

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Max Rosenberg and Ina Rosenberg

Claim Numbers: 212691/AH; 213778/AH

Award Amount: 191,640.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Max Rosenberg (“Account Owner Max Rosenberg”) and of Ina Rosenberg (“Account Owner Ina Rosenberg”) (together 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 Claimants, who are brother and sister, each submitted each a Claim Form identifying the Account Owner Max Rosenberg as their father, who was born in 1883 in Filehne, Germany, and was the son of [REDACTED] and [REDACTED]. The Claimants stated that Max Rosenberg was married to [REDACTED] and had two children: [REDACTED 1] (Claimant [REDACTED 1]) and [REDACTED 2] (Claimant [REDACTED 2]). The Claimants stated that their father resided at several addresses in Berlin, Germany, where he also owned and managed, as of 1920, an alabaster and marble products factory at 34 Ritterstrasse, which was liquidated by the Nazis in 1939. The Claimants stated that their father, who was Jewish, fled with his wife and Claimant [REDACTED 2] from Germany to the United States, via the Netherlands, in September 1939, and that Claimant [REDACTED 1] was sent with a *Kindertransport* to England. The Claimants added that their parents were allowed to carry only personal belongings, forced to leave behind all of the family’s assets and documents. The Claimants stated that [REDACTED] died in 1962 in Norristown, Pennsylvania, in the United States, and that Max Rosenberg died in 1972, also in Norristown. In support of their claims, the Claimants submitted documents, including identification documents indicating their parents’ names, their father’s birth certificate, their parents’ marriage certificate, letters indicating their father’s business and his death certificate. The Claimants also submitted their father’s travel permit dated 1924, bearing his photo and signature, and his signed will in which he bequeathed his estate in equal shares to the Claimants.

Claimant [REDACTED 2] indicated that he was born on 20 July 1922, and Claimant [REDACTED 1] indicated she was born on 28 February 1928, both in Berlin.

Information Available in the Bank Records

The bank records consist of the accounts opening agreement, signed by the Account Owners, and printouts from the Bank's database. According to these records, the Account Owners were "*Direktor*" Max Rosenberg and Ina Rosenberg who resided at Griebnitzstrasse 4, Berlin-Neubabelsberg, Germany. The bank records indicate that the Account Owners held one custody account¹, which was opened on 17 September 1928, one demand deposit account and one savings/passbook account. The bank records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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 this account after 1945. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(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 claims of Claimant [REDACTED 1] and Claimant [REDACTED 2] in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner Max Rosenberg. Their father's name matches the published name of the Account Owner. The Claimants stated that Max Rosenberg lived in Berlin, Germany, which matches published information about the Account Owner's city and country of domicile contained in the bank records. Furthermore, the Claimants identified their father's profession as a factory owner and manager, which matches the Account Owner's unpublished title of "*Direktor*." In addition, the Claimant submitted samples of their father's signature, which matches the signature sample contained in the bank records. In support

¹ The bank records contain an account opening card form that indicates a "*Titeldepot*" account, which is a custody account. This form includes indications added by the Bank of an additional demand deposit account and savings/passbook account. Such forms were typically used by the Bank at the time, mostly but not only for the opening of custody accounts, and therefore they did not always indicate whether the account in question was in fact a custody account. Although this form therefore does not necessarily demonstrate that the Account Owners held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that they held such an account.

of their claims, the Claimants submitted numerous documents, including their parents' marriage certificate, their own birth certificates, and their father's birth certificate.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner Max Rosenberg was a Victim of Nazi Persecution. The Claimant stated that the Account Owner Max Rosenberg was Jewish and that he had to flee Germany with his family to escape Nazi persecution.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner Max Rosenberg by submitting documents, including their birth certificates, demonstrating that they are the Account Owner's children. The Claimants submitted the Account Owner's will in which he bequeathed his estate to the Claimants. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

In this case, given that the bank records indicate that the Account Owners were German nationals with an address in Germany, the Nazi campaign to confiscate the domestic and foreign assets of its Jewish nationals, and the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners 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 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, and that relationship justifies 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.

Amount of the Award

In this case, the Account Owners held a savings/passbook account, a demand deposit account and a custody 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 present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a savings/passbook account was 830.00 Swiss Francs, the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of a custody account was 13,000.00 Swiss Francs. The present value of these amounts is calculated by multiplying them by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 191,640.00 Swiss Francs.

Division of the Award

The Claimants submitted the Account Owner's will in which the Account Owner bequeathed his estate to the Claimants in equal shares. According to Article 23(2)(a) of the Rules, the Claimants [REDACTED 2] and [REDACTED 1] are each entitled to one-half of the award.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 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
March 11, 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).