

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED], [REDACTED], [REDACTED], [REDACTED],
[REDACTED], and [REDACTED]

in re Account of Pal and Palné Somogyi

Claim Numbers: 215743/MBC; 219220/MBC

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the account of Pal and Palné Somogyi (the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted two Claim Forms identifying the Account Owners as his paternal uncle, Pal Somogyi, and his aunt by marriage, Palné Ernestine Somogyi. The Claimant noted that Palné means *Mme.* (Mrs.) Pal Somogyi. The Claimant stated that his uncle was born in Haidu Nadudvar, Hungary, on 30 March 1902, and was married to [REDACTED] (or [REDACTED]) [REDACTED], née [REDACTED], who was born in Kaba (Debrecen), Hungary, on 19 June 1906. The Claimant indicated that his uncle, who was Jewish, was a grain merchant who resided at Kossuth utca in Nadudvar, until he was enrolled in the army, and was sent to the Russian Front, where he was killed on 15 September 1942. The Claimant also indicated that his aunt, who was Jewish, was deported to the Auschwitz concentration camp, where she perished on 17 July 1944. The Claimant stated that the couple had one child, [REDACTED], who perished in Auschwitz on 15 July 1944.

In support of his claims, the Claimant submitted documents, including his aunt’s and uncle’s marriage and death certificates. The Claimant stated that he was born on 7 September 1937 in Budapest.

In these proceedings, the Claimant is representing his sister [REDACTED], who was born on 17 May 1936 in Budapest, and his cousins. [REDACTED] was born on 18 July 1921 in Haidu Nadudvar; [REDACTED] was born on 22 October 1922 in Debrecen, Hungary; [REDACTED] was born on 16 December 1934 in Budapest; [REDACTED] was born on 26 June 1924 in Törörszent Miklos; and [REDACTED] was born on 15 July 1956 in Rio de Janeiro, Brazil.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his father [REDACTED] from Hungary, and in which he stated that he was told by his parents that they had a bank account in Zurich, Switzerland. The Claimant also stated that his maternal grandmother [REDACTED] tried to enter Switzerland, but was denied entry by the Swiss authorities and was subsequently killed in Auschwitz.

Information Available in the Bank Records

The bank records consist of an account card and a printout from the Bank's numbered database. According to these records, the joint Account Owners were Pal Somogyi and *Frau* (Mrs.) Palné Somogyi, from Hungary. These records show that Palné Somogyi was Pal Somogyi's spouse. The bank records do not indicate the type of account that the Account Owners held, but indicate that the account was held under the number 2921, and that the Bank was instructed to withhold all correspondence to the Account Owners. The bank records show that the account was closed in November 1949.

The bank records do not show to whom the account was paid, nor do these records indicate the value of this account. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 two claims of the Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His uncle's and aunt's name and country of residence match published information about the Account Owners.¹ The Claimant also indicated that his uncle was married, which matches information about the Account Owners contained in the bank records. The Claimant also identified the Account Holders even though they were published separately on the list of account owners published on 5 February 2001 by the Independent Committee of Eminent Persons ("ICEP").

¹ In Hungarian, the suffix "né" is typically used to indicate a woman's married status and name.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Pal Somogyi, and indicates that his date of birth was 30 March 1902 and that his place of birth was Nadudvar, which matches the information about the Account Owner Pal Somogyi provided by the Claimant. This database also includes a person named [REDACTED], who resided in Nadudvar, which matches information about the Account Owner Palné Somogyi provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his father [REDACTED], prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a belief held by the Claimant prior to the publication of the ICEP List that members of his family owned a Swiss bank account. This supports the credibility of the information provided by the Claimant.

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 that his uncle was enrolled in the Hungarian army, and sent to the Russian Front, where he was killed in 1942, and that his aunt and their child perished in the Auschwitz concentration camp in 1944.

Moreover, the CRT notes that the database discussed above containing the names of victims of Nazi persecution includes a person named Pal Somogyi, and indicates that his date of birth was 30 March 1902 and that his place of birth was Nadudvar, which matches the information about the Account Owner provided by the Claimant. This database also includes a person named [REDACTED], who resided in Nadudvar, which matches information about the Account Owner Palné Somogyi provided by the Claimant.

The Claimant’s Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents such as their marriage and death certificates, demonstrating that the Account Owners are his aunt and uncle. There is no information to indicate that the Account Owners have other surviving heirs than the Claimant, his sister and his cousins, whom he is representing in the present proceedings.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) as provided in Article 28 (see Appendix A) of the Rules, 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were his uncle and aunt, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners held one account of unknown type. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, 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 pursuant to instructions of ICEP (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 calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister and five cousins in these proceedings. According to Article 23 of the Rules, the Claimant, his sister and cousins are each entitled to receive one-seventh (6,771.43 Swiss Francs) of the Award.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claims 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
March 5, 2003

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).