

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Paul Oppenheimer
also acting on behalf of Rudolf Oppenheimer
and Rachel Eve Dorothy Oppenheimer

in re Account of Dr. Hans Oppenheimer

Claim Number: 210941/ME¹

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of Paul Oppenheimer (the “Claimant”) to the account of Dr. Hans Felix Robert Oppenheimer (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his father, Dr. Hans Felix Oppenheimer, who was born on 18 June 1901 in Fürth, Germany, and was married to Dr. Friederike Oppenheimer née Fürst on 19 September 1927, who was born on 23 January 1902. According to the information provided by the Claimant, his father and mother had three children together: Rudolph, Rachel Eve Dorothy, and the Claimant.

The Claimant stated that his father was a Commercial Counselor/Financial Advisor at the banking company of *Mendelsohn & Co.*, and held German citizenship.

The Claimant stated that his father lived and worked in Berlin, Germany from 1933 until 1936, after which he moved to Heemstede, the Netherlands, where he lived from 1940 to 1942. According to the information provided by the Claimant, his father then moved to Amsterdam, the

¹ The Claimant’s brother, Rudolph Oppenheimer, submitted an additional claim to the published account of the Claimants’ great-grandfather Loius Oppé, which is registered under the claim number 210600. The CRT will treat the claim to this account in a separate decision. However, Rudolph Oppenheimer has requested to be represented by the Claimant with respect to the claim to the account of Hans Oppenheimer.

Netherlands, where he worked for *Mendelssohn & Co.* until 1943. The Claimant stated that his father and his family were deported from Amsterdam to the transit concentration camp Westerbork, where they remained until they were deported to Bergen-Belsen. Hans Oppenheimer perished in Bergen-Belsen in 1945.

The Claimant stated that he was born on 20 September 1928 in Berlin, and is representing his siblings Rudolph Oppenheimer born on 1 October 1931 in Berlin, and Rachel Eve Dorothy Oppenheimer, born on 23 June 1936 in London, the United Kingdom.

Information Available in the Bank Records

The bank records consist of a signed change of address form dated 6 August 1936 in Amsterdam and a signed receipt card dated 20 July 1936 in Amsterdam. According to these records, the Account Owner was Dr. Hans Oppenheimer. The bank records indicate that the Account Owner held a custody account, numbered 40793. Furthermore, the bank records indicate that the Account Owner changed his address from Heerengracht 194 in Amsterdam at the end of August, 1936 to Heerengracht 408 in Amsterdam in September of 1936. In the signed receipt card dated 20 July 1936, the Account Owner acknowledged the receipt of the conditions governing his custody account.

The bank records do not show 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.

There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father’s name and place of residence match the published name and place of residence of the Account Owner. The Claimant identified his father as holding a doctor title which matches unpublished information about the Account Owner contained in the bank records. The Claimant submitted his father’s signature sample, which matches that of the Account Owner in the bank records. Additionally, the Claimant submitted a copy of the Account Owner’s death certificate from Amsterdam which identifies the Account Owner’s wife and parents. The Claimant also provided a copy of his own birth certificate which references the Account Owner by name and title.

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 that the Account Owner perished at Bergen-Belsen.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Hans Felix Robert Oppenheimer, and indicates that his age on the date of his death in 1944 was forty-four. Additionally, the database record notes that he lived in Fürth and Amsterdam, and that he held a doctor title, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents including his own birth certificate identifying the Account Owner and a certificate of succession.

The Issue of Who Received the Proceeds

Based on its precedent and the Rules, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.² The CRT concludes in this case that Presumption (j) and (h) apply and it is therefore plausible that the account proceeds were not paid to the Account Owner or his heirs.

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 Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that the Account Owner was his father, 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.

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.

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

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, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value and 65% of the total award amount is 101,400.00 Swiss Francs.

Division of the Award

In this case, the Claimant is representing his two siblings. Since the Claimant and his two siblings are the three surviving children of the Account Owner, the three children are each entitled to a one-third share of the proceeds of the Award pursuant to Article 29(1)(c) of the Rules. Accordingly, Paul Oppenheimer, Rudolph Oppenheimer and Rachel Eve Dorothy Oppenheimer shall each be awarded 52,000.00 Swiss Francs.

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 his claim 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
October 3, 2002

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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).