

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1],
also acting on behalf of [REDACTED]

and

to Claimant [REDACTED 2]¹

in re Accounts of Max Friede

Claim Numbers: 201177/JT; 214959/JT²

Award Amount: 912,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant 1”) and [REDACTED] (“Claimant [REDACTED 2]”) (together the “Claimants”), to the accounts of Max Friede (the “Account Owner”) at the [REDACTED 1] (“Bank I”) and the [REDACTED 2] (“Bank II”).

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 Claimants

The Claimants submitted Claim Forms identifying the Account Owner as their maternal grandfather, Max Friede, who was born on 17 August 1880 in Bocholt, Germany, and was married to Bernhardina Friede, née [REDACTED], on 20 June 1909 in Gelsenkirchen, Germany. The Claimants indicated that their grandparents had four daughters: [REDACTED], née [REDACTED], who was born on 14 May 1910 in Bocholt and who died on 10 January 2000 in New York, New York, the United States; [REDACTED], née [REDACTED], Claimant [REDACTED 2]’s mother and an original Claimant; [REDACTED], née [REDACTED], who is

¹ [REDACTED 2]’s mother, [REDACTED], née [REDACTED], originally filed a claim to the accounts of her father, Max Friede. [REDACTED] passed away on 15 May 2002 in Sound Beach, New York, the United States, so [REDACTED 2] has assumed the claim.

² Claimant [REDACTED 1] submitted two Claim Forms, which were registered under the Claim Numbers 214959 and 221559. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 214959.

represented in these proceedings by her niece, Claimant [REDACTED 1]; and [REDACTED], née [REDACTED], Claimant [REDACTED 1]'s mother, who was born on 18 June 1918 in Bocholt and died on 20 May 1999 in Rye Brook, New York, the United States.

The Claimants stated that their grandfather, who was Jewish, lived at Südwall 7 in Bocholt from 1920 to 1939 and that he owned his own business, *D. Friede*, a blanket factory located in Bocholt. According to Claimant [REDACTED 1], in 1935, when it was no longer possible for his daughters to continue their studies in Germany, Max Friede sent [REDACTED] and [REDACTED] to Switzerland to continue their education. Claimant [REDACTED 1] stated that her grandfather opened a Swiss bank account in order to provide money for his daughters' room, board, tuition, and other expenses. Claimant [REDACTED 2] further stated that her grandmother, Bernhardina Friede, was the Power of Attorney Holder over the account. According to the Claimants, their grandparents fled Germany in 1939, stopping over in Amsterdam, the Netherlands for a few weeks before continuing on to Paramaribo, Surinam and Trinidad, from where they eventually went to New York in 1940. Claimant [REDACTED 1] indicated that [REDACTED] and [REDACTED] remained in Switzerland until 1940, at which time they fled Europe for the United States via Milan, from where they sailed to New York on the USS Manhattan, reuniting with their family on 15 April 1940. The Claimants stated their grandfather died on 20 May 1967 in Queens, New York, and their grandmother on 4 September 1988 in Jamaica, New York.

Claimant [REDACTED 1] indicated she born on 30 April 1946 in New York. Claimant [REDACTED 1] is representing her aunt, [REDACTED], née [REDACTED], who was born on 19 April 1915 in Bocholt, Germany.

Claimant [REDACTED 2] indicated that her mother, [REDACTED], née [REDACTED], was born on 30 April 1912 in Bocholt, Germany and died on 15 May 2002 in Sound Beach, New York, United States.

Information Available in the Bank Record

The bank record of Bank I consists of a customer-opening card and printouts from the Bank's database. According to this record, the Account Owner was Max Friede of Bocholt, Germany. The bank record indicates that the Account Owner held two custody accounts, numbered 39333 and L39333. The custody accounts were closed on 23 March 1937 and 9 September 1938, respectively. The bank record does not show to whom the accounts were paid, nor does this record indicate the value of these accounts. There is no evidence in the bank record that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The bank records of Bank II consist of a power of attorney form dated 1 October 1930, correspondence from the Account Owner's attorney, internal bank correspondence, and printouts from the Bank's database. According to these records, the Account Owner was Max Friede and the Power of Attorney Holder was Frau Bernhardine Friede, who resided at Südwall 7 in

Bocholt, Germany. The bank records indicate that the Account Owner held a custody account.³ The correspondence in the bank records includes various letters from 1949 to 1950 regarding the Account Owner's attempts to retrieve his assets at Bank II. In a letter from the Account Owner's attorney, [REDACTED], to Bank II, dated 5 January 1949, the Account Owner inquired about a custody account he held at Bank II in the summer of 1931 worth approximately 50,000.00 Swiss Francs, which he believed may have been converted into "Swiss Government Obligations." A second inquiry letter, dated 7 February 1950 and written by [REDACTED], an attorney based in Zurich, Switzerland who appears to have assumed the case from [REDACTED], made another request to Bank II to research their records for an account in the name of Max Friede. In Bank II's initial response to [REDACTED]'s letter, dated 9 February 1950, it suggested that Max Friede must have confused the name of Bank II and that Max Friede's account must have been held at another bank. In another letter from Bank II, dated 10 February 1950, Bank II explained that because it would take many hours to research whether Max Friede held an account, Bank II required a payment of 25.00 Swiss Francs (presumably per hour) to carry out his request. In this same document, Bank II noted that the Account Owner's representative had advised Bank II by telephone that the account may have been transferred to the *Reichsbank* or *Deutsche Golddiskontbank* during the Second World War. The bank records do not show when the account at issue was closed, nor do they indicate to whom it was closed; however, letters from the Account Owner to Bank II suggest that the proceeds of the account may have been paid to the Nazi authorities.

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 this account in Bank II's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. The auditors further indicated that the Account Owner's representatives made inquiries regarding the existence of his bank account on behalf of the Account Owner, that Bank II rejected these inquiries and that Bank II may have improperly responded to claims made on an account owned by a possible Victim of Nazi Persecution. 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

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 Claimant [REDACTED 1] and Claimant [REDACTED 2] in one proceeding.

³ The bank records contain a power of attorney form that references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. The CRT concludes that it is plausible that the Account Owner held such an account. The CRT's conclusion is further supported by a letter to Bank II from the Account Owner's attorney dated 5 January 1949 that indicates the existence of a custody account.

Identification of the Account Owner

The Claimants and [REDACTED], who is represented by Claimant [REDACTED 1], have plausibly identified the Account Owner as their grandfather and father, respectively. Their relatives' names match the published name of the Account Owner at Bank I and the Account Owner and the Power of Attorney Holder at Bank II. The Claimants identified their relatives' exact street address in Bocholt, which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the bank records of Bank II. In support of their claims, the Claimants submitted copies of documents, including the Account Owner's passport and naturalization certificate and various other family members' passports, birth certificates, and death certificates.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that he fled Germany in 1939 to avoid persecution by the Nazis.

The Claimant's Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that Claimant [REDACTED 1] and Claimant [REDACTED 2] are his granddaughters and that their aunt, [REDACTED], whom Claimant [REDACTED 1] represents, is his daughter.

The Issue of Who Received the Proceeds

Regarding the account at Bank II, given the application of Presumptions (e), (h), and (j) contained in Appendix A,⁴ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder or their heirs.

Regarding the accounts at Bank I, given the application of Presumptions (a) and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder or their heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, their claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their grandfather and [REDACTED]'s father, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts.

⁴ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here for the custody accounts numbered 39333 and L39333 held at Bank I, 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. Consequently, the 1945 total of the two custody accounts was 26,000.00 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 an amount of 312,000.00 Swiss Francs.

In cases where the bank records do not contain information on account values, the CRT uses the average values of the type of account as specified in Article 35 of the Rules. However, in this case, a letter from the Account Owner contained in the bank records for Bank II indicates that the value of the custody account as of 1931 was 50,000.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules, for a total of 600,000.00 Swiss Francs. Consequently, the total award amount in this case for the three custody accounts held at Bank I and Bank II is 912,000.00 Swiss Francs.

Division of the Award

According to Article 29 of the Rules, when an Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted claims to the account, in equal shares by representation. Consequently, Claimant [REDACTED 1], her aunt [REDACTED], whom Claimant [REDACTED 1] represents, and Claimant [REDACTED 2] are each entitled to one-third of the total award amount.

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, however, because [REDACTED], who is represented by Claimant [REDACTED 1], is age 75 or older, she is entitled to receive 100% of her portion of the total award amount. Accordingly, the initial payment amount is 839,200.00 Swiss Francs, which is comprised of 100% of that portion of the Award that is based on a recorded account value (600,000.00 Swiss Francs), plus 100% of [REDACTED]'s share of that portion of the Award that is based on Article 35 presumptions (104,000.00 Swiss Francs) and 65% of Claimant [REDACTED 1]'s and Claimant [REDACTED 2]'s shares of that portion of the Award that is based on Article 35 presumptions (135,200.00 Swiss Francs).

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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

November 26, 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).