

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Felix Waldstein and Gertrud Waldstein

Claim Numbers: 219067/MB; 219068/MB

Award Amount: 94,800.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the accounts of Felix Waldstein (“Account Owner Felix Waldstein”) and Gertrud Waldstein (“Account Owner Gertrud Waldstein”) (together, the “Account Owners”) at the Basel 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 Claim Forms stating that Felix Waldstein and Gertrud Waldstein were his grandparents. The Claimant stated that Felix Waldstein was born on 6 February 1865 in Gnesen, Germany, that Gertrud Rosenfeld was born on 26 February 1879 and that they were married in Hamburg, Germany, after which they lived in the Altona district of Hamburg. According to the Claimant, Felix Waldstein was a lawyer and a member of the German parliament in the 1920s and the Account Owners fled Germany for England in 1939 after Felix Waldstein was forced to give up his law practice. The Claimant stated that Gertrud Waldstein died on 15 December 1942 in Wembley Park, England, and that Felix Waldstein died on 13 December 1943, also in Wembley Park, England. The Claimant stated that he is the only surviving heir of both Account Owners. The Claimant was born in Hamburg, Germany 11 December 1932.

Information Available in the Bank Records

The bank records consist of printouts from the Bank’s electronic database. According to these records, the Account Owner of one account was Frau Gertrud Waldstein, née Rosenfeld from Altona, Germany. The bank records indicate that Account Owner Gertrud Waldstein held an

account of unknown type, opened on 28 October 1930. According to these records, a second account was held by Felix Waldstein, a lawyer, of Altona, Germany and the holder of Power of Attorney for this account was Gertrud Waldstein, née Rosenfeld. The bank records indicate that Account Owner Felix Waldstein held an account of unknown type, opened on 27 October 1930. The bank records do not show if or when either of the accounts were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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 did not find these accounts 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 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 discretion of the Claims Judges. In this case, the CRT determines it appropriate to join the two claims of Claimant [REDACTED] to the accounts of Felix Waldstein and Gertrud Waldstein in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. His grandparents' names match the published names of the Account Owners. The Claimant also provided address information which matches published information contained in the bank records. Further, the Claimant provided information about Account Owner Felix Waldstein's profession which matches unpublished information contained in the bank documents. In support of his claims, the Claimant submitted documents, including copies of the death certificates of Felix Waldstein and Gertrud Waldstein, handwriting samples of Felix Waldstein and Gertrud Waldstein, documents regarding the estates of Felix Waldstein and Gertrud Waldstein and the Claimant's own birth certificate and United States Certificate of Citizenship.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has plausibly shown that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and lived in Germany until 1939 when they fled to England to avoid further persecution. The Claimant indicated that Account Owner Felix Waldstein was forced to quit his law practice shortly before he fled to England.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that the Account Owners were his grandparents. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

This case raises the question of whether the Account Owners could have accessed their accounts after leaving Germany. The bank records indicate that the Account Owners were German nationals with an address in Germany. Given the Account Owners' flight from Nazi persecution, the fact that Account Owner Felix Waldstein was forced by the Nazis to abandon his law practice in Germany, the Nazi enforcement of flight taxes, the Nazi campaign to confiscate the domestic and foreign assets of its Jewish nationals, and the application of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that it is therefore plausible that the account proceeds were not paid to the Account Owners or their 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 claimed accounts belonged to Victims of Nazi Persecution. Second, the Claimant has plausibly demonstrated that the Account Owners were his grandparents 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 claimed accounts.

Amount of the Award

In this case, the Account Owners owned two accounts of unknown type and unknown value. Pursuant to Article 35 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 ICEP Investigation, when the type of account was not known, the average value of the account in 1945 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 37(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs for each account and a total award amount of 94,800.00.

Initial Payment

Article 37(3)(a) of the Rules provides that where the value of an Award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the Claimant shall be 65% of the Certified Award, and the Claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value and 65% of the total award amount is 61,620.00 Swiss Francs.

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

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 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

December 31, 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).