

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Dr. Ede Szücs

Claim Number: 600707/HM¹

Award Amount: 156,000.00 Swiss Francs

This certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the Accounts of Dr. Ede Szücs (the “Account Owner”) at 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 a claim form to the Holocaust Claims Processing Office (“HCPO”) in 1998, an Initial Questionnaire with the Court in 1999, and a 1998 ATAG Ernst & Young claim form identifying the Account Owner as her uncle (the brother of her father, [REDACTED]). According to the Claimant, the Account Owner was Jewish, and he was born on 15 June 1880 in Subotica, Yugoslavia. The Claimant stated that her uncle was a lawyer but earned his living managing the vineyards of his brothers, [REDACTED] and [REDACTED] [REDACTED]. The vineyards were located in Padej, Yugoslavia (formerly part of Hungary). The Claimant specified that her uncle’s name at birth was [REDACTED], and that he changed his name to Ede Szücs sometime between 1920 and 1930. The Claimant further stated that, at the age of 66, her uncle married [REDACTED], née [REDACTED]. According to the Claimant, her uncle [REDACTED] opened an account in Switzerland before the Second World War, and later used that money to start a new business in Canada. The Claimant stated that her uncle [REDACTED] could also have deposited money on behalf of her uncle Ede. The Claimant asserted that her uncle lived at Disz ter. 7, in Budapest, Hungary, and he was forced to hide from the Nazis in 1944. The Claimant stated that her uncle Ede returned to Subotica in 1945 or 1946, and he died

¹ The Claimant submitted a claim, numbered B-01290 on 18 September 1998 to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600707/HM. The Claimant has submitted additional claims that are registered under the Claim Numbers 222951 and 222952. The CRT will treat these claims in a separate decision.

there on 27 October 1966 without children. The Claimant stated that her uncle's wife predeceased him. The Claimant stated that she was born on 30 August 1931 in Budapest.

The Claimant submitted a Claim Form to the CRT in 1997, asserting her entitlement to a Swiss bank account owned by the Account Owner, Dr. Ede Szücs, whose name was included in the list of dormant accounts published by the Swiss Bankers Association in July 1997. A Final Award was rendered by the CRT in an arbitration concluded on 9 April 2001 (the "Arbitration").² In the Arbitration, the information before the CRT indicated that Dr. Ede Szücs held a demand deposit account in United States Dollars. The CRT determined that the Claimant had a valid claim and ordered the Bank to pay the Claimant an adjusted amount of 47,928.00 United States Dollars. This value was based on documents submitted by the Bank, which showed that the value of the account was 4,792.80 United States Dollars on 31 December 1944.

Information available in the Bank Records

The bank records consist of a 1959 list of dormant accounts prepared by the Bank's Zurich branch pursuant to an internal bank survey, and research documents in relation to a survey conducted pursuant to the Swiss Federal Decree of 1962 concerning assets of missing foreigners or stateless persons persecuted on the basis of race, religion or politics.

According to these records, the Account Owner was Dr. Ede Szücs who used an address at Dunovska-Banovina in Padej, Yugoslavia. The bank records indicate that the Account Owner held a demand deposit account in United States Dollars and a custody account, numbered 66758. The demand deposit account was considered dormant in 1959 and 1962 and was registered with ATAG Ernst & Young in 1997. According to these records, the balance in the demand deposit account in 1959 was 4,607.00 United States Dollars.

The custody account was also considered dormant as it was included on a 1959 list of dormant accounts and on a 1962 survey registration form. The contents in the custody account were registered by the Bank, on an unknown date, as a bondholder's interest in *Canada Dominion Ext. Loan of 1935, 2½-45*, the value of which is unknown. The bank records do not show when the custody account was closed, to whom it was paid, or its value. 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 (the "ICEP Investigation") did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. They found no evidence of activity on this account after 1945. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

² Claims Resolution Tribunal for Dormant Accounts in Switzerland, Docket No. 6223/0898/KW/OM.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her uncle's name matches the published name of the Account Owner. Additionally, the Claimant submitted a sample of the Account Owner's signature, which matches the signature sample contained in the bank documents.

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 was forced to hide from the Nazis in Budapest in 1944.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that the Account Owner is her uncle. The Claimant submitted a detailed narrative of the fate and circumstances of her and her uncle's family.

The Issue of Who Received the Proceeds

With regard to the custody account, given the application of Presumptions (f), (h) and (j), as provided in Article 28 (see Appendix A) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT concludes that it is therefore plausible that the account proceeds were not paid to the Account Owner or his heirs. Based on its precedent and the Rules, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts.

With regard to the demand deposit account, the CRT concludes that the proceeds of this account were awarded to the Claimant in the arbitral proceedings concluded 9 April 2001.³

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 the Account Owner was her uncle, 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 custody account.

Amount of the Award

In this case, the CRT is awarding one custody account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here with regard to the custody account, 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

³ Claims Resolution Tribunal for Dormant Accounts in Switzerland, Docket No. 6223/0898/KW/OM.

of a custody account was 13,000.00 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 156,000.00 Swiss Francs.

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
April 4, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).