

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Renée Françoise Aimée Wertheimer
represented by Denis Delcros

in re Accounts of René Wertheimer and Rosita Wertheimer

Claim Numbers: 221970/MBC; 221971/MBC

Award Amount: 102,720.00 Swiss Francs

This Certified Award is based upon the claims of Françoise Wertheimer (the “Claimant”) to the accounts of René Wertheimer and Rosita Wertheimer (the “Account Owners”) at the Lausanne 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 two Claim Forms identifying the Account Owners as her parents, René Jacques Wertheimer and Rosa (Rosita) Jorgelina Wertheimer, née Jauregui-Fiaz. The Claimant indicated that her father, who was born in Paris, France, on 1 January 1880, and her mother, who was born in Buenos Aires, Argentina, on 27 November 1891, were Jewish, and were married on 14 August 1930 in Neuilly-Sur-Seine, France. The Claimant stated that her father was a lawyer and resided with his wife at 244, rue de Rivoli in Paris, from 1931 until his death on 20 October 1936. The Claimant further stated that her mother fled to Cap d’Ail in southern France when France was invaded by the Nazis in May 1940, and returned to Neuilly-Sur-Seine, at the end of 1944, where she stayed until her death on 13 February 1949. In support of her claims, the Claimant submitted numerous documents, including her own birth certificate, her parents’ marriage and death certificates, and an official document relating to the estate of Rosa Jorgelina Wertheimer, née Jauregui-Fiaz. This document indicates that Rosa Jorgelina Wertheimer’s four children (the Claimant, Philippe Antoine Wertheimer, Marcel Etienne Wertheimer and Rosine Georgina Wertheimer) are each entitled to one-quarter of her estate. The Claimant stated that she was born on 29 December 1922 in Nice, France.

Information Available in the Bank Records

The bank records consist of a registration card, a list of accounts, dated 16 June 1976, that had been transferred to a suspense account for clients who had disappeared (*compte pour créanciers disparus*), and printouts from the Bank's database. According to these records, the Account Owners were René Wertheimer and his wife, Rosita Jauregui-Fiaz, both residing at 244, rue de Rivoli, Paris. The Account Owners jointly held one demand deposit account in Swiss Francs (numbered 8703), one demand deposit account in United States Dollars (opened on 30 October 1936 and numbered 8051), one demand deposit account in United States Dollars (opened on 19 August 1936 and numbered 8051), one demand deposit account in Swiss Francs (opened on 11 June 1936 and numbered 8051), and one safe deposit box, numbered 576. The bank records indicate that the Power of Attorney Holders for the accounts were Philippe Wertheimer, Marcel Wertheimer, Françoise Wertheimer, and Rosine Wertheimer.

The bank records indicate that the content of the safe deposit box was transferred to the account number 8703 on 29 December 1936. There is no information on the value of the safe deposit box. The bank records also indicate that account number 8703 was transferred on 4 November 1942 to a suspense account for clients who had disappeared. The records indicate that, on 1 June 1976, the Bank reversed the suspension and reinstated the account as an active account. The records indicate that the Bank then closed the account on 16 June 1976 by imposing bank fees. The balance of the account on that date was 354.50 Swiss Francs.

The bank records do not show when the safe deposit box and the three accounts numbered 8051 were closed, or to whom they were paid, nor do these records indicate the value of the 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") did not find the accounts in the Bank's system of open accounts, and therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the bank records that the Account Owners, the Power of Attorney Holders or their heirs closed the accounts 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 two claims of the Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her parents' names match the published names of the Account Owners. The Claimant identified the Account Owners' relationship and their exact street address, which matches unpublished information about the Account Owners contained in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish. After the death of René Wertheimer in 1936, his widow, Rosita Wertheimer, became the sole owner of the accounts. The Claimant stated that her mother, Rosita Wertheimer, was forced to flee to Cap d'Ail on the southern coast of France after the Nazis invaded France in 1940.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents, including her own birth certificate, demonstrating that she is the Account Owners' daughter. The information submitted by the claimant indicates that the Account Owners had four children, but the CRT has received no other claims to the accounts at issue as of the date of this Award.

The Issue of Who Received the Proceeds

With regard to the account numbered 8703, the bank records indicate that the account was suspended on 4 November 1942 and then reinstated and closed by imposition of bank fees on 16 June 1976.

The three demand deposit accounts numbered 8051 were closed at an unknown time and unknown to whom. Given the persecution of French Jews and the confiscation of their assets by Nazi-Vichy authorities, the Swiss freeze of French assets, the practice of Swiss banks of withholding, or providing misleading, information in their response to the inquires of account owners and their heirs, and given Account Owner Rosita Wertheimer's flight from the Nazis, and the closure of Account 8703 to bank-imposed fees, the CRT concludes in this case that Presumptions (f), (h), and (j) contained in Appendix A¹ apply, and it is therefore plausible that the account proceeds of the accounts numbered 8051 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.

The safe deposit box will not be awarded in view of the fact that the bank records indicate that the contents were transferred to account number 8703.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were her parents, 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 accounts.

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

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here for the three demand deposit accounts numbered 8051, 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, giving a total 1945 value of 6,420.00 Swiss Francs for the three demand deposit accounts numbered 8051. 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 77,040.00 Swiss Francs for these accounts.

The bank records also indicate that the value of the demand deposit account numbered 8703 as of 16 June 1976 was 354.50 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 1,280.00 Swiss Francs, which reflects standardized bank fees charged to the demand deposit account between January 1945 and 16 June 1976. The adjusted value of this account is 1,634.50 Swiss Francs. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs for a demand deposit account. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 25,680.00 Swiss Francs.

Therefore, the total award amount for all accounts is 102,720.00 Swiss 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 claims 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

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).