

# CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]  
represented by [REDACTED]

**in re Accounts of Jenny Oppenheimer  
and Heinrich Oppenheimer**

Claim Number: 005217/JT

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”) to the accounts of Jenny Oppenheimer, née [REDACTED] (“Account Owner Jenny Oppenheimer”) and Heinrich Oppenheimer (“Account Owner Heinrich Oppenheimer”) together (the “Account Owners”), at 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 owners, and the bank have been redacted.

## **Information Provided by the Claimant**

The Claimant submitted a Claim Form identifying the Account Owners as her maternal aunt and uncle, Jenny Oppenheimer, née [REDACTED], who was born in 1896, and her husband, Heinrich Oppenheimer. The Claimant stated that her aunt and uncle, who were Jewish, did not have any children and resided at Landwehrstrasse 2 in Darmstadt, Germany. The Claimant further stated that shortly after her uncle Heinrich died in 1937, she and her mother, [REDACTED], née [REDACTED], visited her aunt in Germany. Her aunt told her that she had deposited assets in a Swiss bank, the name of which the Claimant cannot recall. The Claimant stated that her aunt died in 1938 in Darmstadt, before being deported to the Theresienstadt concentration camp. The Claimant indicated that she was born on 19 April 1926 in Insterburg, Germany and submitted her birth certificate identifying her mother as [REDACTED], née [REDACTED]. The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Jenny Oppenheimer, née [REDACTED].

## **Information Available in the Bank Records**

The bank records consist of two customer-opening cards and printouts from the Bank's database. According to these records, Account Owner Jenny Oppenheimer, née [REDACTED], held a custody account, numbered L14087, at the Basel branch of the Bank. The bank records indicate that the Account Owner was from Darmstadt, Germany and that she was a widow. The bank records show that the account was opened on 18 November 1937 and was closed on 22 September 1938, unknown to whom. The amount in the account on the date of its closure is unknown.

The bank records further indicate that Account Owner Heinrich Oppenheimer was from Darmstadt, Germany and that he held five accounts at an unknown branch of the Bank, three demand deposit accounts and two custody accounts, numbered L8326 and L8351. The bank records indicate that Account Owner Heinrich Oppenheimer died on 7 April 1937. Two of the demand deposit accounts were closed on 8 December 1933 and both custody accounts were closed on 10 November 1937. The remaining demand deposit account was closed on 11 June 1936. All five accounts were closed unknown to whom and the amount in the accounts on the respective dates of their closure is unknown. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

## **The CRT's Analysis**

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her uncle's name matches the published name of one of the Account Owners. Her aunt's name matches the unpublished name of the other Account Owner in the bank documents. The Claimant identified her relatives' place of residence as Darmstadt, Germany, which matches unpublished information about the Account Owners contained in the bank records. Moreover, the Claimant stated that her uncle died in 1936 or 1937, which matches the information contained in the bank records that the Account Owner was a widow when she opened the custody account numbered L14087 in 1937. In support of her claim, the Claimant submitted documents including a family tree and a copy of her own birth certificate.

### Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and that they lived in Nazi Germany until their deaths.

### The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents including her birth certificate and a family tree that demonstrates that she is their niece.

## The Issue of Who Received the Proceeds

With respect to the custody account held by Account Owner Jenny Oppenheimer, numbered L14087, given that the custody account was closed in September 1938, while the Account Owner died in 1938 prior to her deportation to a Nazi concentration camp, and the application of Presumptions (a) and (j) contained in Appendix A,<sup>1</sup> the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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.

With respect to the five accounts held by Account Owner Heinrich Oppenheimer, the CRT finds it plausible that the Account Owners received the proceeds of these accounts. Of his demand deposits, two were closed on 8 December 1933, and the third was closed on 11 June 1936. Both of Account Owner Heinrich Oppenheimer's two custody accounts were closed on 10 November 1937, shortly after his death on 7 April 1937. Eight days later, on 18 November 1937, his wife, Jenny, opened a separate new account at the Bank. In these circumstances, the CRT concludes it is not plausible that Account Owner Jenny Oppenheimer would have opened an account at the same bank that had, just prior to the opening of her new account, misappropriated her husband's two custody accounts, or even prior to that, his three demand deposit 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 Owners were her aunt and uncle, 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 accounts.

## Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here for both custody 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. 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 100% of the total award amount.

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<sup>1</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

**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

23 January 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:<sup>1</sup>

- 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;<sup>2</sup>
- 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.<sup>3</sup>

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<sup>1</sup> 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*

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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.

<sup>2</sup> See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

<sup>3</sup> 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).