

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 Frieda Rothschild

Claim Numbers: 221188/MBC,¹ 222914/MBC²

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED I] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the account of Frieda Rothschild (the “Account Owner”) 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 owner, and the bank have been redacted.

Information Provided by the Claimants

The Claimants, who are siblings, submitted Claim Forms identifying the Account Owner as their maternal great-aunt, Frieda Rothschild, née Freidländer, who was Jewish. The Claimants indicated that their great-aunt was probably born in Rawitz, Germany in approximately 1878 and was married to Louis Rothschild, who was probably born in Stettin, Germany in approximately 1875. The couple had two children: [REDACTED], who was born in Görlitz, Germany, in 1907 and died in Hamburg, Germany in 1982, and [REDACTED], who was born in Görlitz in 1905 and died in Haifa, Israel in 1959. The Claimants indicated that neither [REDACTED] nor [REDACTED] had children. The Claimants further stated that Frieda Rothschild was a housewife and that Louis Rothschild owned a shop that supplied equipment for butcheries in Görlitz at Rauschwalder Strasse 2, where he and the Account Owner resided until 1934. The Claimants explained that Louis Rothschild was arrested shortly after the Nazis came to power, but he was eventually released. The Claimants stated that after their uncle was released, he and his wife fled Germany. They fled to Strasbourg, France, in 1934, where they remained for a

¹ Claimant [REDACTED 1] submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 221189. The CRT will treat the claim to this account in a separate decision.

² Claimant [REDACTED 2] and Claimant [REDACTED 1] submitted additional claims to the accounts of Louis Rothschild, which are registered under the Claim Numbers 221187 and 222913. The CRT will treat the claims to these accounts in a separate decision.

short time. They then moved to Merano, Italy, where they stayed until 1935. According to the Claimants, Louis and Frieda Rothschild emigrated from Merano to Palestine, where they remained until their deaths. The Claimants stated that Frieda Rothschild died in Haifa, Israel in 1958 and that Louis Rothschild died in Jerusalem, Israel in 1948.

Claimant [REDACTED 2] indicated that she was born in Haifa on 7 December 1945 and Claimant [REDACTED 1] indicated that he was born in Haifa on 29 December 1941.

Information Available in the Bank Records

The bank records consist of two letters that the Power of Attorney Holder sent to the Bank. One letter was sent from Merano, Italy on 17 January 1935, and the other was sent from Strasbourg, France on 31 January 1934. The records also include a power of attorney form and a signature sample. According to these records, the Account Owner was Frieda Rothschild, née Freidländer, from Görlitz, and the Power of Attorney Holder was Louis Rothschild. The bank records do not indicate the type of account that the Account Owner held. The bank records do not show when the account at issue was closed, to whom it was paid, or 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 could not determine whether there had been activity on the account after 1945. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

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 CRT’s discretion. In this case, the CRT determines it appropriate to join the Claimants’ claims in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their great-aunt’s name and city of residence match the published name and city of residence of the Account Owner, and their great-uncle’s name matches the published name of the Power of Attorney Holder. The Claimants indicated that their great-aunt’s maiden name was Freidländer, which matches unpublished information about the Account Owner contained in the bank records. Moreover, the Claimants indicated that their relatives resided in Strasbourg, France, and in Merano, Italy, in 1934 and 1935, which matches unpublished information contained in the bank records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and fled from Germany in 1934 after the Nazis arrested and subsequently released her husband.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that the Account Owner was their great-aunt. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) contained in Appendix A,³ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, 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 claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their great-aunt, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their 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 an account of unknown type was 3,950.00 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 47,400.00 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 30,810.00 Swiss Francs.

³ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Division of the Award

According to Article 29 of the Rules, if neither the Account Owner's spouse nor any descendant of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. Consequently, Claimant [REDACTED 2] and Claimant [REDACTED 1] are each entitled to receive one-half of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 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

November 26, 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).