

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Walter Friedrich

in re Accounts of Gertrud Bodenwieser-Rosenthal

Claim Number: 501734/JG

Award Amount: 325,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published accounts of Gertrud Bodenwieser-Rosenthal (the “Account Owner”), over three of which Jakob Friedrich Rosenthal (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).¹

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 the Account Owner as Gertrud Bodenwieser-Rosenthal, née Bondi, who was born on 3 February 1890 in Vienna, Austria, and was married to Friedrich Jacques Rosenthal on 20 June 1920 in Vienna. In a telephone conversation with the CRT, the Claimant stated that Gertrud Bodenwieser-Rosenthal was the Claimant’s maternal grandfather’s sister’s husband’s maternal aunt. The Claimant explained that she is also the sole heir of [REDACTED], who was the son of Gertrud Bodenwieser-Rosenthal’s sister, [REDACTED], née [REDACTED].

The Claimant indicated that Gertrud Bodenwieser-Rosenthal, who was Jewish, was a professional dancer and choreographer, and did not have any children. According to the

¹ The CRT notes that on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), the power of attorney holders over the accounts of *Frau* Gertrud Bodenwieser-Rosenthal are published as Friedrich Rosenthal and Jakob Rosenthal. Upon careful review, the CRT has determined that there was only one power of attorney holder, who was named Jakob Friedrich Rosenthal (the “Power of Attorney Holder”). In addition, the CRT has determined that whereas the ICEP List indicates that Gertrud Bodenwieser-Rosenthal held three accounts, the Bank’s records indicate that she in fact held four accounts, over three of which Jakob Friedrich Rosenthal held power of attorney.

Claimant, Gertrud Bodenwieser-Rosenthal resided at Universitätstrasse 10 in Vienna from 1920 to 1939. The Claimant stated that Gertrud Bodenwieser-Rosenthal fled to Australia via France and New Zealand in 1939, settling in Sydney, Australia, where she resided until her death in 1959. The Claimant further indicated that Friedrich Jacques Rosenthal perished in Auschwitz in 1942.

In support of her claim, the Claimant submitted copies of:

- (1) the death certificate of [REDACTED], which indicates that he was born in Vienna on 12 May 1911, that he died in Bogota, Colombia on 3 November 1993, and that his father was [REDACTED];
- (2) the will of [REDACTED], dated 13 May 1992, which indicates that his parents were [REDACTED] and [REDACTED], and that [REDACTED] is his sole heir;
- (3) [REDACTED]'s travel documents, issued on 6 February 1939, which indicate that [REDACTED] was born on 10 August 1886 in Vienna, and that she was an Austrian national;
- (4) an excerpt from a book entitled *An Ecstasy of Purpose - The Life and Art of Gertrud Bodenwieser*, by Shona Dunlop MacTavish, which states that Gertrud Bodenwieser was born on 3 February 1890 in Vienna to [REDACTED] and [REDACTED]; that Gertrud Bodenwieser's sister's name was [REDACTED], and that she married [REDACTED]; that Gertrud Bodenwieser's nephew's name was [REDACTED]; and that Gertrud Rosenthal changed her surname to Bodenwieser in order to "protect the sensitive feelings of her family"; and
- (5) a short biography of Gertrud Bodenwieser from the website "Australia Dancing", which is excerpted below.²

The short biography of Gertrud Bodenwieser includes the following relevant extract:

Gertrud Bodenwieser, dancer, teacher and choreographer, was born in Vienna on 3 February 1890, the younger daughter of [REDACTED] and [REDACTED]. She was trained in classical ballet by Carl Godlewski, but soon came to develop her own modern expressionist mode of dancing based on the New Dance method. By 1917 she had adopted the surname "Bodenwieser". She married theatre director Friedrich Jacques Rosenthal on 27 June 1920.

Bodenwieser gave her first public performance as a dancer at the Wiener Konzerthaus, Vienna, on 5 May 1919. Between 1920 and 1938 she taught at the *Akademie für Musik und Darstellende Kunst* (the Vienna State Academy for Music and Drama), where she was appointed a professor in 1926. From 1925 to 1939 Bodenwieser and Tanzgruppe Bodenwieser toured extensively in Europe, also visiting New York and Japan.

² The biography may be viewed at: <http://www.australiadancing.org/subjects/14.html>.

Following the Nazi invasion of Austria in 1938, Bodenwieser and her husband fled to France. While Bodenwieser went on to join some of her dancers in Colombia, Rosenthal stayed in France, where he was later arrested and interned in the concentration camp at Auschwitz, Poland. It is believed that he died in 1942. During her tour with her company in South America, she found herself unable to return to Vienna, and arrived in Australia via New Zealand in 1939. She immediately established a company in Sydney, variously called the Bodenwieser Ballet and the Bodenwieser Viennese Ballet. From 1940 to 1954 the Ballet toured Australian cities and towns, as well as visiting New Zealand, South Africa, Rhodesia and India.

The Claimant indicated that she was born on 8 February 1935 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of a safe deposit box account card; a customer card; a power of attorney form; printouts from the Bank's database; and a report from 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"). Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of a signed declaration of the Account Owner's husband; a customer card; a power of attorney form; an account opening document; and a list of closed accounts belonging to Austrian account owners.

According to these records, the Account Owner was *Frau* ("Mrs.") Gertrud Bodenwieser-Rosenthal, and the Power of Attorney Holder was Jakob Friedrich Rosenthal (Friedrich Rosenthal), the Account Owner's husband, both of whom resided at Universitätstrasse 10 in Vienna IX, Austria. The Bank's records indicate that Bodenwieser was not the Account Owner's given surname, but rather merely her "stage name" (*Künstlernamen*), and that her actual surname was Rosenthal.

The Bank's records indicate that the Account Owner held a custody account and an account, the type of which is not indicated, both numbered 41336, over both of which Jakob Friedrich Rosenthal held power of attorney. According to the Bank's records, the Account Owner requested that the Bank retain all correspondence regarding the accounts numbered 41336. The records indicate that unknown type of account numbered 41336 was closed on 31 March 1938; the records do not indicate the value of that account. The records further indicate that on 6 April 1938, custody account 41336 was transferred to an account under another name used by the Account Owner. The records further indicate that the Account Owner wrote to the Bank regarding her assets on 12 May 1938 and asked the Bank not to give any information regarding about her assets to individuals representing the German Reich, except with regard to certain securities remaining in custody account 41336, namely *3% Kassa-Obl. Schweizerische Bankverein* bonds with a face value of 2,000.00 Swiss Francs ("SF"). The records do not indicate whether there were other securities contained in that custody account. The records further indicate that custody account 41336 was closed on 17 November 1938. There is no

evidence in the Bank's records that the Account Owner, the Power of Attorney Holder, or their heirs closed the custody account and received the proceeds themselves.

The Bank's records also indicate that the Account Owner held a safe deposit box numbered 990, over which Jakob Friedrich Rosenthal also held power of attorney. According to the records, this account was opened on 15 November 1935, and the Account Owner requested that the Bank retain all but the most important correspondence regarding this account. The records indicate that the safe deposit box was closed on 25 March 1938, and that on that date, one of the keys to the safe deposit box was not returned to the Bank; however, five days later, on 30 March 1938, according to the Bank records, the second key was returned to the Bank.³

Finally, the Bank's records also indicate that the Account Owner held an account, the type of which is not indicated, numbered 41836, which was merely held under the name "Bodenwieser" (as opposed to "Bodenwieser-Rosenthal"). The records indicate that this account was closed on 1 September 1938. There is no evidence in the Bank's records that the Account Owner or her heirs closed this account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner and the Power of Attorney Holder. The Claimant's relative's name and city and country of residence match the published name and city and country of residence of the Account Owner. In addition, the Claimant identified the Account Owner's street address and marital relationship with the Power of Attorney Holder, the Power of Attorney Holder's correct name,⁴ and the fact that the Account Owner's surname Bodenwieser was a stage name, all of which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the Bank's records.

The CRT notes that the name Gertrud Bodenwieser-Rosenthal appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List"). The CRT notes that there are no other claims to these accounts.

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, that she fled Austria after

³ The CRT notes that safe deposit boxes in Swiss banks usually have two keys, one of which is retained by the bank, and the other which is kept by the owner of the box. Upon closing a safe deposit box, the owner is required to return the second key.

⁴ The CRT notes that [REDACTED] (the "Claimant") identified the Power of Attorney Holder's name as Friedrich Jacques Rosenthal, while the Bank's records indicate that the Power of Attorney Holder's name was Jakob Friedrich Rosenthal or Friedrich Rosenthal. The CRT notes that the name Jacques is a recognized variation of the name Jakob.

the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), and that her husband perished in Auschwitz in 1942.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant’s relative. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT further notes that the Claimant identified unpublished information about the Account Owner and the Power of Attorney Holder as contained in the Bank’s records. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form.

The CRT notes that the Claimant is only distantly related to the Account Owner. According to the Claimant, the Account Owner, Gertrud Bodenwieser-Rosenthal, was the Claimant’s maternal grandfather’s sister’s husband’s maternal aunt. However, the CRT notes that the Account Owner had no children, and that her likely heir was her nephew, [REDACTED], who was the son of Gertrud Bodenwieser-Rosenthal’s sister, [REDACTED], née [REDACTED]. The Claimant explained that she is the sole heir of [REDACTED]. Therefore, despite the distant relationship, it is likely, based upon the information available to the CRT, that the Claimant is the sole heir to the Account Owner’s sole heir.

The Issue of Who Received the Proceeds

The Bank’s records indicate that the safe deposit box numbered 990 was closed on 25 March 1938; that the second key to that safe deposit box was returned to the Bank on 30 March 1938; and that the account of unknown type numbered 41336 was closed on 31 March 1938. The Bank’s records further indicate that the proceeds of custody account 41336 were transferred to an account under the Account Owner’s other name on 16 April 1938, and that the Account Owner sent a letter to the Bank regarding the custody account numbered 41336, referring to securities remaining in it, on 12 May 1938.

Given that the Account Owner had control over her accounts as late as 16 April 1938, when she transferred part of the contents of custody account numbered 41336 to another account in her other name; that the safe deposit box was closed on 25 March 1938 and the Account Owner returned the second key to that box returned five days later; and that the unknown type of account numbered 41336 was closed on 31 March 1938; the CRT concludes that the Account Owner received the proceeds of safe deposit box numbered 990 and the unknown type of account numbered 41336.

With regards to custody account 41336, as indicated above, the Bank’s records indicate that a portion of the contents of this account was transferred to an account numbered 41836 on 16 April 1938 which was held under the Account Owner’s other name, and that the custody account

41336 was closed on 17 November 1938. The Bank's records also indicate that the Account Owner held an account of unknown type under the name "Bodenwieser" which was numbered 41836, and that that account was closed on 1 September 1938. Consequently, the CRT concludes that the account into which portions of the securities from custody account 41336 were transferred was account numbered 41836, held under the name "Bodenweiser," and that account was also a custody account. The Bank's records show that account numbered 41336 remained open after that transfer and that it held certain securities, and that it was ultimately closed on 17 November 1938. The records show that the custody account numbered 41836, held under the name "Bodenweiser," was closed on 1 September 1938.

Given that the Account Owner expressed to the Bank her concerns that no information regarding her custody accounts be imparted to representatives of the Nazi regime following the *Anschluss*, but for the bonds remaining in the custody account 41336; that there is no record of the payment of custody accounts 41336 or 41836 to her; that the Account Owner resided in Austria after the *Anschluss* and was still there at the time both accounts were closed; that the Account Owner and her heirs would not have been able to obtain information about her account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (a), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the accounts' proceeds were not paid to the Account Owner, the Power of Attorney Holder, 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that she is the Account Owner's nephew's brother-in-law's granddaughter, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed custody accounts 41336 and 41836.

Amount of the Award

As indicated above, the CRT has determined that the Account Owner received the proceeds of the unknown type of account numbered 41336 and safe deposit box numbered 990. Consequently the award in this case is for the custody accounts numbered 41336 and 41836. The CRT notes that the Bank's records show that a portion of the securities in account numbered 41336 was transferred to account numbered 41836, and that securities remained in account 41336, including, at least, *3% Kassa-Obl. Schweizerische Bankverein* bonds with a face value of SF 2,000.00. The records do not show, however, if these were the only assets remaining in custody account numbered 41336. Accordingly, the CRT considers this an account of unknown value. The records do not indicate the value of the assets transferred to custody account 41836. 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 current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00. Together, the two custody accounts had a combined 1945 value of SF 26,000.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 325,000.00.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 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
18 December 2008