

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Alfred Rothschild
acting on behalf of himself and his brothers, Herbert Rothschild and Gerard Rothschild

in re Account of Ludwig Rothschild

Claim Number: 221517/MD

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Alfred Rothschild (the “Claimant”) to the account of Ludwig Rothschild (the “Account Owner”) at 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 his father, Ludwig Rothschild, who was born on 26 June 1894 in Heidelberg, Germany, and was the son of Emanuel and Rosa Rothschild. According to the Claimant, Ludwig Rothschild married Hilde Strauss, with whom he had three children: Alfred (the Claimant), Gerard, and Herbert.

The Claimant stated that his father, who was a businessman, owned a company named “A. Krauss KG” that was located at 39 Hauptstrasse in Heidelberg. The Claimant stated that his father lived at the same address until 1935 and at Weberstrasse in Heidelberg from 1936 to 1937. According to the Claimant, his father, who was Jewish, emigrated from Germany to the United States in 1937, where he lived until his death in 1980. The Claimant indicated that his mother, Hilde Rothschild, died in 1945 in the Bronx, New York, the United States. The Claimant was born on 27 February 1926 in Heidelberg, Germany.

Information Available in the Bank Records

The bank record consists of a registry card. According to this record, the sole Account Owner was Ludwig Rothschild, who lived at 39-43 Hauptstrasse in Heidelberg. The Account Owner held an account of an unknown type. The bank record does not show if or when the account at issue was closed or to whom, if anyone, it was paid. Furthermore, the record does not indicate

the value of the account. The auditors who carried out the investigation of this bank to identify the accounts of Victims of Nazi Persecution pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP”) did not find the 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.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father’s name and city of residence match the published name and city of residence of the Account Owner. The Claimant stated that his father owned a company located at 39 Hauptstrasse in Heidelberg, and that he also lived at this address until 1935. This information matches the unpublished address of the Account Owner contained in the bank records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has plausibly shown that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and that he was forced to flee Germany in 1937.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he and his brothers, Herbert and Gerard, whom he represents, are related to the Account Owner by submitting a detailed family tree and specific biographic information demonstrating that he and his brothers are the Account Owner’s sons. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

This case raises the question of whether the Account Owner could have accessed his account after leaving Germany. The bank records indicate that the Account Owner was a German national with an address in Germany. Given the enforcement of flight taxes, the Nazi campaign to confiscate the domestic and foreign assets of its Jewish nationals, and application of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the proceeds 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 the determination of whether or not account owners or their heirs received the proceeds of their accounts.

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

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 he and his brothers, whom he represents, are the sons of the Account Owner, and these relationships justify 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 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.

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, claimants shall receive an initial payment of 35% of the total award amount. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65% of the total award amount. In this case, the value of the account at issue is based on Article 35 presumptions. In this instance, 35% of the total award amount is 30,810.00 Swiss Francs.

Division of the Award

The Claimant is representing his two brothers in these proceedings. According to Article 29 of the Rules, each of the Claimant's brothers is entitled to receive one-third of any payment made to the Claimant.

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 his claim to determine whether there are additional Swiss bank accounts to which he and his brothers 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 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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).