

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Account of Gustav Hoffmann and Käte Hoffmann

Claim Numbers: 214398/SH; 214399/SH

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the accounts of Gustav Hoffmann and Käte Hoffmann (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 two Claim Forms identifying the Account Owners as his parents, Gustav Hoffmann and Kaete (or Käte, or Käthe) Rosalie Hoffmann, née [REDACTED]. The Claimant stated that his father was born in Leipzig, Germany, on 23 June 1888, and that his mother was born in Breslau, Germany, on 4 May 1896. The Claimant indicated that he and his sister, [REDACTED] (or [REDACTED]) [REDACTED], née [REDACTED], were Gustav and Kaete Hoffmann’s only children. According to the Claimant, his father, who was Jewish, was a bank representative at the *Dresdner Bank* in Breslau, where he lived with his family. The Claimant stated that his father suffered from tuberculosis, and that he died in a sanatorium in Obersdorf, Germany, on 7 March 1935. The Claimant indicated that his mother, who was also Jewish, fled to Palestine in 1940, after the Claimant fled there in 1939 and the Claimant’s sister immigrated to England. The Claimant indicated that his mother died in Jerusalem, Israel on 22 February 1956.

The Claimant provided documents, including a document showing that his parents lived at Augustastraße 116 in Breslau, and documents containing samples of his parents’ signatures. The Claimant submitted a summary of his parents’ biography, as well as his sister’s birth certificate. In addition, he submitted a copy of the Jerusalem District Court’s decision regarding his late mother’s estate, showing that the Claimant and his sister [REDACTED], Kaete Hoffmann’s only heirs, were each entitled to one-half of her estate. The Claimant also provided

his sister [REDACTED]'s will, in which she indicated that her husband, [REDACTED], was entitled to all of her assets if he survived her, and that if he did not, the assets should be divided so that her son [REDACTED], [REDACTED]'s descendants, and her daughter [REDACTED] each receive one-third of her assets.

The Claimant stated that he and his sister were born in Breslau on 24 June 1924 and 11 March 1931, respectively.

Information Available in the Bank Records

The bank records consist of a joint account opening contract signed in Zurich on 22 September 1930, and printouts from the Bank's database. According to these records, the Account Owners were Mr. Gustav Hoffmann and Mrs. Käte Hoffmann, both of whom resided at Augustastraße 116 II in Breslau 13, Germany, and who jointly held a custody account. The bank records contain the Account Owners' signatures. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

The bank records do not show if or when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. 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.

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 Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His parents' names and their city and country of residence match the published names and city and country of residence of the Account Owners. The Claimant stated that his parents lived at Augustastraße 116, which matches unpublished information about the Account Owners' address contained in the bank records. Finally, the Claimant submitted samples of his parents' signatures, which match the signature samples contained in the bank records.

Status of the Account Owners as a Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and that they lived in Nazi Germany. The Claimant further indicated that Account Owner Käte Hoffman fled from Germany to Palestine in 1940.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that he and his late sister are Gustav and Käte Hoffmann's only children. Furthermore, the Claimant provided a Court decision concerning his mother's estate, as well as his sister's will. The Claimant's sister's will demonstrates that her husband, [REDACTED], and their two children, [REDACTED] and [REDACTED], are all related to the Account Owners.

The Issue of Who Received the Proceeds

Given the application of Presumptions (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 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were his parents, [REDACTED]'s parents-in-law, and [REDACTED] and [REDACTED]'s grandparents, and that these relationships justify 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 joint custody account. 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 ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 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 156,000.00 Swiss Francs.

Division of the Award

The Claimant is representing his late sister's husband and the couple's two children in the present proceedings. According to Article 23(2)(a) of the Rules, if the Claimant has submitted the Account Owner's will or other inheritance document, the award will provide for distribution

among beneficiaries who have submitted a claim. According to a decision rendered by the District Court of Jerusalem on 30 October 1956 with respect to Käte Hoffmann's estate, the Claimant and his sister are each entitled to one-half of her estate. Furthermore, the Claimant provided a copy of his sister's will, which is dated 9 November 1997. In her will, the Claimant's sister stated that she intended to leave all of her assets to her husband, [REDACTED], should he survive her. Given that the Claimant is representing his brother-in-law, [REDACTED], in these proceedings, the latter is entitled to receive one-half of the Award. In view of their mother's will, [REDACTED] and [REDACTED] are not entitled to a portion of the Award.

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 his claims to determine whether there are additional Swiss bank accounts to which he 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).