

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]

in re Account of Estate of Charles A. Rosenthal

Claim Number: 221328/AX

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the account of Charles A. Rosenthal. This Award is to the published account of the Estate of Charles A. Rosenthal (the “Account Owner”) at the [REDACTED] (the “Bank”).¹

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 a Claim Form identifying the Account Owner as the Estate of her father-in-law, Charles Anton Rosenthal, who was born on 22 May 1888 or 1889 in Munich, Germany, and was married to [REDACTED], née [REDACTED], on 30 June 1917 in Düsseldorf, Germany. The Claimant stated that her father-in-law had two children: [REDACTED 2], who was born on 25 October 1919 in Frankfurt, Germany; and [REDACTED], who was born on 3 May 1923 in Frankfurt. The Claimant explained that Charles Rosenthal, who was Jewish, was a business manager of a large construction company named *Philipp Holzmann*, located in Frankfurt. According to the Claimant, in 1932, Charles Rosenthal was transferred to Basle, Switzerland, where he worked for a subsidiary of *Philipp Holzmann*.

The Claimant further explained that in 1934, *Philipp Holzmann* transferred Charles Rosenthal from Switzerland to Bogota, Colombia, but that Charles Rosenthal’s family remained in Germany. According to the Claimant, Charles Rosenthal traveled to Zurich, Switzerland, in

¹ The CRT notes that the account was incorrectly published on the February 2001 of the list of accounts determined by Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”) as belonging to Charles A. Rosenthal. The Bank’s records indicate that the owner of the account was the Estate of Charles A. Rosenthal.

1937 to recover from a long illness. The Claimant stated that her father-in-law subsequently went to New York, New York, the United States, where he died on 4 February 1938.

The Claimant indicated that Charles Rosenthal's sister, [REDACTED], née [REDACTED], and her husband, [REDACTED], lived in Amsterdam, the Netherlands, at the time of Charles Rosenthal's death, and therefore his Estate was settled in Amsterdam. The Claimant stated that [REDACTED] was appointed executor of the Estate of Charles Rosenthal.

The Claimant indicated that Charles Rosenthal's family fled from Germany to the Netherlands, later to Switzerland, and then shortly to Colombia, before emigrating to the United States. The Claimant explained that [REDACTED], [REDACTED 2], and [REDACTED] changed their family name to [REDACTED] when they became United States citizens. The Claimant stated that [REDACTED] died on 9 December 1966 in Pasadena, California, the United States.

The Claimant explained that she was married to [REDACTED] on 19 January 1983, and that her husband died on 26 December 2000 in Pasadena. The Claimant submitted an excerpt from the memoir of [REDACTED], written in the 1980s, in which he described how his mother had urged him to flee from Germany to the Netherlands during the Nazis' rise to power. In his memoir, [REDACTED] wrote about his family assets in Switzerland: "At the time he [Charles Rosenthal] left for Colombia he had transferred some money to Swiss banks. [...] Even though I had become a Colombian citizen, mother and her New York lawyer feared that the Nazis might not recognize my change of nationality, and keep me hostage to force mother to repatriate the foreign assets she had inherited."

In support of her claim, the Claimant submitted documents, including the marriage certificate of Charles Rosenthal, indicating that Charles Rosenthal resided in Germany and used the title "Dr."; the United States naturalization certificates of [REDACTED] and [REDACTED], indicating that their former nationality was Colombian; a decree by a court as part of naturalization indicating that [REDACTED] changed his name; the estate tax return for the Estate of Charles Rosenthal and the application for Colombian citizenship by Charles Rosenthal, indicating that [REDACTED] and [REDACTED] were his sons and that they resided in Germany, that Charles Rosenthal resided in Bogota, that the surrogate court that presided over his Estate was in Amsterdam, that [REDACTED] was appointed executor of the Estate, and that he held assets outside his last domicile (Colombia); the marriage certificate of [REDACTED], indicating that [REDACTED] and the Claimant were married; and [REDACTED]'s death certificate, indicating that his father was Charles A. Rosenthal, and that his wife was the Claimant.

The Claimant stated that she was born on 8 December 1953 in Stillwater, Oklahoma, the United States. The Claimant is representing her brother-in-law, [REDACTED 2], who was born on 25 October 1919 in Frankfurt.

Information Available in the Bank's Records

The Bank's records consist of lists of accounts. According to these records, the Estate of Dr. Charles A. Rosenthal held one account, numbered 33913, the type of which is not indicated. The Bank's records indicate that the heirs of the Account Owner used addresses in Amsterdam, the Netherlands; and Bogota, Colombia.

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") determined that the account was in existence in October 1945. The Bank's 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 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's records that the Account Owner, its executor, or its 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. The Estate of the Claimant's father-in-law's name matches the published name of the Account Owner. The Claimant stated that a court in Amsterdam presided over Charles Rosenthal's Estate. This information is consistent with the published city of residence of the Account Owner. The Claimant stated that Charles Rosenthal died in February 1938, which is also consistent with unpublished information contained in the Bank's records. In addition, the Claimant indicated that Charles Rosenthal resided in Bogota and used the title Dr., which further matches unpublished information about the Account Owner contained in the Bank's records. In support of her claim, the Claimant submitted the marriage and death certificates of [REDACTED], indicating his father was Charles Rosenthal, and the estate tax return for the Estate of Charles Rosenthal and the application for Colombian citizenship by Charles Rosenthal, indicating that he resided in Bogota, and that the surrogate court that presided over the Estate was in Amsterdam, providing independent verification that the person who is claimed to be the Account Owner had the same name and had connections to the same cities recorded in the Bank's records as the name of the Account Owner and the cities in which it was located. 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 has made a plausible showing that Charles Rosenthal was a Victim of Nazi Persecution. The Claimant stated that Charles Rosenthal was Jewish, and was unable to return to Nazi Germany. The Claimant stated that Charles Rosenthal's wife and children, who were also Jewish, fled from Germany to escape Nazi persecution.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to Charles Rosenthal by submitting specific information and documents, demonstrating that Charles Rosenthal was the Claimant's father-in-law. These documents include the estate tax return for the Estate of Charles Rosenthal and the application for citizenship to Colombia by Charles Rosenthal, indicating that [REDACTED 2] and [REDACTED] were his sons; and the marriage certificate and death certificate of [REDACTED], indicating that Charles Rosenthal was his father and the Claimant was his wife. There is no information to indicate that Charles Rosenthal has surviving heirs other than the Claimant, and Charles Rosenthal's son, [REDACTED 2], whom the Claimant is representing.

The Issue of Who Received the Proceeds

Given that the Claimant stated that Charles Rosenthal died in 1938, that the Bank's records indicate that the account remained open after Charles Rosenthal's death; that Charles Rosenthal's wife and children fled Germany to Colombia and then to the United States; that there is no record of the payment of the Account Owner's account to Charles Rosenthal's Estate or his heirs, nor any record of a date of closure of the account; that the Account Owner's heirs would not have been able to obtain information about the account 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 Charles Rosenthal's 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 has plausibly demonstrated that the Account Owner was the Estate of her father-in-law, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that the Account Owner, its executor, or its heirs did not receive the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one account of unknown type. 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 an account of unknown type was 3,950.00 Swiss Francs ("SF"). 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 a total award amount of SF 49,375.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Article 23(1)(f) further stipulates that if a child of the Account Owner is deceased, that child's spouse but none of that child's descendants have submitted a claim, that child's spouse shall be considered a child of the Account Owner for the purposes of this Article. Accordingly, the Claimant and her brother-in-law, [REDACTED 2], are each entitled to one-half of the total award amount.

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
28 September 2004