

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED1]
also acting on behalf of [REDACTED]¹ and [REDACTED]

and

Claimant [REDACTED2]
also acting on behalf of [REDACTED] and [REDACTED]

in re Accounts of Louis Oppé

Claim Numbers: 210600/SJ; 217936/SJ

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED1] (“Claimant [REDACTED1]”) and of [REDACTED2], née [REDACTED2], (“Claimant [REDACTED2]”) (together the “Claimants”) to the accounts of Louis Oppé (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as Claimant [REDACTED2] has 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 Claimants submitted Claim Forms identifying the Account Owner as their great-grandfather, Louis Oppé, who was born on 26 June 1840, and was married to Laura Skutsch. The Claimants both stated that Louis Oppé, who was Jewish, was a manufacturer (*Fabrikant*) on Jakobstrasse in Mühlhausen, Germany, and Claimant [REDACTED1] added that Louis Oppé owned the firm *S. A. Oppé*. Additionally, the Claimants stated that Laura Oppé, née Skutsch, who appears as a Power of Attorney Holder on the list of bank accounts published on 5 February 2001, was the wife and heir of Louis Oppé. Furthermore, Claimant [REDACTED1] identified the lawyer Rudolf Fürst, who appears as a second Power of Attorney Holder on the list, as his grandfather, the son-in-law of his great-grandfather, Louis Oppé (the husband of [REDACTED], née

¹ [REDACTED] submitted a claim to the account of [REDACTED], which is registered under Claim number 210941. The CRT will treat the claim to this account in a separate decision.

[REDACTED].) The Claimants also stated that Louis Oppé died in Baden-Baden, Germany in 1915, but that both Power of Attorney Holders lived in Germany during the Second World War. The Claimants stated that Laura Oppé died in Aachen, Germany. Claimant [REDACTED1] stated that her date of death was 30 December 1941 and Claimant [REDACTED2] stated that she died in 1942. Claimant [REDACTED1] added that Rudolf Fürst perished in Sobibor in the early 1940s.

In support of their claims, the Claimants submitted numerous documents, including copies of their family trees. Claimant [REDACTED1] submitted documents for the estates of Louis and Laura Oppé, Rudolf and [REDACTED] Fürst, and [REDACTED] and [REDACTED], showing that the Account Owner was her great-grandfather, as well as the birth certificate and the marriage certificate of [REDACTED], which states that she married Doctor Rudolf Fürst. Claimant [REDACTED2] submitted hereditary documents to the estates of Louis and Laura Oppé and [REDACTED], née [REDACTED], showing her relationship to the Account Owner, and the marriage certificate, death certificate and hereditary documents of [REDACTED], née [REDACTED], also showing that the Account Owner was her great-grandfather

Claimant [REDACTED1] indicated that he was born on 1 October 1931 in Berlin, Germany. Claimant [REDACTED1] is representing his siblings: [REDACTED], born on 20 September 1928 in Berlin; and [REDACTED], born on 23 June 1936 in London, England. Claimant [REDACTED2] indicated that she was born on 2 April 1939 in Oruro, Bolivia. Claimant [REDACTED2] is representing her sister, [REDACTED], who was born on 12 June 1946 in Oruro, and her aunt, [REDACTED], née [REDACTED], who was born on 28 June 1909 in Breslau, Germany.

Information Available in the Bank Records

The bank records consist of an account opening contract, a power of attorney form and printouts from the Bank's database. According to these records, the Account Owner was Louis Oppé and the original Power of Attorney Holder was Laura Oppé, the Account Owner's wife. The bank records indicate that the Account Owner held a custody account, numbered 1684, that was opened on 11 July 1908, and a demand deposit account, numbered 4928. The bank records also include a second power of attorney form, signed on 4 January 1917 by the lawyer Dr. Rudolf Fürst, the Account Owner's son-in-law, to the custody account numbered 1684.² The records indicate that the Account Owner resided at Lindenbuhl 17, Mühlhausen/Thünngen, with his wife. Finally, the records indicate that Rudolf Fürst resided at Thearerstrasse 14 in Heidelberg.

The bank records indicate that one or more of the accounts were frozen in the 1945 Freeze of German Assets. The bank records do not show when the accounts at issue were unfrozen or closed, or to whom they were paid, nor do these records indicate the values of these accounts.

² This second power of attorney, together with the statements from the Claimants that Louis Oppé died in 1915, indicates to the CRT that Laura Oppé, as the wife of the Account Owner, assumed ownership of the accounts after his death. Notwithstanding this fact, for the purposes of this Award, the CRT will continue to refer to Louis Oppé as the Account Owner and Laura Oppé as a Power of Attorney Holder.

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 these accounts in the Bank’s system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their great-grandfather’s name matches the published name of the Account Owner and their great-grandmother’s name matches the published name of one of the Power of Attorney Holders. The Claimants have also identified the Account Owner’s place of residence as Mühlhausen, Germany, which matches published information about the Account Owner contained in the bank records. Additionally, the Claimants identified Power of Attorney Holder Laura Oppé as the wife of the Account Owner, which matches unpublished information. Furthermore, Claimant [REDACTED1] identified the second Power of Attorney Holder, Rudolf Fürst, as his grandfather and the son-in-law of the Account Owner, which matches unpublished information contained in the bank records. Finally, Claimant [REDACTED1] identified Rudolf Fürst as a lawyer, which matches unpublished information about the Power of Attorney Holder contained in the bank records. In support of their claim, the Claimants submitted documents, including hereditary documents of the Account Owner and Power of Attorney Holders, and the birth and marriage certificates of [REDACTED], indicating that her husband was Doctor Rudolf Fürst.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Power of Attorney Holders, the heirs of the Account Owner, were Victims of Nazi Persecution. The Claimants stated that the Power of Attorney Holders were Jewish and lived in Germany until their deaths during the Second World War. Power of Attorney Holder Rudolf Fürst was imprisoned and died in a concentration camp.

The Claimants’ Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that the Account Owner was their great-grandfather.

The Issue of Who Received the Proceeds

Given the deaths of the Account Owner's heirs during World War II, the freezing of his accounts in 1945, and the application of Presumptions (h) and (j) contained in Appendix A,³ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holders, 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 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their great-grandfather and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holders nor their heirs received the proceeds of the claimed account.

Amount of the Award

The Account Owner held one custody account and one demand deposit account. Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case with these two accounts, 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 and the average value of a demand deposit account was 2,140.00 Swiss Francs, for a total of 15,140 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 181,680.00 Swiss Francs.

Division of the Award

Both Claimant [REDACTED1] and Claimant [REDACTED2] are representing family members in this proceeding. According to Article 29 of the Rules, the Award shall be divided as follows, based upon the relationship of the parties to the Account Owner.

Claimant [REDACTED1], a great-grandchild of Louis and Laura Oppé, is representing his two siblings. As a result, they share equally in the one-half of the total award amount, to which they are entitled through their grandmother, the daughter of the Account Owner. Therefore, each of them is entitled to one-sixth of the Award.

Claimant [REDACTED2], also a great-grandchild of Louis and Laura Oppé, is representing her sister and her aunt, [REDACTED] (a granddaughter of the Account Owner). They are entitled to one-half of the total Award through their relationship to the Account Owner's daughter [REDACTED], who is Claimant [REDACTED2]'s grandmother and [REDACTED]'s mother.

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Thus, [REDACTED] is entitled to one-quarter of the total award amount. Claimant [REDACTED2] and her represented sister share the remaining one-quarter to which they are entitled through their mother, so that each is entitled to one-eighth of the total Award.

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 [REDACTED] is age 75 or older, she is entitled to receive payment of 100% of her portion of the total award amount. Accordingly, the initial payment amount is 133,989.00 Swiss Francs, which is comprised of 100% of [REDACTED]'s portion of the award (45,420.00 Swiss Francs) and 65% of the portion of the award due to the remaining Claimants and represented parties, as divided above (a total of 88,569.00 Swiss Francs). Specifically, Claimant [REDACTED1], [REDACTED] and [REDACTED] will each receive an initial payment of 19,682.00 Swiss Francs, and Claimant [REDACTED2] and [REDACTED] will each receive an initial payment of 14,761.50 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

January 28, 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).