

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Siegbert Weil

Claim Number: 004282/AH

Award Amount: 219,240.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of [REDACTED].¹ This Award is to the accounts of Siegbert Weil (the “Account Owner”) at the Diessenhofen 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 a Claim Form identifying the Account Owner as her father, Siegbert Weil. In a telephone conversation with the CRT on 19 August 2002, the Claimant indicated that her father's family had lived in Gailingen, Germany, where both her great-grandfather and grandfather were born. In around 1907 her grandfather moved to Wurzburg, Germany, where he owned a clothing store at Innerengrabben 20. The Claimant indicated that her grandfather was a wealthy man and submitted a document indicating that he owned an original Titian painting and had business dealings in several German cities. The Claimant further stated that her father and his sister, [REDACTED], were both born in Wurzburg, on 15 November 1908 and 1910, respectively. She stated that her aunt lived in Zurich, Switzerland, and that her father was a language and trade student in Wurzburg. The Claimant indicated that her grandfather often traveled to Zurich for medical treatment and business affairs, and that her aunt told her that he had deposited money in Swiss banks. The Claimant further stated that her family's assets were looted, that her grandmother was deported to Theresienstadt in 1942, and her grandfather escaped to Vaduz, Lichtenstein. In spite of the fact that he had been in need of constant medical attention, the Swiss authorities had refused to grant him a visa in order to join his daughter in Zurich, and he died in Vaduz in 1943. The Claimant's father left Germany in around 1932 to be

¹ The CRT will treat the claim to this account in a separate decision.

with his sister in Zurich. Having been denied a visa, he went to Paris, from which city he was deported. He then escaped in 1934 to Palestine, where he married the Claimant's mother in 1935. He served in the British army until 13 June 1941, when he died in an Italian air raid. The Claimant further indicated that her grandmother survived Theresienstadt, but was refused entry to Switzerland by the Swiss authorities, and that only after a long struggle and the payment of a substantial entry fee was she allowed entry to a refugee camp in Langnau, where she died in 1946. The Claimant's aunt died on 2 September 1998 in Zurich. The Claimant stated that she was born an only child on 25 August 1936, in Tel Aviv, Palestine.

In support of her claim, the Claimant submitted detailed information and various documents, including her father's and grandfather's birth certificates, which indicate that they were both born in Gailingen and were Jewish. She also provided her grandfather's entry permits into Switzerland for the period between 1936 and 1941, a document from the Wurzburg city archives regarding her father and his family. This indicates that his grandfather's roots were in Gailingen and that he was a merchant by profession. There are also résumés for the two men, along with records from the Theresienstadt Remembrance Association in connection with the Claimant's grandmother. Finally, the Claimant provided an extended family tree, her grandfather's Vaduz legitimization card, her father's death certificate and her grandfather's obituary.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to Swiss bank accounts owned by her father and his parents.

Information Available in the Bank Records

The bank records consist of printouts from the Bank's database. According to these records, the Account Owner was Siegbert Weil who resided in Gailingen, Germany and owned six bank accounts. The bank records indicate that the Account Owner held three demand deposit accounts and three accounts of unknown type, all of which were held in the same branch of the Bank. It is not known when the accounts were opened or by whom they were closed. Neither do the records show when the accounts at issue were closed, to whom they were paid, or what the values of the accounts were. 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 these accounts in the Bank's system of open accounts, and therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts 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.

The CRT's Analysis

Identification of the Account Owner

The Claimant has identified the Account Owner. Her father's name matches the unpublished name of the Account Owner, and his city and country of domicile match unpublished

information in relation to the Account Owner. The CRT notes that no other claims were submitted to these accounts.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Siegbert Weil, 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 her 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 her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

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 that with the rise of anti-Semitism in Germany, was forced to flee the country. He later applied for and was denied a Swiss visa, which led him to flee to Paris, and then to Palestine in 1934. He was killed there during an Italian air raid on 13 June 1941.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents showing that she was the Account Owner’s only daughter. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

This case raises the question of whether the Account Owner could have accessed his account after leaving Germany. The bank records indicate that the Account Owner was a German national with an address in Germany. Given 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,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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 claim is admissible in accordance with the criteria contained in Article 23 of the Rules Governing the Claims Resolution Process (the “Rules”). Second, the Claimant has plausibly demonstrated that

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

the Account Owner was her father and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case for each of the six accounts at issue, the average value of the same or 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 demand deposit account was 2,140.00 Swiss Francs and the value of an unknown account type was 3,950.00 Swiss Francs. The present values of these amounts are calculated by multiplying them by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount for the three demand deposit accounts and three accounts of unknown type, of 219,240.00 Swiss Francs.

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 accounts' values and 65% of the total award amount is 142,506.00 Swiss Francs.

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 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
October 3, 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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).