

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Paul Rosenau and Hugo Rosenau

in re Account of A.M. and J. Heilbronner

Claim Numbers: 201151/ME, 203942/ME

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claims of Paul Rosenau and Hugo Rosenau (the “Claimants”) to the unpublished account of A.M. and J. Heilbronner (the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as neither Claimant has in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

The Claimants, who are twin brothers, each submitted a Claim Form identifying the Account Owner as their maternal uncle, Julius Heilbronner, who was born on 5 August 1879 in Memmingen, Germany, and was married to his wife (whom the Claimants were unable to identify) in the early 1920s, for approximately one year before they were divorced. Julius Heilbronner and his wife had no children. The Claimants stated that their uncle was the owner of a family textile business that was originally located at Kramerstrasse in Memmingen and was known by the name of *M.L. Heilbronner*. The Claimants further stated that their uncle moved the company to Munich, Germany, in the 1920s, where the business was known by the name of *Tuchhaus Heilbronner* and specialized in the sale of men’s suit fabrics and linens. According to the information provided by the Claimants, their uncle’s business and place of residence was located at Sonnenstrasse 8 in Munich, where he employed a housekeeper and a chauffeur. The Claimants stated that their uncle would regularly visit the Claimants and their mother in Augsburg, Germany (located approximately thirty five kilometers from Munich), that he gave presents to the Claimants, including valuable books and a stamp collection, and that he repeatedly assured the Claimants that they were his heirs.

According to the information provided by the Claimants, their uncle, who was Jewish, devised a strategy to circumvent the increasing persecution of Jews by the Nazis in the 1930s by starting a business in St. Gall, Switzerland, known by the name of *Womag (Wollstoff Manufaktur AG)*, to which he sent bales of men’s suiting fabrics from his store in Munich. The Claimants stated that their uncle was driven to Switzerland on a seemingly routine business trip by his chauffeur in the

summer of 1938, but he decided to stay there indefinitely and sent his chauffeur and car back to Munich. The Claimants stated that their uncle's business and personal assets were confiscated by the Nazis when it became obvious that the Claimants' uncle was not planning to return to Munich, and that the Claimants' uncle's business was destroyed during the "Night of Broken Glass" pogrom (*Kristallnacht*) on 9 November 1938. According to the information provided by the Claimants, the Swiss authorities required their uncle to transfer 5,000.00 Swiss Francs to Germany between 1 May 1939 and 29 November 1940 to settle commercial debts regarding his merchandise imports into Switzerland in accordance with the "Clearing Treaty Arrangement" between Germany and Switzerland. The Claimants stated that although their uncle strenuously protested to the Swiss authorities that the Nazis had already confiscated his assets in Munich, the value of which would cover the commercial debt in question, the Swiss authorities insisted that he make the payment. According to the information provided by the Claimants, making this payment resulted in their uncle losing his business, and he was forced to lease a room from a Swiss family in St. Gall and to depend on Jewish organizations (*Hilfsvereine*) to support him during the remaining years of the Second World War. The Claimants further stated that the Swiss bank with which their uncle had an account is the Bank named in this claim. According to the information provided by the Claimants, their uncle moved to Philadelphia, Pennsylvania, the United States in 1948, where he arrived as a "broken old man, both in body and spirit," without money and suffering from asthma. The Claimants stated that their uncle died on 13 May 1950 and that he did not leave a will, as he did not have any assets of which to dispose. The Claimants submitted a family biography dated 6 September 1999, a copy of their uncle's restitution claim against Germany, dated 16 September 1948, and their uncle's death certificate. The Claimants indicated that they were born on 12 June 1915 in Augsburg.

The Claimants previously each submitted an Initial Questionnaire with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Julius Heilbronner, of Munich, Germany.

Information Available in the Bank Record

The bank record consists of a list of account owners transferred to a suspense account. According to this record, the joint Account Owners were A.M. and J. Heilbronner, who resided in Munich, Germany. The bank record indicates that the Account Owners held a demand deposit account. The bank record further indicates that the value of the account on an unknown date, but after transference to the collective account, was 964.00 Swiss Francs. The bank records do not indicate when the account at issue was opened, transferred to the collective amount, closed, or to whom it was paid, nor does this record indicate the value of this account on the date of its closure. 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 the Bank'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. There is no evidence in the bank record that the Account Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified one of the Account Owners. Their uncle's name matches the unpublished first initial of one of the Account Owners and the unpublished last name of both Account Owners. The Claimants identified their uncle's city of residence as Munich, Germany, which matches unpublished information about the Account Owners contained in the bank records. Moreover, the Claimants identified the Bank at which their uncle held an account, which matches unpublished information contained in the bank record. In support of their claim, the Claimants submitted documents, including their uncle's death certificate.

The CRT notes that the Claimants filed an Initial Questionnaire with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Julius Heilbronner, of Munich, Germany. The name of Account Owner Julius Heilbronner was not published on the February 2001 list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimants have based their present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as their relative, but rather on their personal knowledge of a direct family relationship. It also indicates that the Claimants had reason to believe that their relative owned a Swiss bank account. This supports the credibility of the information provided by the Claimants. The CRT notes that all other claims to this account were disconfirmed due to different cities of residence.

Status of One of the Account Owners as a Victim of Nazi Persecution

The Claimants have made a plausible showing that one of the Account Owners was a Victim of Nazi Persecution. The Claimants stated that their uncle was Jewish, that he fled Nazi Germany to Switzerland in 1938, and that his personal and business assets located in Munich were confiscated or destroyed by the Nazis during the Second World War.

The Claimants' Relationship to one of the Account Owners

The Claimants have plausibly demonstrated that they are related to one of the Account Owners by submitting their uncle's death certificate that identifies one of the Claimants, Paul Rosenau, as the person who reported their uncle's passing to the Department of Health in Pennsylvania.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) as provided in Article 28 (see Appendix A) of the Rules, 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that one of the Account Owners was their uncle, 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 account.

Amount of the Award

In this case, the Account Owners held one demand deposit account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, since it is unknown on what date the account had a value of 964.00 Swiss Francs, 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. 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 a total award amount of 25,680.00 Swiss Francs.

Division of the Award

According to Article 25(2) of the Rules, in cases where the Joint Account is claimed by relatives of only one or some of the Joint Account Owners, it shall be presumed that the Account was owned as a whole in equal shares by the Account Owners whose shares of the Account have been claimed.

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, the Claimants, who are twin brothers and the only direct descendants of their uncle's parents to have submitted a claim to the account of their uncle, are each entitled to one half (1/2) 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 5, 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).