

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Elisabeth Havas
acting on behalf of herself and of Antoinette Weiss

in re Account of Ionica Weiss

Claim Number: 214908/AA

Award Amount: 744,720.00 Swiss Francs

This Certified Award is based upon the claim of Elisabeth Havas (the “Claimant”) to the account of Ionica Weiss (the “Account Owner”) at the Zurich branch of 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 and Initial Questionnaire identifying the Account Owner as her mother, Ionica Weiss, who was born on 25 December 1888 in Törökszentmiklos, Hungary and married Geza Weiss in Nagyvarad, Hungary in December 1914. The Claimant stated that she is the daughter of the Account Owner and that she was born in Oradea, Romania on 17 May 1918. According to the Claimant, her parents had two children, the Claimant and her brother, Etienne, who was born in Nagyvarad on 28 August 1916 and died in France on 11 January 1967. The Claimant explained further that her father, Geza Weiss, was an optician and that her family lived at Principele Mihai 5 in Oradea and at Gerliczy U5 S2 in Nagyvarad during the Second World War. On 3 June 1944, the Claimant’s parents were deported to Auschwitz, where they were immediately sent to the gas chamber. The Claimant survived the Second World War and lived in Romania until approximately 1960, when she emigrated to Israel. The Claimant disclosed in conversations with the CRT that after her departure from Eastern Europe, she attempted to obtain information from the Bank about accounts belonging to her mother, but the Bank declined to provide the Claimant with information regarding the existence of any such account. In support of her claim, the Claimant submitted her birth certificate, her brother’s birth certificate and will, and a document in which her mother’s signature appears.

Information Available in the Bank Records

The bank records consist of a list of Swiss bank accounts that were registered by Romanian citizens who were compelled by the Romanian Communist Regime to report their foreign assets, or by the Regime itself when it determined that its citizens owned assets held in Swiss banks. According to the records, the sole Account Owner was Ionica Weiss of Romania. The bank records do not indicate what type of account she held, but there is a notation in the records that the account balance was 62,000.00 Swiss Francs on 20 August 1948, a date recognized by the CRT as that of the Swiss Government's Freeze of Romanian Assets. While there is no recorded closing date, the auditors who investigated this account concluded the account was closed sometime after August 1948. There is no evidence in the bank records that the Account Owner or her heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her mother's name matches the published name of the Account Owner.

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 Ionica Weiss, 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 the Account Owner and her husband were deported to Auschwitz, where they perished on 3 June 1944.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting her and her brother's birth certificates, which name the Account Owner as their mother. There is no information before the CRT 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.¹ The CRT concludes in this case that one or more of these presumptions applies and it is therefore plausible that the account proceeds were not paid to the Account Owner or her heirs.

The CRT notes, in particular, that the account belonged to a Romanian citizen and was still open as of 1948, which was four years after the Account Owner died in Auschwitz, and therefore may have been subject to the Freeze of Romanian Assets in August 1948 pursuant to a Decree of the Swiss Federal Council. As the Account Owner died in 1944, she could not have closed the account and received the proceeds after the Freeze was lifted in 1950. Approximately one year later, in August 1951, Switzerland and Romania entered into an agreement on compensation for Swiss property that had been nationalized by Romania's communist regime. As a part of that arrangement, the Swiss Government agreed to assist the Romanian Government in finding the dormant account assets of deceased Romanian nationals and residents in Swiss banks.

Thus, there is a possibility that, as in the case of expropriated property compensation agreements with Poland and Hungary, the Swiss Government, which is a Release under the Settlement, may have used the account of the Account Owner, and others similarly situated, as leverage to obtain compensation for the property of Swiss citizens expropriated by the Romanian Government by agreeing to assist that Government in locating the dormant account of the deceased Account Owner. A direct agreement to transfer unclaimed assets was apparently not part of the Romanian agreement due to an international outcry against the Swiss Government agreements with Poland and Hungary in 1950, which did provide for such transfers.

In any event, even if the Account was not taken for use in the compensation settlement, the CRT determines that the Account Owner, who was murdered in 1944, did not receive the proceeds of the Account, and, in the circumstances of this Account, that it is not plausible that the Claimant received them. There is no evidence in the bank records of any access to the Account after the Freeze was lifted in 1950. Accordingly, it is entirely consistent with the Settlement to pay the Claimant the proceeds of the account.

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 the Account Owner was her mother, 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.

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

Amount of the Award

The Bank records indicate that the value of the account as of 20 August 1948 was 62,000.00 Swiss Francs. In accordance with Article 37(1) of the Rules Governing the Claims Resolution Process (the “Rules”), this amount is increased by an adjustment of 60.00 Swiss Francs, which reflects standardized bank fees charged to the account between the beginning of 1 January 1945 and 20 August 1948. Thus, the adjusted balance of the account at issue is 62,060.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 744,720.00 Swiss Francs.

Division of the Award

The Claimant is representing her sister-in-law, Antoinette Weiss, in these proceedings. According to Article 29, of the Rules, her sister-in-law is entitled to one-half of the amount paid to the Claimant.

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

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. "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 does not exist 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).