

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Accounts of Otto Ehrenfest

Claim Numbers: 212024/SA¹

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Otto Ehrenfest (the “Account Owner”) at 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 Claimants

The Claimant submitted a Claim Form identifying the Account Owner as her maternal grandfather, Otto Ehrenfest, who was born on an unknown date in Vienna, Austria, and was married to [REDACTED], the Claimant’s grandmother, also on an unknown date in Vienna. The Claimant stated that her grandparents, who were Jewish, had two children: [REDACTED], who was born on an unknown date and who died in 1990, and [REDACTED], the Claimant’s mother. The Claimant indicated that her grandfather resided at Franzesbruechenstrasse 22, in Vienna, and that he was a dentist who held the title of Doctor. The Claimant further indicated that her grandfather fled Austria in 1938 to Portland, Oregon, the United States, where he died on an unknown date. In support of her claim, the Claimant provided copies of photographs of members of her family and Otto Ehrenfest’s diploma of medicine dated 1903.

The Claimant indicated that she was born on 6 June 1927, in Vienna. The Claimant is representing [REDACTED], née [REDACTED], her mother, who was born in Vienna on 7 October 1901.

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 212023 and 212024. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 212024/SA.

Information Available in the Bank Record

The bank record consists of an account-opening card. According to this record, the Account Owner was Dr. Otto Ehrenfest, who resided in Vienna, Austria. The bank record indicates that the Account Owner held a demand deposit account and a custody account. The custody account, which was numbered L59058, was opened on 1 September 1937 and was closed on 6 July 1939. The demand deposit account was closed on 10 July 1939. The amounts in the accounts on the dates of their closure are unknown, nor do the bank records show to whom the accounts were paid. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of a Dr. Otto Ehrenfest. These documents include a census form numbered 4830, which was signed and submitted by Dr. Otto Ehrenfest on 15 July 1938, and the letters and documents that were attached thereto. According to these records, Dr. Otto Ehrenfest, who was Jewish, was born on 26 October 1848, resided with his wife [REDACTED], née [REDACTED], at Franzensbrückenstrasse 22, in Vienna II, Austria, and worked as a dentist. The records indicate that Dr. Otto Ehrenfest's various assets included real property located at Pötzleinsdorferstrasse 94, in Vienna XVIII, cash, jewelry, insurance, business interests, and foreign securities, some of which were denominated in Swiss Francs. The census form gave no indication that any of these assets were held in a Swiss bank.

According to these records, as of 27 April 1938, Dr. Otto Ehrenfest and his wife, [REDACTED], owned combined assets totaling 121,796.44 Reichsmarks. The records state further that, based on this total, they were assessed a "Jewish Assets Tax" (*Judenvermögensabgabe*) of 21,400.00 Reichsmarks and a so-called "flight tax" (*Reichsfluchtsteuer*) of 24,845.00 Reichsmarks.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her grandfather's name and country of residence matches the published name and country of residence of the Account Owner. The Claimant identified her grandfather's city of residence and title of "Doctor", which matches unpublished information about the Account Owner contained in the bank records. The Claimant also identified her grandfather's profession, the name of his spouse, and his street address, which match information about the Account Owner contained in the Austrian State Archives. In support of her claim, the Claimant submitted her grandfather's diploma of medicine dated 1903.

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 and lived in Vienna until 1938, when the Account Owner fled Nazi-controlled Austria to the United States.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting a detailed family tree, biographical details about her grandfather, and personal documentation belonging to her grandfather. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, consequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and the applicability of Presumptions (a) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds in this case were not paid to the Account Owner or his heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to assist in determining 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 was her grandfather, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his 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 demand deposit account was 2,140.00 Swiss Francs, and the average value of a custody account was 13,000.00 Swiss Francs. The present value of these amounts is calculated by multiplying the sum by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 181,680.00 Swiss Francs.

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Division of the Award

The Claimant is representing her mother in these proceedings. According to Article 29 of the Rules, her mother, the sole surviving child of the Account Owner, is entitled to receive 100% of any payment made to the Claimant.

Initial Payment

In this case, the Claimant's mother is age 75 or older and is therefore entitled to receive payment of 100% of the total award amount.

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

December 27, 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).