

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Liese Grete Wilson
also acting on behalf of Evelyn McClain

in re Account of Hermann Rothschild

Claim Number: 220972/IG

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of Liese Grete Wilson, née Rothschild, (the “Claimant”) to the account of Hermann Rothschild (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her father, Hermann Rothschild, who was born on 12 May 1886 in Hörstein at Aschaffenburg, Germany, and was married to Babetta Rothschild, née Steinhardt, in Germany. The Claimant stated that her father, who was Jewish, owned a farm and land in Gerolzhofen, in the vicinity of Frankfurt, Germany. The Claimant also indicated that her father was interned and performed forced labor in the Dachau concentration camp from 1933 to 1935 or 1936. The Claimant stated that upon her father’s release from Dachau in 1935 or 1936, he returned to Gerolzhofen before fleeing with his wife and children to Palestine via the Netherlands. The Claimant submitted her birth certificate identifying her father as Hermann Rothschild, as well as a published document concerning the Rothschild family’s involvement in German wars from 1866 to 1918 and their fate during the Second World War. That document indicates that Hermann Rothschild returned to Germany in 1950, and later died in 1969 in Würzburg. The Claimant indicated that she was born in Gerolzhofen on 11 June 1918. The Claimant is representing Evelyn McClain, her daughter, who was born on 20 December 1945 in Bristol, England.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Hermann Rothschild.

Information Available in the Bank Record

The bank record consists of a bank registration card. According to this record, the Account Owner was Hermann Rothschild, who resided in Frankfurt, Germany and had an address in Zurich, Switzerland. The bank record indicates that the Account Owner held a demand deposit account.

The account was closed unknown to whom on 20 March 1935. The amount in the account on the date of its closure is unknown. There is no evidence in the bank record that the Account Owner or his 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. His father's name matches the published name of the Account Owner. The Claimant identified her father's place of residence as Gerolzhofen, located near Frankfurt, Germany, which substantially matches unpublished information about the Account Owner's place of residence contained in the bank record.

In support of her claim, the Claimant submitted her birth certificate identifying Hermann Rothschild as her father and a published document concerning the Rothschild family's involvement in German wars from 1866 to 1918 and their fate during the Second World War.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Hermann Rothschild, prior to the publication in February 2001 of the list of accounts determined by the ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

The CRT notes that it received one other claim to this account, but this claim was inadmissible and disconfirmed.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, was interned in Dachau, where he performed forced labor from 1933 to 1935 or 1936, and fled to Palestine via the Netherlands, with his wife and children upon his release.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting a birth certificate, which demonstrates that the Account Owner was her father.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which account owners are interned in the Dachau concentration camp for a relatively short time, and then, near the time of their release and flight from Germany or Austria, Swiss accounts held by the account owners are transferred to Nazi-controlled banks or closed unknown to whom. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis in order to obtain the account owners' release, and the application of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds in this case were not paid to the Account Owner or his heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to assist in determining 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his 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 a demand deposit account was 2,140.00 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 25,680.00 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.

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

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

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

December 31, 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).