

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
and
Claimant [REDACTED 2]

in re Accounts of Anna Tempel and Dr. Alexander Brat

Claim Number: 211219/ME, 218332/ME, 224267/ME

Award Amount: 256,074.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together, the “Claimants”) to the accounts of Anna Tempel (“Account Owner Tempel”) and Dr. Alexander Brat (“Account Owner Alexander Brat”) (together, the “Account Owners”) at the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case Claimant [REDACTED 1] has, 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

Claimant [REDACTED 1] submitted two Claim Forms identifying Account Owner Tempel as his paternal grandmother, Anna Tempel, née [REDACTED], and Account Owner Alexander Brat as his father, Dr. Alexander Brat. Claimant [REDACTED 1] stated that his grandmother had three children: [REDACTED], [REDACTED], and Alexander. Claimant [REDACTED 1] stated that the children were born during his grandmother’s first marriage, and that [REDACTED] was his grandmother’s second husband, who died in 1914. According to the information provided by Claimant [REDACTED 1], his grandmother resided at Narutowicza 16, Lodz, Poland in 1940. Claimant [REDACTED 1] stated that his grandmother, who was Jewish, was killed by the Nazis during the Second World War.

Claimant [REDACTED 1] stated that his father was born on 1 March 1896 in Zdunska Wola, Poland, and was married to [REDACTED], née [REDACTED], who was born on 12 June 1896. Claimant [REDACTED 1] is the couple’s only child. Claimant [REDACTED 1] stated that both of his parents were medical doctors. According to the information provided by Claimant [REDACTED 1], his parents, who were Jewish, emigrated from Poland to Italy in 1925. While in Italy, they lived in Rogliano, Ferramonti, Campagna and Montecatini. Claimant

[REDACTED 1] stated that his family was interned in a camp in Italy from June 1940 until 1946, after which the family returned to Montecatini, where his parents resided at Corso Matteotti 35/1. Claimant [REDACTED 1] indicated that his father died on 28 January 1968 in Montecatini, and his mother died on 25 May 1980 in Pescia, Italy.

Claimant [REDACTED 1] submitted a document dated 10 November 1938 that identifies Claimant [REDACTED 1]'s grandmother and verifies that his father changed his last name from [REDACTED] to [REDACTED]. Additionally, Claimant [REDACTED 1] submitted his parents' death certificates and a notarized statement dated 10 January 1939 concerning his parents' visit to Uruguay where Claimant [REDACTED 1]'s uncle lived. He also submitted a statement from the Montecatini Community Registry dated 15 March 2001 verifying that Claimant [REDACTED 1] and his family currently reside in Montecatini, and that Claimant [REDACTED 1] was originally registered as a resident of Montecatini on 30 August 1937. Additionally, Claimant [REDACTED 1] submitted correspondence between his father and the Bank dated 5 January 1939 which refers to an account held by the Claimant [REDACTED 1]'s grandmother, and correspondence dated 14 June 1939 and 20 April 1940, which refers to two accounts held by the Claimant [REDACTED 1]'s father. Furthermore, Claimant [REDACTED 1] submitted a power of attorney form dated 3 February 1940, in which Claimant [REDACTED 1]'s father grants power of attorney to Claimant [REDACTED 1]'s mother with respect to accounts held by Claimant [REDACTED 1]'s father at the Bank. Finally, Claimant [REDACTED 1] submitted a letter from the Bank to Claimant [REDACTED 1], dated 8 March 1989, indicating that the Bank did not have any records of accounts that Claimant [REDACTED 1]'s parents may have held at the Basel and Zurich branches of the Bank. Claimant [REDACTED 1] indicated that it is possible that his parents claimed the accounts referred to in the documents submitted by Claimant [REDACTED 1] after the Second World War, but that he is not certain. Moreover, Claimant [REDACTED 1] indicated that it is possible that his grandmother held other accounts in Switzerland besides the account referred to in the letter submitted by Claimant [REDACTED 1] dated 5 January 1939. Claimant [REDACTED 1] indicated that he was born on 3 September 1928 in Florence, Italy.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his grandmother, Anna Tempel, née [REDACTED], and his father Alexander Brat. Furthermore, Claimant [REDACTED 1] previously submitted an ATAG Ernst & Young claim form in 1997, asserting his entitlement to a Swiss bank account owned by his father, Alexander Brat.

Claimant [REDACTED 2] submitted a Claim Form identifying Account Owner Tempel as the sister of his maternal grandfather (his great-aunt), Anna Tempel, née [REDACTED], who was born in 1861 in Tomaszow, Poland, and was first married to [REDACTED] in approximately 1885 in Tomaszow, with whom she had three children: [REDACTED], [REDACTED] and [REDACTED]. Claimant [REDACTED 2] stated that his great-aunt was widowed and married her second husband [REDACTED] in Lodz. According to the information provided by Claimant [REDACTED 2], his great-aunt was widowed again and married her third husband, [REDACTED] in approximately 1933 in Lodz, and that she may have been widowed a third time. Claimant [REDACTED 2] stated that his great-aunt, who was Jewish, lived at Narutowiczastrasse at the corner of Wschodniastrasse in Lodz from 1915 until 1939. According

to the information provided by Claimant [REDACTED 2], who is a Holocaust survivor himself, his great-aunt was arrested by the *Gestapo* in December of 1939 after her chambermaid reported her to the Nazis. Claimant [REDACTED 2] stated that his great-aunt was not heard from again. According to the information provided by Claimant [REDACTED 2], his cousin [REDACTED] fled to South America before the Second World War and his cousin [REDACTED] fled to Italy. Claimant [REDACTED 2] stated that his cousin [REDACTED] married a physician by the name of [REDACTED] before the Second World War, with whom she had two children.

Claimant [REDACTED 2] identified Account Owner Alexander Brat as his cousin, [REDACTED], who was one of three children born to Account Owner Tempel during her first marriage. The remaining information provided by Claimant [REDACTED 2] about [REDACTED] is consistent with the information provided by Claimant [REDACTED 1] about Alexander Brat.

Claimant [REDACTED 2] submitted his birth certificate identifying his mother's maiden name as [REDACTED], an extensive family tree and a document from the civil registry office in Strykow, Poland dated 22 October 1969 mandating the change of Claimant [REDACTED 2]'s father's first name from [REDACTED] to [REDACTED], and correcting Claimant [REDACTED 2]'s date of birth from 14 May 1911 to 6 September 1911. Claimant [REDACTED 2] indicated that he was born on 6 September 1911 in Strykow.

Information Available in the Bank Records

The bank records consist of two lists of custody accounts. According to these records, the Account Owner was Anna Tempel, née [REDACTED], who was a widow in 1935 and resided in Lodz, Poland. The bank records indicate that the Account Owner held a custody account numbered 23650, and that this number was changed to 46979-II on 31 October 1945 when the Bank was acquired by another Swiss bank. The bank records also indicate that the account was opened on 18 April 1935 and closed on 1 March 1952. The amount in the account on the date of its closure is unknown.

According to the 5 January 1939 letter from the Bank to Account Owner Alexander Brat submitted by Claimant [REDACTED 1], the Bank held an account in the name of Account Owner Tempel, who, according to a letter from Account Owner Tempel to the Bank, granted her son Account Owner Alexander Brat unrestricted power of attorney with respect to this account. This letter indicates that Account Owner Alexander Brat and Account Owner Tempel held an account of unknown type with a value of 4,800.00 Swiss Francs. In a letter dated 14 June 1939, the Bank indicates that the balance of the account at that time was 4,389.50 Swiss Francs, and that this balance would be available to Account Owner Alexander Brat on 30 June 1939. There is no information about the disposition of this account in the letter.

Claimant [REDACTED 1] also provided a copy of a power of attorney form dated 3 February 1940, in which Account Owner Alexander Brat grants power of attorney to [REDACTED] with respect to any accounts held by Account Owner Alexander Brat at the Bank. Additionally, Claimant [REDACTED 1] provided a letter from the Bank to Account Owner Alexander Brat

dated 20 April 1940 in which the Bank refers to instructions of Account Owner Alexander Brat regarding an account of unknown type. The letter also refers to additional assets held by Account Owner Alexander Brat at "G." In the letter, the Bank wrote, "Regarding the assets in G., unfortunately I am not able, due to formal reasons, to arrange for what you wish in G., unless I have instructions from you directed specifically to G. I therefore ask you to send me such written instructions, which I will then use to make the necessary arrangements in G." The letter contains no information about the disposition of these accounts.

There is no evidence in the bank records that the Account Owners, the Power of Attorney Holder or their heirs closed these accounts and received the proceeds themselves.

Finally, Claimant [REDACTED 1] submitted a letter dated 8 March 1989, in which he is informed that the Bank was unable to locate any assets held in the name of Dr. Alexander Brat and [REDACTED] at the Basel branch and the Zurich branch of the Bank.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process ("the Rules"), claims to the same or related account may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the three claims of the Claimants in one proceeding.

Identification of the Account Owners

Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly identified Account Owner Tempel as their grandmother and great-aunt, respectively. Their relative's name and city of residence match the published name and city of residence of Account Owner Tempel. Claimant [REDACTED 1] stated that his grandmother was widowed after her second marriage in 1914 and Claimant [REDACTED 2] stated that his great-aunt was possibly widowed again after her third marriage in 1933. This matches unpublished information about Account Owner Tempel contained in the bank records, which identify Account Owner Tempel as a widow in 1935.

Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly identified Account Owner Alexander Brat as their father and cousin, respectively. The bank records submitted by Claimant [REDACTED 1] identify Account Owner Alexander Brat as the son of Account Owner Tempel. In support of his claim, Claimant [REDACTED 1] submitted documents, including a letter from the Bank that identifies his grandmother and father, and a power of attorney form that identifies his parents. Additionally, Claimant [REDACTED 1] provided a document that evidences his father's name change and identifies his grandmother.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that Account Owner Tempel was Jewish, and that she was arrested and killed by the Nazis during the Second World War. Furthermore, Claimant [REDACTED 1] stated that Account Owner Brat was Jewish and that he was interned at a camp in Italy from 1940 to 1946.

The Claimants' Relationship to the Account Owners

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owners by submitting documents including a letter from the Bank and Claimant [REDACTED 1]'s father's death certificate demonstrating that Account Owner Tempel was his grandmother and that Account Owner Alexander Brat was his father.

Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owners by submitting an extensive family tree and his birth certificate identifying his mother's maiden name as [REDACTED] demonstrating that Account Owner Tempel was his great-aunt and that Account Owner Alexander Brat was his cousin.

The Issue of Who Received the Proceeds

With respect to the custody account held by Account Owner Tempel, given her arrest and death at the hands of the Nazis, and the application of presumptions (e), (h), and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not the Account Owners or their heirs received the proceeds of their accounts.

With respect to the account of unknown type referred to in the letter dated 5 January 1939, and the account of unknown type held by Account Owner Alexander Brat referred to in the letter dated 20 April 1940, given the application of Presumptions (e), (h), and (j), as provided in Article 28 of the Rules (see 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, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owners were their relatives, and the respective relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owners held one custody account with an unknown value and two accounts of unknown type, one with an unknown value and the other with a known value. Pursuant to Article 29 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 investigation conducted by the Independent Committee of Eminent Persons (“ICEP”), 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 for one custody account and one account of unknown value is 16,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an award amount for these three accounts of 203,400.00 Swiss Francs.

With respect to the account of unknown type of the Account Owners referred to in the letter dated 5 January 1939, the bank records indicate that the value of the account as of 14 June 1939 was 4,389.50 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 31(1) of the Rules, to produce an award amount for this account of 52,674.00.

Consequently, the total award amount in this case is 256,074.00 Swiss Francs.

Division of the Award

According to Article 23(1)(c) of the Rules, if the 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 a claim, in equal shares by representation. In this case, Claimant [REDACTED 1] is the only direct descendant of the Account Owners to have submitted a claim. Therefore, Claimant [REDACTED 1] is entitled to the entire amount of the proceeds of the Award.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 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
March 11, 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).