

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED]

In re Account of Otto Hoffmann

Claim Number: 209285/IG

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”) to the account of Otto Hoffmann (the “Account Owner”) 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 a Claim Form identifying the Account Owner as her husband, Otto Hoffman(n),¹ who was born on 5 December 1896 in Komatov, Austro-Hungary, and was married to the Claimant on 18 October 1925 in Vienna, Austria. The Claimant identified her husband as the owner and manager of the *Denes* company, a manufacturer and distributor of glass, located in Vienna. The Claimant stated that her husband resided at St. Veitgasse 12-14 in Vienna XII until 1938. The Claimant stated that her husband was Jewish, and that he was detained in the Dachau and Buchenwald concentration camps from May 1938 until February 1939. The Claimant stated that her husband fled to the United States in 1939, where he died on 25 September 1958 in Bloomington, Illinois.

The Claimant indicated that she was born on 18 December 1905 in Vienna, and that she and her husband have two children: [REDACTED], née [REDACTED] and [REDACTED]. The Claimant submitted her own United States naturalization certificate, dated 17 May 1944.

¹ The Claimant stated that Otto Hoffmann changed his last name into Hoffman upon arrival in the United States.

Information Available in the Bank Record

The bank record consists of a printout from the Bank's database. According to this record, the Account Owner was Otto Hoffmann who resided in Vienna, Austria. The printout also makes a reference to Oatenhof, but it is not clear whether this refers to a name or an address. The bank record indicates that the Account Owner held a custody account, numbered 20395, that was opened on 22 April 1937 and was closed on 15 October 1940. The amount in the account on the date of its closure is unknown. The bank record does not show to whom the account was paid, nor does this record indicate the value of this account.

There is no evidence in the bank record that the Account Owner or his heirs closed the account 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 Otto Hoffmann, numbered 47290, and signed by [REDACTED] on 20 August 1938 in Vienna. According to these documents, Otto Hoffmann, who was born on 5 December 1896, and who was married to [REDACTED], née [REDACTED], was a businessman and resided with his wife at St. Veitgasse 12/14 in Vienna until he was deported to the concentration camp Dachau (3K, Block 10, Stube 1). According to these documents, Otto Hoffmann, who was Jewish, owned and managed a company named *Hermann Denes* located at Hamburgerstrasse 5 in Vienna V.

The documents found in the Austrian State Archives give evidence of the wealth of Otto Hoffmann reported to the Nazi Regime at the time he was sent to Dachau. According to these statements, the total assets of Otto and [REDACTED] Hoffmann amounted to 149,622.00 Reichsmarks, out of which a special tax levied on Jews (*Judenvermögensabgabe*) in the amount of 26,800.00 Reichsmarks and a flight tax in the amount of 30,705.00 Reichsmarks were paid. According to these documents, Otto Hoffmann was the owner of one-third of income-yielding premises at Hamburgerstrasse 7 in Vienna V and a holder of eight life insurance policies in various Austrian and foreign insurance companies, including an insurance policy of the Austrian insurance company *Der Anker*, which was reported to the Nazi Regime by an attorney, Dr. Erich Rajakowitsch, as a part of the Aryanization process of the Jewish assets in Austria (*Gildemeester-Aktion*) and the value of the insurance policy was transferred to *Bankhaus Krentschker & Co* in Vienna. The Austrian census records also include a general power of attorney form to [REDACTED] signed by Otto Hoffmann in Dachau on 16 July 1938. These records also indicate that on 3 February 1939, Otto Hoffmann was interned in Buchenwald.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her husband's name matches the published name of the Account Owner. The Claimant identified her husband's place of residence as Vienna, Austria, which matches published information about the Account Owner contained in the bank records. Furthermore, the Claimant identified herself as [REDACTED] and submitted her United States naturalization certificate supporting this and containing a sample of her signature, which matches the signature sample contained in the Austrian census records.

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 was detained in concentration camps for nine months before he could flee from 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 detailed biographical information demonstrating that the Account Owner was her husband.

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 account owners are interned in the Dachau concentration camp for a relatively short time, and then, near the time of their release, Swiss accounts held by the account owners 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 application 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 husband, 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 account.

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

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 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 37(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Initial Payment

In this case, the Claimant 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).