

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Ada Rosenzweig and Georg Rosenzweig

Claim Numbers: 214478/ME; 214479/ME

Award Amount: 425,812.80 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the Account of Ada Rosenzweig and Georg Rosenzweig (the “Account Owners”) at the Zurich branch of 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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted two Claim Forms identifying the Account Owners as her parents, Ada (Adele) Rosenzweig, née [REDACTED], and Georg Rosenzweig, who were born in Vienna, Austria on 24 February 1900 and 26 December 1900, respectively, and were married on 15 September 1925 in Vienna. The Claimant stated that Georg Rosenzweig was an Austrian lawyer and Doctor of Law, and that he resided at Seilergasse 16 in Vienna from 1925 to 1936. The Claimant did not state when her father died, but information from the Austrian State Archives indicates he died on 11 February 1936. His wife remarried as a widow in July 1938. According to the information provided by the Claimant, her mother, who had both Austrian and Yugoslavian citizenship, fled Austria to Yugoslavia in November 1938. She fled to England a year later and finally to the United States, where she died on 25 April 1995. The Claimant stated that her mother, who was born Jewish, converted to Christianity in 1932. In support of her claim, the Claimant submitted her father’s will, her birth certificate, her marriage certificate, and her mother’s death certificate. The Claimant stated that she was the only child of the Account Owners, and that she was born in Vienna on 16 May 1927.

Information Available in the Bank Records

The bank records consist of a joint account contract dated 13 September 1929 and printouts from the Bank’s database. According to the bank records, the Account Owners were Ada Rosenzweig

and Georg Erich Rosenzweig, who both lived at Seilergasse 16 in Vienna. The bank records indicate that the Account Owners held a custody account under the code name “[REDACTED],” but they do not show if or when the account was closed, or to whom it was paid, nor do they indicate the value of the 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”) 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 the account after 1945. There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Adele Rosenzweig, née Steiner. The documents indicate that the Account Owner was Jewish, was born on 24 February 1900, and became the widow of [REDACTED] on 11 February 1936. The records show that Adele Rosenzweig used the address of Seilergasse 16 in Vienna I in 1938. Furthermore, the records show that Adele Rosenzweig had remarried and acquired the married name [REDACTED] by 17 April 1940 and had moved to the United States by 24 May 1940. The records state that Adele Rosenzweig held a custody account at the Bank containing securities of a Yugoslav textile company with a value of 20,300.00 Reichsmarks as of 14 July 1938.

The CRT’s Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners as her mother and her father. Her parents’ names match the published names of the Account Owners. The Claimant has stated that her father was a Doctor of Law, which matches unpublished information in the bank records. The Claimant has provided her parents’ street address in Vienna before the Second World War as well as the dates they lived there, which exactly match unpublished information contained in the bank documents. Finally, the code word on the account was “[REDACTED],” which is the name of the Account Owners’ only child, the Claimant.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that her mother, Ada Rosenzweig, was a Victim of Nazi Persecution. The Claimant stated that her mother, who was born Jewish and converted to Christianity in 1932, lived in Austria until November 1938. Notwithstanding her conversion, Nazi racial laws nevertheless would have considered her to be Jewish, and thus she would have been targeted for persecution by the Nazi Regime.

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 birth certificate, their marriage certificate, and their respective wills, demonstrating that the Account Owners were her parents. The Claimant has stated that her parents had no other surviving heirs.

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, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and then their accounts are transferred to Nazi-controlled banks or are 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, 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 her 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 Owners were her parents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor their heirs received the proceeds of the claimed account.

Amount of the Award

The Austrian State Archives records indicate that the value of the custody account as of 14 July 1938 was 20,300.00 Reichsmarks, which was equal to 35,484.40 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 425,812.80 Swiss Francs.

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 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).

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

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).