

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED], [REDACTED] and [REDACTED]

in re Accounts of Jean Wormser and Rose Wormser

Claim Number: 215280/JT; 215281/JT

Award Amount: 705,960.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the joint accounts of Jean Wormser and Rosalie Wormser, née Elkann, (the “Account Owners”) at the Basel branch of the [REDACTED] (“Bank I), the Basel branch of the [REDACTED] (“Bank II”), and at the [REDACTED] (“Bank III”) (together “the Banks”).

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 Account Owner Jean Wormser as his paternal grandfather, who was born on 20 September 1902 in Dijon, France, and was married to Account Owner Rosalie Wormser, née Elkann, the Claimant’s paternal grandmother, who was born in 1904. The Claimant stated that his grandparents were Jewish and that his grandfather was an industrialist. The Claimant further stated that his grandfather’s assets were confiscated during the Second World War. The Claimant stated that his grandfather died on 9 December 1993 in Dijon and his grandmother in 1986, also in Dijon. The Claimant indicated that he was born on 20 January 1953 in Bar-sur-Aube, France. The Claimant is representing his two sisters and his paternal uncle in these proceedings.

Information Available in the Bank Records

The bank records consist of two opening cards from Bank I, extracts from the ledgers of Bank II, a customer-opening card from Bank III, and printouts from the Banks’ databases. The bank records indicate that the Account Owners jointly held four custody accounts, two passbook accounts, one savings account, one demand deposit account, and one “special deposit” account.

According to the bank records, three of the custody accounts were closed on 31 December 1940, 12 September 1941, and 31 January 1944, respectively. The fourth custody account was labeled

closed by the Bank on 6 November 1969, although the bank records indicate the Bank blocked the account on 6 July 1940 following a federal order to freeze the assets of French citizens. One passbook account was closed on 29 April 1941 and the other on 31 January 1944. The savings account was closed on an unknown date. The demand deposit account was closed on 6 June 1962. The “special deposit” account was closed on 25 October 1945. The bank records do not indicate to whom the accounts were paid, nor do they show the value of the accounts on the dates of their closure. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The Tribunal’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. His grandfather’s name matches the published name of Account Owner Jean Wormser. The city in which the Claimant’s grandfather lived matches published information about Account Owner Jean Wormser contained in the bank documents. Furthermore, the Claimant’s grandmother’s name matches the unpublished name of the joint Account Owner. In support of his claim, the Claimant submitted documents, including a family tree and a notarized letter, dated 7 April 1994, certifying that the Claimant is the grandson of Jean and Rosalie Wormser.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and lived in France throughout the Second World War.

The Claimant’s Relationship to the Account Owners

The Claimant has plausibly demonstrated that he and those he represents are related to the Account Owners by submitting documents demonstrating that they are the Account Owners’ son and grandchildren.

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 Owners or their heirs.

¹ 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 governing the Claims Resolution Process (the “Rules”). 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 that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

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, in 1945 the average value of a custody account was 13,000.00 Swiss Francs. The average value of a passbook/savings account was 830.00 Swiss Francs, the value of a demand deposit account was 2,140.00 Swiss Francs, and the value of an “other” type of account was 2,200.00 Swiss Francs. Consequently, the total for four custody accounts, three savings accounts, one demand deposit account, and one “other” type of account is 58,830.00 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 705,960.00 Swiss Francs.

Article 37(3) 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 35% of the Certified Award, and the claimant may receive a second payment of up to 65% 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 values and 35% of the total award amount is 247,086.00 Swiss Francs.

Division of the Award

The Claimant is representing his two sisters and his uncle in these proceedings. According to Article 29 of the Rules, children of Account Owners who have submitted a claim are entitled to equal shares of the Award. Where a child of the Account Owner is deceased, but that child’s descendants are living and have submitted a claim or claims, those descendents are entitled to equal portions of the deceased child’s share of the Award. Accordingly, the Account Owners’ son, [REDACTED], is entitled to receive one half of any payment made to the Claimant, and the Claimant and his sisters are each entitled to receive one sixth of any payment made 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 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).