

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dr. Hilda Debacker
also acting on behalf of Renée Spodheim

in re Accounts of Ernest Edgar Szekely and Frédéric Spodheim

Claim Number: 209245/JT

Award Amount: 258,840.00 Swiss Francs

This Certified Award is based upon the claim of Hilda Debacker, née Spodheim, (the “Claimant”) to the accounts of Ernest Edgar Szekely (“Account Owner Szekely”) and Frédéric Spodheim (“Account Owner Spodheim”) (together the “Account Owners”) 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 Account Owner Spodheim as her father, Frederic Spodheim, who was born on 1 February 1892 in Herta, Romania, and was married to Regine Spodheim, née Vogel, on 8 June 1916 in Bacău, Romania. The Claimant indicated that her father was Jewish and that he had two children, the Claimant and her sister, Renée Spodheim. The Claimant further indicated that her father was a pharmaceutical representative for *Chinoïn*, a company based in Hungary of which he was a majority shareholder. The Claimant stated that her father was a partner, along with Ernest Szekely, of *Squachimica* in Bucharest, Romania and *Progrès Scientifique* in Paris, France. According to the Claimant, her father lived in Bucharest until the pogroms took place against Jews in January 1941, after which he fled to the United States. He traveled via Turkey, Iraq and India. He then spent 41 days on a ship bound for New York, New York. The Claimant indicated that her father lived in New York, New York from 1941 to 1973 and in Charleston, South Carolina until his death on 15 November 1983. The Claimant explained that during the Second World War, her father was denied access to bank accounts he held in France and England as a result of his “enemy alien” nationality status, despite the fact that he was a refugee who fled Romania. The Claimant submitted documents including a family tree, a copy of her parents’ marriage certificate identifying them as Friederich Spothheim and Regine Vogel of Bucharest, Romania, and a copy of her own birth certificate identifying her father as Frederic Spodheim.

The Claimant indicated that she was born on 17 July 1924 in Bucharest. The Claimant is representing Renée Spodheim, her sister, who was born on 13 September 1917 in Bacău. The Claimant indicated that her sister's birth certificate indicates her date of birth was 31 August 1917 because Romania followed the Julian calendar at that time.

Information Available in the Bank Records

The bank records consist of printouts from the Bank's database. According to these records, the Account Owners held five accounts: one custody account numbered 3502, one demand deposit account numbered 3502, one safe deposit box numbered 1510, one safe deposit box numbered 600 and one account of unknown type numbered 279875.

The Account Owners of the custody account and demand deposit account were Frédéric Spodheim of Bucharest, Romania and Ernest Edgar Szekely of 26 rue de la Pépinière, Paris, France. The bank records indicate that the demand deposit account was opened in 1931 and the custody account was opened in 1934. The bank records further indicate that both accounts were closed to the Bank's profit and loss account on 23 December 1963. The amount in the custody account on the date of its closure is unknown. The amount in the demand deposit account as of 16 March 1944 was 162.00 Swiss Francs.

The Account Owners of the safe deposit boxes numbered 1510 and 600 were Frédéric Spodheim of Bucharest and Ernest Edgar Szekely of Paris. The bank records indicate that the safe deposit box numbered 1510 was included in a list dated 31 August 1950 identifying safes for which rent was outstanding. The bank records do not show when the safe deposit boxes were closed or to whom they were paid, nor do these records indicate the value of the safe deposit boxes.

The Account Owner of the account of unknown type was Frederic Spodheim. The bank records indicate that the Power of Attorney Holder for the account was Regine Spodheim. The bank records further indicate that the account was opened in 1931. The bank records do not show when the account of unknown type was closed or to whom it was paid, nor do these records indicate the value of this account.

The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not find the safe deposit boxes and the account of unknown type in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. The auditors also indicated that the accounts appeared in working papers prepared by the Bank in connection with the 1962 survey. The Account Owners, however, were not registered in the 1962 survey. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Spodheim. Her father's name, as well the names of both her mother and her father's business partner, match the published names of the Account Owner and the Power of Attorney Holder. The Claimant identified her father's city of residence, as well as the city of residence of the Power of Attorney Holder, which matches published information about the Account Owners and Power of Attorney Holder contained in the bank records. In support of her claim, the Claimant submitted documents, including a family tree, copies of her parents' marriage certificate identifying them as Friedrich Spothheim and Regine Vogel, and a copy of her birth certificate identifying her father as Frederic Spodheim. The CRT notes that there were no other claimants to this account.

Status of the Account Owner Spodheim as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner Spodheim was a Victim of Nazi Persecution. The Claimant stated that Account Owner Spodheim was Jewish, and that he fled Romania for the United States in 1941.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she and her sister are related to Account Owner Spodheim by submitting documents demonstrating that they are his daughters. There is no information to indicate that Account Owner Spodheim has other surviving heirs.

The CRT notes that the custody account, the demand deposit account, and the two safe deposit boxes were owned jointly by Account Owner Spodheim and Account Owner Szekely. According to Article 25(2) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), in cases where a joint account is claimed by relatives of only one or some of the joint account owners, it shall be presumed that the account was owned as a whole in equal shares by the account owners whose shares of the account have been claimed. In this case, the CRT has not received any claims from the heirs of Account Owner Szekely. Accordingly, the CRT shall presume that the four accounts that were jointly held by Claimant Spodheim and Claimant Szekely were owned in whole by Account Owner Spodheim.

The Issue of Who Received the Proceeds

With regard to the safe deposit boxes and the account of unknown type, given the application of Presumptions (f), (h), and (j) as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds of the were not paid to the Account Owners, the Power of Attorney Holder, 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.

With regard to the custody account and demand deposit account, the bank records indicate that they were taken into bank profits.

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 18 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Spodheim was her father, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owners, the Power of Attorney Holder, nor their heirs received the proceeds of the accounts at issue.

Amount of the Award

In this case, the Account Owners held five accounts: one custody account, one demand deposit account, two safe deposit boxes and 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 with respect to the custody account, the two safe deposit box accounts and the account of unknown type, 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 a custody account was 13,000.00 Swiss Francs, the average value of a safe deposit box account was 1,240.00 Swiss Francs, and the average value of an account of unknown type was 3,950.00 Swiss Francs. The total of these average values for the four accounts is 19,430.00 Swiss Francs. The present value of these amounts is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an amount of 233,160.00 Swiss Francs.

The bank records indicate that the value of the demand deposit account as of 16 March 1944 was 164.00 Swiss Francs. According to Article 29 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. The present value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12, in accordance with Article 31(1) of the Rules, for an amount of 25,680.00 Swiss Francs.

Consequently, the total award amount in this case is 258,840.00 Swiss Francs.

Division of the Award

The Claimant is representing her sister in these proceedings. According to Article 23 of the Rules, the Claimant and her sister are each entitled to receive one-half of the award amount.

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 her claim 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

March 28, 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).