars and the custody account were closed on 1 January 1949. The amounts in these accounts on the dates of their closure are unknown, and the bank documents do not show to whom they were paid. There is no evidence in the bank records that the Account Owners or their heirs closed the demand deposit account in United States Dollars and the custody account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the Claimant's claims in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. Her aunt's and uncle's names and city of residence match the published names and city of residence of the Account Owners. The Claimant indicated that her relatives were married and resided at rue de la Faisanderie 90 in Paris, which matches unpublished information about the Account Owners contained in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and had to flee to southwestern France, where they lived in hiding until the end of the Second World War.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting government tax documents demonstrating that she and her sisters are heirs of Pierre and Adèle Seligmann. There is no information to indicate that the Account Owners have

surviving heirs other than the Claimant and the individuals whom she is representing in these proceedings.

The Issue of Who Received the Proceeds

The CRT considered two plausible outcomes in this case. In the first outcome, at sometime prior to the War the Account Owners withdrew all but a small amount of their funds from their accounts at the Bank. Because closing fees may have been larger than the balances left in the accounts, the Account Owners left the remaining balances in the accounts.

Alternatively, the Account Owners held substantial funds in the accounts, but they were unable to access the accounts during the War because of the Swiss freeze of French assets in June 1940. They were similarly unable to access the accounts after the War because of the Swiss banks' practice of withholding or supplying misleading information in response to account inquiries received after the War from account owners or their heirs.

Because the Account Owners were Victims of Nazi Persecution and had to live in hiding during the War, the CRT finds that it is more plausible that the funds were frozen and absorbed by the Bank by the charging of fees, and the accounts were eventually closed by being taken into bank profits.

In fact, in the case of the demand deposit account in Swiss Francs, the bank records indicate that it was taken into bank profits on 1 March 1953. Therefore it is clear that the proceeds of this account were not paid to the Account Owners or their heirs.

Regarding the demand deposit account in United States Dollars and the custody account, given that the closing date of the accounts was 1 January 1949, which would have been a bank holiday, and the application of Presumptions (f) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners or their heirs. Based on its precedent and 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 claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were her aunt and uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the accounts.

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

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here with the custody account and the demand deposit account in United States Dollars, 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 investigation carried out to identify accounts of Victims of Nazi persecution pursuant to instructions of the Independent Committee of Eminent Persons (“the ICEP investigation”), in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of a custody account was 13,000.00 Swiss Francs. Thus, the total average value of the demand deposit account in United States Dollars and the custody account was 15,140.00 Swiss Francs.

The bank records indicate that the value of the demand deposit account in Swiss Francs was 6.70 Swiss Francs as of 1 March 1953. In accordance with Article 37(1) of the Rules, this amount is increased by an adjustment of 585.00 Swiss Francs, which reflects numbered account fees and standardized bank fees charged to this account between 1945 and 1 March 1953. There was no interest paid to this account. Consequently, the adjusted balance of this account is 591.70 Swiss Francs. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs.

Thus, the 1945 total average value of the accounts at issue was 17,280.00 Swiss Francs. The present value of the amount of the award is determined by multiplying this amount by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 207,360.00 Swiss Francs.

Division of the Award

The Claimant is representing her sisters in these proceedings. According to Article 29 of the Rules, her sisters are each entitled to receive one-third of any payment made to the Claimant.

Initial Payment

In this case, the Claimant and represented parties are age 75 or older and are therefore entitled to receive 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 her claims to determine whether there are additional Swiss bank accounts to which she 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).