

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Franz Karl Weiss

Claim Numbers: 214948/MO; 222761/MO¹

Award Amount: 13,996.92 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Franz Karl Weiss (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 identifying the Account Owner as his maternal uncle, Franz Karl Weiss, who was born to Emil and [REDACTED] on 16 April 1918 in Vienna, Austria. The Claimant stated that the family resided in Vienna until 1926 and thereafter in Budapest, Hungary. Furthermore, the Claimant stated that due to anti-Jewish legislation, his uncle, who was Jewish, was prohibited from studying in a university in Hungary; therefore, he immigrated to Switzerland, where he lived in Zurich between 1938 and 1945. He indicated that during this period his uncle attended university and worked and traveled throughout Switzerland in an effort to save Jews and other refugees from Nazi persecution. The Claimant further indicated that his uncle began to use the name [REDACTED] in 1938 and moved back to Hungary in 1945. The Claimant stated that in 1950 his uncle was sentenced to death in Hungary and was executed that same year. He was vindicated in 1956.

The Claimant indicated that he is the son of [REDACTED], the Account Owner’s sister, and he was born on 28 July 1950 in Budapest. He further stated that his mother died in 1996 and that [REDACTED], another sister of Franz Karl Weiss, died in 1994. The Claimant asserted that he is the only heir of the Account Owner, who did not marry or have any children.

¹ The Claimant submitted additional claims to the accounts of Emil Weiss, Therese Weiss, Leone Dan and Leon Dan, which are registered under the claim numbers 214946, 214947, 214949, 222760, 222762, 222763 and 222764. The CRT will treat the claims to these accounts in separate decisions.

The Claimant submitted a letter from the [REDACTED] dated 18 April 1939, acknowledging the receipt of a deposit from his grandfather, Emil Weiss, and identifying the Account Owner, as well as the Claimant's grandmother, [REDACTED], the Claimant's great-uncle by marriage, [REDACTED], the Claimant's great-aunt, [REDACTED], née [REDACTED], and her granddaughter, [REDACTED], née [REDACTED], as Power of Attorney Holders of that account.

The Claimant submitted Claim Forms with the CRT in 1997 and 1998, asserting his entitlement to a Swiss bank account owned by his grandfather, Emil H. Weiss, 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 30 November 2000 (the "Arbitration").² In the Arbitration, the information before the CRT indicated that Karl Franz Weiss, was a Power of Attorney Holder of the Claimant's grandfather safe deposit box. The CRT determined that the Claimant had a valid claim and ordered the Bank to deliver to the Claimant the contents of the safe deposit box.

Information Available in the Bank Records

The bank records consist of correspondence between the Bank and the Refugees Section of the Swiss Department of Justice and Police. A letter dated 10 November 1954 from the Police Department to the Bank in Bern indicates that the Account Owner was a Hungarian citizen, Franz Karl Weiss, who was born on 16 April 1918. According to this letter, on 15 July 1943 the Account Owner deposited two passbook accounts numbered 9182 and 9250, with a total balance of 121.85 Swiss Francs, that were held at the [REDACTED], with the Police Department. The Police Department in turn deposited them at the Bank. In this letter, the Police Department indicated that the Account Owner left Switzerland for an unknown destination and requested the return of the passbooks from the refugee custody account, numbered 348, at the Bank to the Police Department. A receipt, dated 12 November 1954, describes the delivery of the passbooks from the refugee custody account number 348 at the Bank to the Refugees Section of the Police Department. According to this receipt, the nominal value of the passbook numbered 9182 was 115.80 Swiss Francs and the nominal value of the passbook numbered 9250 was 6.05 Swiss Francs. The Police Department acknowledged this receipt on 15 November 1954.

The bank records do not show if or when the accounts at issue were closed, or to whom they were paid. 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") did not find these accounts in the Bank's system of open accounts, and they determined that the account were closed. 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. 3155/0598/JN/WN.

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 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 Owner

The Claimant has plausibly identified the Account Owner. His uncle's name matches the published name of the Account Owner. The Claimant identified his uncle's date of birth and stated that his uncle resided in Switzerland during the Second World War, which matches unpublished information about the Account Owner contained in the bank records. In support of his claim, the Claimant submitted documents, including his uncle's birth certificate, a registration of the Account Owner's address in Zurich and a copy of his uncle's death certificate.

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. He also indicated that due to anti-Jewish legislation in Hungary, his uncle immigrated to Switzerland. The bank records indicate that the Account Owner's status in Switzerland was that of a refugee.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that the Account Owner was his maternal uncle. The Claimant further submitted a letter from the [REDACTED] dated 18 April 1939, acknowledging the receipt of a deposit from his grandfather, Emil Weiss, and identifying the Account Owner, as well as other family members, as Power of Attorney Holders of that account. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

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. These presumptions are contained in Appendix A.³ Because the Account Owner died prior to the transfer of the passbooks at issue to the Swiss Department of Justice and Police, the CRT concludes that given the situation in Eastern Europe after the War (see presumption (i)) it is plausible that the accounts proceeds were not paid to the Account Owner or his heirs.

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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. Second, the Claimant has plausibly demonstrated that the Account Owner was his 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 accounts.

Amount of the Award

The bank records indicate that the nominal value of the passbooks as of 12 November 1954 was 115.80 Swiss Francs and 6.05 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 512.42 Swiss Francs and 532.14 Swiss Francs respectively, which reflects standardized bank fees charged to the passbooks between 1945 and 12 November 1954. Consequently, the adjusted balance of the accounts at issue are 628.22 Swiss Francs and 538.19 Swiss Francs, respectively, for a total of 1,166.41 Swiss Francs. According to Article 35 of the Rules, if the amount in a passbook was less than 830.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 830.00 Swiss Francs. In this case, the CRT considers the values declared at the time of the transfer of the passbooks to be plausible evidence of the actual value of the accounts. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount for the two passbooks is 13,996.92 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 his claim 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

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).