

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
acting on behalf of [REDACTED]

in re Accounts of Adolphe Stern, George Focseneanu, George Semo and Michel Stern

Claim Numbers: 210711/LK, 210712/LK, 210713/LK, 210715/LK

Award Amount: 393,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”) to the accounts of Adolphe Stern, George Focseneanu, George Semo, and Michel Stern (the “Account Owners”) at the Zurich 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 four Claim Forms identifying one of the Account Owners as her father, Adolphe Stern, who was born on 19 April 1910 in Tasi or Jassy, Romania, and was married to [REDACTED] on 16 October 1942 in Bucharest, Romania. The Claimant stated that her father lived at 2 Danielopol in Bucharest until 1942, when he moved to 29 Brezioianu, in Bucharest. The Claimant further stated that her father went to Paris, France around 1947 and remained there. According to the Claimant, her father, who was Jewish, was subject to forced labor in Romania and was stripped of his bar certification to practice law in 1940. In support of her claim, the Claimant submitted documents including a family tree, her father’s birth, marriage, and death certificates, as well as his passport, French Naturalization certificate, and license to practice law. The Claimant indicated that she was born on 19 June 1948 in Neuilly sur Seine, France. The Claimant is representing [REDACTED], her mother, who was born on 6 August 1920 in Botosani, Romania.

Information Available in the Bank Records

The bank records consist of customer cards and printouts from the Bank’s numbered accounts database. According to these records, the Account Owners were Romanian, and one of the Account Owners was Adolphe Stern, who resided at Danielopol 3 in Bucharest, Romania, before

moving to Paris, where he was considered stateless. The bank records indicate that the Account Owner held one custody account, numbered 8809, and five numbered accounts of unknown type: account number 2226 held in conjunction with George Focseneanu (also known as Georges Focseneau or Foczeneau), account number 6995 held in conjunction with George Focseneanu and Michel Stern (a relative of Account Owner Adolphe Stern), and account numbers 8115, 10230, and 14298 held in conjunction with George Focseneanu and George Semo. The bank records for account numbers 8115, 10230, and 14298 indicate that correspondence was to be sent to a [REDACTED]. The other accounts had instructions to hold all mail to the Account Owners at the Bank.

The bank records do not show when the accounts at issue were closed, to whom they were paid, or the values of the accounts. 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 they therefore presumed that it 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 Owners or their heirs closed the accounts 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 four claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified Account Owner Adolphe Stern. Her father's name and city match the published name and city of residence of Account Owner Adolphe Stern. The Claimant provided information regarding her father's street address and his move to Paris, France, which substantially matches unpublished information about Account Owner Adolphe Stern contained in the bank records. In support of her claim, the Claimant submitted documents, including her family tree, her father's birth, marriage, and death certificates, and his passport, French Naturalization certificate, and license to practice law. The CRT notes that there was one other claimant to these accounts, but the claimed account owner had a different name than this Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Adolphe Stern was a Victim of Nazi Persecution. The Claimant stated that Account Owner Adolphe Stern was Jewish, was subjected to forced labor in Romania, and was stripped of his license to practice law.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner Adolph Stern by submitting documents demonstrating that she is his daughter.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners or their heirs. Based on its precedent and 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. Second, the Claimant has plausibly demonstrated that the Account Owner Adolph Stern was her father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case the Account Owner had one custody account and five accounts of unknown type. 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 Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a custody account was 13,000.00 Swiss Francs and the average value of an account of unknown type was 3,950.00 Swiss Francs. The total 1945 value for the one custody amount and five accounts of unknown type is therefore 32,750.00 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 393,000.00 Swiss Francs.

Division of the Award

Pursuant to Article 31(2), it is presumed that the accounts were owned as a whole by Adolphe Stern, since the CRT has received no claims to the accounts from relatives of the other three joint Account Owners. The Claimant is representing her mother, [REDACTED], in these proceedings. According to Article 29 (1)(b), as the spouse of one of the Account Owners, [REDACTED] is entitled to 50% of the Award amount, and the Claimant is entitled to the other 50%.

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

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 the represented party is age 75 or older, she is entitled to receive payment of 100% of her portion of the total award amount. Accordingly, the initial payment amount is 324,225.00 Swiss Francs, which is comprised of 100% of [REDACTED]'s portion of the award (196,500.00 Swiss Francs) and 65% of the Claimant's portion of the award (127,725.00 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

January 28, 2003

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).