

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED1], [REDACTED2] and [REDACTED3]

in re Accounts of Heinrich Maier and *Bankhaus E. Mayer*

Claim Numbers: 219151/JT; 220994/JT; 222975/JT

Award Amount: 130,440.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED1] (“Claimant [REDACTED1]”), [REDACTED2] (“Claimant [REDACTED2]”), [REDACTED3] (“Claimant [REDACTED3]”) (together the “Claimants”) to the account of Heinrich Maier (the “Account Owner”) at the Rheinfelden branch of the [REDACTED] (“Bank I”). This Award is also to the accounts of *Bankhaus E. Mayer* (Account Owner *Bankhaus E. Mayer*) at the Zurich branch of the [REDACTED] (“Bank II”). When jointly referred to, Account Owner Heinrich Maier and Account Owner *Bankhaus E. Mayer* are hereinafter referred to as (the “Account Owners”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

The Claimants submitted Claim Forms identifying Account Owner Heinrich Mayer as their father, who was born on 8 April 1887 in Freiburg, Germany, and was married to [REDACTED] on 28 October 1919 in Freiburg. Claimant [REDACTED2] and Claimant [REDACTED3] stated that their grandfather, [REDACTED], founded the wholesale steel company *Julius Mayer* in Freiburg and that upon his death, in 1911, their father became the sole owner of this company. Claimant [REDACTED2] and Claimant [REDACTED3] further stated that their father’s banking affairs were carried out by Account Owner *Bankhaus E. Mayer*, which was located in Freiburg, Germany, founded by their great-uncle [REDACTED] and later owned by his son, the Claimants’ cousin, [REDACTED]. According to the Claimants, they arrived with their parents in the United States in March 1938. Claimant [REDACTED2] and Claimant [REDACTED3] indicated that their father made an agreement with his cousin [REDACTED] to liquidate his financial holdings and move them to Switzerland. They also indicated that [REDACTED] was accused of illegal currency transactions by the Nazis and committed suicide while fleeing from the Gestapo. The Claimants stated that their father was not able to trace the whereabouts of the money. Claimant [REDACTED1] also stated that her father had business connections in

Switzerland. The Claimants stated that their father died on 22 December 1955 in New York, New York, the United States.

In support of her claim, Claimant [REDACTED1] submitted her birth certificate issued in Freiburg. Claimant [REDACTED2] and Claimant [REDACTED3] submitted an advertisement of the company *Julius Mayer*. The Claimants also submitted their father's naturalization certificate dated 1944.

Claimants [REDACTED1], [REDACTED2], and [REDACTED3] indicated that they were born on 22 July 1926, 28 October 1921, and 22 March 1931, respectively, in Freiburg.

Information Available in the Bank Records

The bank records of Bank I consist of an undated list of savings/passbook accounts from the Rheinfeldern branch of the Bank and printouts from the Bank's database. According to these records, the Account Owner was Heinrich Maier from Germany. The bank records indicate that the Account Owner held a savings/passbook account, numbered 14055, valued on an unknown date at 42.75 Swiss Francs. These records further indicate that the account at issue was transferred to the *Deutsche Reichsbank* (German National Bank) on an unknown date. The bank records do not indicate when the account at issue was closed.

The bank records of Bank II consist of an opening card and printouts from the Bank's database. According to these records, the Account Owner was *Bankhaus E. Mayer*, which was located at Salzstrasse 24 in Freiburg, Germany. The bank records indicate that the Account Owner held one demand deposit account, numbered 19634, and two accounts of unknown type, numbered 7925 and 19634, respectively. The bank records indicate that the accounts at issue were closed but do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts.

The CRT's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (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 claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owners. Their father's name matches the published name of Account Owner Heinrich Maier. Although the spelling of their father's name is slightly different than the spelling of the Account Owner's name in the bank documents, the CRT concludes that the two spellings are variations of the same name. The CRT notes that the bank records do not contain any specific information about Account Owner Heinrich Maier other

than his name and country of residence. The Claimants' identification of the Account Owner is supported by the fact that the Claimants also identified the unpublished name and address of Account Owner *Bankhaus E. Mayer*. In support of their claims, the Claimants submitted their father's naturalization certificate.

The CRT also notes that, though the account was incorrectly published as "E. Meyer," the Claimant identified the correct name of Account Owner Bankhaus E. Mayer. All other claims to the account were based on the incorrect name of the Account Owner as "E. Meyer," and none of those claimants were related to Claimants [REDACTED1], [REDACTED2], or [REDACTED3].

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that Account Owner Heinrich Maier was Jewish and was forced to leave Germany in 1938. The Claimants further stated that Account Owner *Bankhaus E. Mayer* was owned by their cousin, [REDACTED], who was Jewish and committed suicide while fleeing the Gestapo in Germany.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are the children of Account Owner Heinrich Mayer and relatives of the owners of Account Owner *Bankhaus E. Mayer*. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

The bank records indicate the account of Account Owner Heinrich Maier was paid to Nazi authorities. The CRT presumes that if Account Owner Heinrich Maier or his heirs did not receive the proceeds of the account of Heinrich Maier, then Account Owner *Bankhaus E. Mayer*, its owner [REDACTED], or its successors in interest did not receive the proceeds of the account of *Bankhaus E. Mayer* either. Moreover, with regard to the account of Account Owner *Bankhaus E. Mayer*, given the application of Presumptions (h) and (j) contained in Appendix A,¹ the CRT also concludes that it is plausible that the account proceeds were not paid to Account Owner *Bankhaus E. Mayer* or its successors in interest. 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 or successors in interest 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 23 of the Rules. Second, the Claimants have plausibly demonstrated that Account Owner Heinrich Maier was their father, and that Account Owner *Bankhaus E. Mayer* was owned by their father's cousin, and those 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.

¹ An expanded version of Appendix A appears on the CRT II website – www.crt-ii.org.

Amount of the Award

With regard to the savings/passbook account numbered 14055, the bank records indicate that its value was 42.75 Swiss Francs, but do not indicate the date of this value. Accordingly, the CRT is unable to determine the value of that account in 1945. Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here for all of the accounts, including the savings/passbook account numbered 14055, 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 savings/passbook account was 830.00 Swiss Francs, the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of an account of unknown type was 3,950.00 Swiss Francs, for a total of 10,870.00 Swiss Francs for the four accounts. 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 130,440.00 Swiss Francs.

Division of the Award

According to the principles of distribution outlined in Article 29 of the Rules, the Claimants are each entitled to one-third of the award amount.

Initial Payment

Article 37(3) (a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, however, because Claimant [REDACTED1] and Claimant [REDACTED2] are age 75 or older, they are entitled to receive payment of 100% of their portion of the total award amount. Accordingly, the initial payment amount is 115,222.00 Swiss Francs, which is comprised of 100% of Claimant [REDACTED1] and Claimant [REDACTED2]'s portion of the award (43,480.00 Swiss Francs each) and 65% of Claimant [REDACTED3]'s portion of the award (28,262.00 Swiss Francs).

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 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

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).