

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Paul and Otto Rendi

Claim Numbers: 220463/MBC; 221717/MBC

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the account of Paul and Otto Rendi (the “Account Owners”) at the Zurich branch of 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 owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted two Claim Forms identifying the Account Owners as her father, Paul Rendi, and her uncle, Otto Rendi. The Claimant stated that her father, who was a textile merchant, was born in Graz, Austria on 14 April 1906 and was married to [REDACTED], in New York, the United States, on 21 December 1947. The Claimant’s father died in Oranenburg, New York on 6 September 1966. The Claimant indicated that she and her sister [REDACTED], whom the Claimant is not representing in the present proceedings, are Paul Rendi’s only children.

The Claimant further indicated that her father’s brother, Otto Rendi, was born in Graz, and was married to Trate Rendi née Forstner. Otto Rendi died in Graz on an unknown date. The Claimant stated that her uncle had no children. According to the family tree that the Claimant submitted, her uncle had a sister, [REDACTED]. To date, [REDACTED]’s son [REDACTED] has not filed a claim to his uncle’s account. Finally, the Claimant asserted that Otto Rendi and Paul Rendi were Jewish, and that they lived in Graz at Joanneumring 5. The Claimant stated that Otto Rendi fled Austria to avoid Nazi persecution.

Information Available in the Bank Records

The bank records consist of printouts from the Bank’s database, a list of account owners and

letters to and from the Swiss Compensation Office. According to these records, the joint Account Owners were Ing. Otto Rendi and Paul Rendi, who resided at Joanneumring 5 in Graz, Austria. The bank records indicate that the Account Owners held a demand deposit account.

The bank records show that the amount in the account was 149.50 Swiss Francs when it was frozen on 17 February 1945 (the amount in the account was 125.00 Swiss Francs as of 13 June 1955, 111.00 Swiss Francs as of 7 September 1959, and 101.00 Swiss Francs as of 15 November 1963). These documents do not show if or when the account at issue was closed, or to whom it was paid. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

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 (the "ICEP Investigation") did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. According to the bank documents and the auditors' report, the account was frozen on 17 February 1945 and unfrozen on 27 June 1955. This account was also included in the list that the Bank drew up in the course of the internal survey that it carried out in 1959. This list indicates that there was no client contact from 1933. Finally, the bank documents evidence that the account was reviewed for the 1962 Survey.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Paul Rendi. These records include an Austrian census form for Paul Rendi numbered 24041, which is dated 6 July 1938. These records indicate that Paul Rendi was Jewish, that he was a merchant, that he was born on 14 April 1906, and that he resided at Minervalaan 24 in Amsterdam, the Netherlands. The records show that he owned a share of a business named *Tuchhaus S. Rendi*, which was located at Joanneumring 5 in Graz, that had been confiscated by the Nazis on 12 June 1938. The records show that Paul Rendi owned assets, including a considerable amount of stocks and bonds in foreign companies, worth 684,286.00 Reichsmarks, and that he was required to pay flight taxes of 171,071.00 Reichsmarks by 15 May 1938. The records do not mention assets held in a Swiss bank account.

Furthermore, the records of the Austria State Archives (Archive of the Republic, Finance) also include documents concerning the assets of Ing. Otto Rendi. These records include an Austrian census form for Ing. Otto Rendi numbered 38345, which is dated 15 July 1938. These records indicate that Ing. Otto Rendi was Jewish, was born on 15 October 1901, that he was a merchant, and that he was married to Traute Rendi, née Forstner-Billau. These records show that Ing. Otto Rendi resided at Kaiserfeldgasse 3 in Graz and that he owned a share of a business named *Tuchhaus S. Rendi*, located at Joanneumring 5 in Graz, that had been confiscated by the Nazis on 12 June 1938. The records show that Paul Rendi owned assets, including a considerable amount of stocks and bonds in foreign companies, worth 749,690.00 Reichsmarks, and that he was required to pay flight taxes of 187,422.00 Reichsmarks by 15 May 1938. The records do not mention assets held in a Swiss bank account.

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 discretion of the CRT. In this case, the CRT determines it appropriate to join the Claimant's claims.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. Both her father's and uncle's names and city of residence match the published names and city of residence of the Account Owners. The Claimant indicated that both her father and her uncle lived at Joanneumring 5, in Graz, which matches unpublished information about the Account Owners contained in the bank documents.

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. The Claimant further indicated that her uncle, Otto Rendi, fled Austria to avoid Nazi persecution. As the Claimant's father, Paul Rendi, got married and died in New York in 1947 and 1966 respectively, it is plausible that he also had to flee Austria to avoid Nazi persecution.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting her birth certificate showing that she is the daughter of Paul Rendi and the niece of Otto Rendi.

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.¹ The CRT concludes in this case that Presumptions (b), (c), and (j) apply, and it is therefore plausible that the account proceeds were not paid to the Account Owners or their 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. Second, the Claimant has plausibly demonstrated that the Account Owners were her father and uncle respectively, 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

The bank records indicate that the value of the account as of 17 February 1945 was 149.50 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 15.00 Swiss Francs, which reflects standardized bank fees charged to the account between 1 January 1945 and 17 February 1945. There was no interest paid to the account at issue. Consequently, the adjusted balance of the accounts at issue is 164.50 Swiss Francs. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 25,680.00 Swiss Francs.

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 16,692.00 Swiss Francs.

Division of the Award

As noted above, the account at issue was a joint account. According to Article 31 of the Rules, the CRT has determined that each of the Account Owners had an equal share of this account. According to Article 29(1)(c) of the Rules, as the Claimant's sister has not filed a claim to the account, nor is she represented by the Claimant, the latter is not entitled to her father's half of the joint account. With respect to the Claimant's uncle's half of the account, Article 29(1)(d) of the Rules provides that if neither the Account Owner's spouse nor children have submitted claims to the account, the Award will provide for an equal division among the other children of the Account Owner's parents or their descendants who have submitted claims to the account. In this case, neither the Claimant's cousin, [REDACTED], nor her sister has filed any claims to the account. Thus, the Claimant is also entitled to Otto Rendi's half of the account. The Claimant is therefore entitled to 100% of the Award amount.

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 claims 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
October 24, 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).