

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant the Estate of [REDACTED]¹
represented by Dolores Emilie Graef

in re Accounts of Albin Oppenheim

Claim Number: 601299/UM²

Award Amount: 936,975.00 Swiss Francs

This Certified Award is based upon the claim of the Estate of [REDACTED] (the "Claimant"), represented by the administrator of the Estate, Dolores Emilie Graef, to the unpublished accounts of Albin Oppenheim (the "Account Owner") at the Zurich branch of the [REDACTED] ("Bank I") and the [REDACTED] ("Bank II").

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's representative submitted a claim to the Holocaust Claims Processing Office ("HCPO"), indicating that she is the administrator of the Estate of [REDACTED] and that she is acting on behalf of that Estate. The Claimant's representative identified the Account Owner as Dr. Albin Joseph Oppenheim, who was born on 8 January 1875 in Brno, Austria-Hungary (now the Czech Republic), and was married to [REDACTED], née [REDACTED], in August 1935. The Claimant's representative stated that Dr. Oppenheim was both a professor of dentistry and a private practitioner in Vienna, Austria. The Claimant's representative also stated that Dr. Oppenheim lectured and traveled extensively, and that he had a brother who lived in Geneva, Switzerland. The Claimant's representative further stated that Dr. Oppenheim, who was Jewish, fled from Vienna to Los Angeles, California, the United States, in December 1938, and that he resided in Los Angeles until his death on 20 November 1945. The Claimant's representative

¹ The CRT notes that Dolores Emilie Graef, the administrator of the Estate of [REDACTED], submitted this claim after [REDACTED]'s death on 13 January 1994, on behalf of the Estate. Accordingly, this award refers to the Estate of [REDACTED] as the Claimant.

² The Claimant's representative submitted a claim, numbered B-00759, on 26 January 1998, to the Holocaust Claims Processing Office ("HCPO") of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601299.

additionally stated that [REDACTED] also lived in Los Angeles until her death, on 13 January 1994.

The Claimant's representative submitted [REDACTED]'s birth certificate, indicating that she was born on 16 February 1895; Albin Oppenheim's will, bequeathing his entire Estate to his wife, [REDACTED]; and an order of the Los Angeles Superior Court, appointing the Claimant's representative as the administrator of [REDACTED]'s Estate.

The Claimant's representative previously submitted an Initial Questionnaire ("IQ") with the Court in 1999, asserting her entitlement, as the administrator of the Estate of [REDACTED], to a Swiss bank account owned by Dr. Albin Oppenheim. In that IQ form, the Claimant's representative indicated that Dr. Albin Oppenheim and his wife fled Austria because he was not permitted to practice his profession under the Nazi regime.

The Claimant's representative stated that Dr. Albin Oppenheim held an account at Bank I and that he unsuccessfully attempted to access his account from the United States prior to his death. The Claimant's representative stated further that Dr. Oppenheim's wife contacted Bank I after the Second World War to inquire about her husband's account, but her attempts to locate the account were unsuccessful. The Claimant's representative submitted a mail receipt addressed to Bank I from Mrs. Albin Oppenheim, dated 3 May 1960.

The Claimant's representative submitted two letters from Bank I, both dated 10 June 1933. The first letter indicates that a company named *Witurmo AG* with its seat in Chur, Switzerland, transferred 15,000.00 United States Dollars ("US\$") in gold coins from its coin-account (*Stückekonto*) at Bank I to numbered account 1637 at Bank I. The letter further indicates that some of the coins had been held at the Zurich branch of Bank I (US\$ 10,000.00) and that some (US\$ 5,000.00) were located in London, the United Kingdom. The second letter informed the owner of numbered account 1637 that *Witurmo AG* transferred the above-mentioned gold coins to account 1637. That letter indicates that US\$ 5,000.00 in gold coins were deposited in London at the *Westminster Bank Limited* under Bank I's name, on behalf of the owner of account 1637 and at the latter's risk.

The Claimant's representative also submitted a letter, dated 14 December 1945, from Fred A. Alden (formerly known as Fritz Adler) to Dr. Albin Oppenheim, in which Fred Alden informed him that he had not had any business connections to Bank I since Bank I was associated with Bank II in 1939, and advised Dr. Oppenheim that Bank I "should be able to answer your questions with the help of their books if you can provide them with the exact designation of the account to which the purchases at that time were made." (*"Dort sollte es an Hand der Buecher moeglich sein, Ihre Fragen zu beantworten, soferne Sie die genaue Bezeichnung des Kontos, fuer das szt. die Anschaffungen erfolgten, angeben koennen."*)

Furthermore, the Claimant's representative submitted a letter, dated 12 February 1948, to Bank I, in which [REDACTED] indicated that her husband had transferred gold coins from *Wiener Bankhaus Reitler* to his account at Bank I in 1933 or to numbered account 1637 at Bank I in 1937. In that letter, [REDACTED] offered to provide a proof of inheritance, if necessary. The Claimant's representative submitted Bank I's reply, in which Bank I explained that the research

conducted had not revealed an existing account in the name of Dr. Oppenheim or an account numbered 1637. Bank I explained that it could do research about Dr. Oppenheim's account that might have existed by that time, if the Claimant would provide Bank I with Dr. Oppenheim's death certificate and a probate order to Dr. Oppenheim's Estate. Bank I also explained that a fee of US\$ 25.00 would be charged for such research. The Claimant's representative also submitted a letter from [REDACTED] to Bank I, dated 2 May 1960, wherein [REDACTED] asked Bank I to research the disposition of numbered account 1637. The Claimant included a check in the amount of US\$ 25 to cover the research fees. The Claimant's representative provided Bank I's reply to the Claimant's letter, dated 13 May 1969, in which Bank I explained that further research had been conducted and that no existing accounts had been found. Bank I cited the destruction of documents from this time period as a hindrance to the search. Bank I also indicated that its business had been taken over by Bank II and that the records of Bank II had also been searched for accounts, but that no relevant documents had been found. Bank I returned the US\$ 25.00 research fee to the Claimant.

In 1996, the Claimant submitted an inquiry to the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (the "Contact Office") and paid a research fee of 100.00 Swiss Francs ("SF"). The Contact Office informed the Claimant in February 1997 that no existing accounts held by Albin Oppenheim were found.

Information Available in the Banks' Records

The auditors who carried out the investigation of these banks 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 report any accounts belonging to Dr. Albin Oppenheim. The bank records regarding these accounts were obtained by the HCPO on behalf of the Claimant and forwarded to the CRT.

Documents Submitted by the HCPO

The documents forwarded to the CRT by the HCPO include correspondence with the legal successor of Bank I and Bank II ("Bank III").

In a letter to the HCPO, dated 29 October 1999, Bank III informed the HCPO that, as of 1963, Bank I was no longer licensed as a bank, was renamed *Lombard und Finanz AG*, and has not been authorised to hold bank accounts since then. In that letter Bank III stated that in 1993, Bank I was merged with *Simonin AG*, which later merged with *Thesaurus*, an affiliate of Bank III.

In a letter to the HCPO, dated 24 February 2000, Bank III indicated that it had searched its records but had found no information regarding numbered account 1637. In light of the documents in the Claimant's possession that evidenced a deposit of gold coins made by *Witurmo AG* on 10 June 1933 to account 1637, Bank III requested from the HCPO additional information regarding the relationship between *Witurmo AG* and Albin Oppenheim.

In the letter of 24 February 2000, Bank III included an excerpt from a registry of custody accounts from Bank II, which included an entry, dated 11 June 1937, for account numbered 12741 in the name of Dr. Albin Oppenheim from Vienna. Citing a lapse of 60 years, Bank III advised that it was unable to provide additional information about either the owner of that account or the account itself.

On 23 February 2004, the HCPO provided the CRT with a copy of an extract from the Commercial Register of the Canton of Grisons received from the City Archive of Chur, Switzerland. According to this document, *Witurmo AG* was a company concerned with the execution of banking, financial and commercial transactions. The company was incorporated on 28 January 1932 and had its seat in Chur. Mr. Arthur Adler, a Swiss citizen, who resided in Zurich, Switzerland, was the company's managing director and the sole member of the Board of Administrators. According to this document, on 1 December 1938, Arthur Adler was replaced by Dr. Adolf Heinrich Reginald Wach, a Swiss citizen, who also resided in Zurich. This document shows that *Witurmo AG* was liquidated in 13 April 1942 and that its assets were transferred to a company named *Laborit AG*, which had its seat in Chur. The document makes no mention of Albin Oppenheim.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of April 27, 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Albin Oppenheim, numbered 44629. These documents indicate that Dr. Albin Oppenheim, a dentist, was born on 8 January 1875 and was married to [REDACTED], née [REDACTED]. The record further indicates that Dr. Albin Oppenheim left Vienna on 25 June 1938, and that at the time he filled out the form he was temporarily staying in Geneva, Switzerland en route to the United States. In addition, the record indicates that "flight tax" ("*Reichsfluchtsteuer*") of 46,475.00 Reichsmark was imposed on Dr. Albin Oppenheim. The record makes no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

Bank I

The Claimant's representative submitted a letter from [REDACTED] to Bank I, sent in 1948, stating that she was searching for evidence of her husband's account, and indicating that this could be registered under the number 1637. In addition, the Claimant submitted an account statement from Bank I containing that number. The CRT notes that this account statement does not contain any specific information about the Account Owner other than the number associated with the account. In addition, the CRT notes that it is plausible that an account statement

documenting a bank transfer is the kind of document only an account owner of one or more of the accounts involved in the transfer, or someone closely related to such an account owner, would possess. Furthermore, the Claimant's representative submitted letters from Dr. Albin Oppenheim, referencing the type of transfer documented by the account statement. Moreover, the CRT notes that the *Witurmo AG*, from whose account the gold coins were transferred into account number 1637, was an institution that completed banking, finance and commercial transactions for its clients. Therefore, the Claimant's representative's failure to identify any personal involvement of Dr. Albin Oppenheim with that company does not call into question the identification. Finally, the CRT notes that there are no other claims to this account. Taking all these factors into account, the CRT concludes that the Claimant's representative has plausibly identified [REDACTED]'s husband as the owner of the account numbered 1637 at Bank I.

Bank II

The Claimant's representative has plausibly identified the Account Owner. [REDACTED]'s husband's name, professional title and city of residence match the name, professional title and city of residence specified in Bank II's ledger entry provided to the Claimant's representative. In support of her claim, the Claimant's representative submitted documents, including Dr. Albin Oppenheim's will and various letters both written to and by him, providing independent verification that the person who is claimed to be the Account Owner had the same name and professional title as those shown in the Bank's records for the Account Owner. The CRT notes that a database containing the names of victims of Nazi persecution includes a person named Albin Oppenheim, and indicates that his date of birth was 8 January 1875 and place of birth was Brno, Czechoslovakia, which matches the information about the Account Owner provided by the Claimant's representative. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. The CRT further notes that [REDACTED] sought information relating to accounts owned by Dr. Albin Oppenheim as early as 1948, and that she continued to inquire about the same over the course of many years, indicating that the individual whose Estate is being represented had reason to believe that her relative owned a Swiss bank account prior to any indication of such ownership by Bank II. This supports the credibility of the information provided by the Claimant's representative. Finally, the CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant's representative has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant's representative stated that the Account Owner was Jewish, that he was prohibited from practicing his profession in Austria under the Nazi regime, that he resided in Austria under the Nazi regime, and that he and his wife subsequently fled to the United States. As noted above, a person named Albin Oppenheim was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant's representative has plausibly demonstrated that the individual whose Estate she is representing was the Account Owner's wife, by submitting the Account Owner's will,

identifying his wife as [REDACTED], and a copy of the court order appointing the Claimant's representative as an administrator of [REDACTED]'s Estate.

The Issue of Who Received the Proceeds

Given that the Account Owner fled from Austria to England in 1938; that the letters submitted by the Claimant's representative document the Account Owner's wife's inquiries about her husband's account; that Bank II did not find the document relating to the account, numbered 12741, until 24 February 2000, after both the Account Owner and his wife were deceased; that there is no record of the payment of the Account Owner's accounts to him, nor any record of a date of closure of the accounts; that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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's representative has plausibly demonstrated that the individual whose Estate she is representing was the Account Owner's wife, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one account of unknown type, numbered 1637, and one custody account, numbered 12741. With regard to the account of unknown type, the document submitted by the Claimant indicates that in 1933 US\$ 15,000.00 in gold coins was transferred to the account. This was equal to SF 61,950.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 774,375.00 for this account. With regard to the custody account, the records provided by Bank II do not provide a value of the 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 current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 162,500.00 for this account.

The CRT notes that the Claimant was charged SF 100.00 as a research fee by the Contact Office in 1996, and has determined that this amount should be reimbursed. Therefore, the total award amount is SF 936,975.00.

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 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
13 October 2004