

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
acting on behalf of herself and [REDACTED]

in re Account of Otto Strakosch

Claim Numbers: 210724/HM; 210725/HM

Award Amount: 834,619.08 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”) to the accounts of Otto Strakosch (the “Account Owner”) at the Zurich branch of the [REDACTED] (“Bank I”) and at the Zurich branch of the [REDACTED] (“Bank II”).

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 banks have been redacted.

Information Provided by the Claimant

The Claimant submitted two Claim Forms to the CRT asserting that her paternal grandfather, [REDACTED], and her father, [REDACTED], had Swiss bank accounts. The Claimant also submitted an Initial Questionnaire to the Court in 1999, in which she asserted that her father’s brother, Otto Strakosch, who was born on 29 May 1884 in Vienna, Austria, also had a Swiss bank account. According to the Claimant, her uncle, who remained childless, was killed in Auschwitz in 1942. The Claimant stated that she was born in Vienna on 10 September 1922 and fled Austria for France in September 1938. The Claimant is representing her sister, [REDACTED], née [REDACTED], who was born in Vienna on 4 August 1929. The Claimant stated that she and her sister are the only surviving family members.

In her Initial Questionnaire, the Claimant stated that her uncle lived at Deutschmeisterplatz 4 in Vienna I, Austria, and that he held accounts at the Zurich branches of Bank I and Bank II valued at approximately 350,000.00 Swiss Francs.

Information Available in the Bank Records

The bank records of Bank I consist of a registration card and printouts from Bank I's database. According to these records, the Account Owner was Otto Strakosch, who lived in Vienna. The bank records show that the Account Owner held three bank accounts: a custody account that was closed on 6 February 1937; a second custody account, numbered 57822, that was closed on 29 April 1938, and a demand deposit account that was closed on 30 April 1938. The bank records do not show the values of these accounts.

The bank records of Bank II consist of a registration card and printouts from Bank II's database. According to these records, the Account Owner was Otto Strakosch, who lived at Deutschmeisterplatz 4 in Vienna I. The bank records indicate that the Account Owner held a custody account, numbered 40768, which was closed on 23 April 1938. The bank records indicate that Power of Attorney over the account was held by Frau Grete Hecht, who resided at Alserstrasse 24, Vienna IX. Bank II was instructed to hold all mail to the Account Owner as of 23 March 1938. The bank records do not show the value of this custody account.

The bank records of Bank I further show that, in 1950, [REDACTED], an American lawyer who represented [REDACTED], the administrator of the Account Owner's estate appointed by the Surrogate's Court of New York, contacted Bank I to request statements regarding the accounts and securities held there by the Account Owner. In a letter in response, Bank I stated that it did not recognize the rights of an appointed administrator to a customer's account as being legally valid, because the Account Owner was not an American resident. That same year, [REDACTED] replied to Bank I in a letter in which he claimed that he and his sister were the legal heirs of the Account Owner, according to the Account Owner's will. In response, Bank I stated that it could provide no information because it had no proof that they were the legal heirs, and it did not keep customer records for more than ten years. In addition, Bank I would require a death certificate of the Account Owner.

Information Available in the Austrian Census Records

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 Otto Strakosch. These records include letters, bank receipts from Bank I and Bank II, and documents written by Nazi authorities. The letters consist of correspondence between Otto Strakosch and *Sturmhauptführer* Franz Neukirchner (an SS officer), between Neukirchner and his superior officer, and between Otto Strakosch and Dr. Alfred Redlich, a lawyer who was appointed by the Nazis to manage Otto Strakosch's estate.

These records indicate that Otto Strakosch was born on 29 May 1884 in Vienna, used an address at Deutschmeisterplatz 4 in Vienna I, stayed in France in April 1939, and owned a wholesale business that traded and marketed chemicals (*Grosshandel mit Chemikalien und Handelsvertretung*) at Deutschmeisterplatz 2, Vienna I, Austria. According to these records,

Otto Strakosch owned a custody account, numbered 57822, at the Zurich branch of Bank I and a custody account, numbered 40768, at the Zurich branch of Bank II.

In a letter from Neukirchner to his superior officer, dated 5 December 1938, Neukirchner stated that the Strakosch asked him for a personal favor. According to Neukirchner, Otto Strakosch asked him to access the safe deposit box of his friend, Frau Grete Hecht, which was located in a bank in Vienna, and to take an envelope contained therein and destroy it. Instead of complying with Otto Strakosch's wishes, Neukirchner opened the envelope and made a list of the bank receipts that were in it that were for accounts held by Otto Strakosch, which he attached to the letter to his superior officer.

The following bank receipts were found in the safe:

Bank I:

- Receipt 1, dated 29 January 1937: 20 New York Central Railroad Co. shares, value 3,681.75 Swiss Francs
- Receipt 2, dated 29 January 1937: 20 Southern Pacific Co. shares, 04.02.37, value 4,042.80 Swiss Francs
- Receipt 3, dated 2 February 1937: Southern Pacific Co. bonds, 05.02.37, value 53,610.15 Swiss Francs

The value of the assets in Bank I totaled 61,334.70 Swiss Francs. All of these assets were held in custody account number 57822.

Bank II:

- Receipt 4, dated 26 January 1937: Southern Pacific Co. bonds, value 3,085.93 Swiss Francs
- Receipt 5, dated 26 January 1937: 30 Southern Pacific Co. shares, value 1,497.14 Swiss Francs
- Receipt 6, dated 26 January 1937: 30 New York Central Railroad Co. shares, value 1,320.89 Swiss Francs
- Receipt 7, dated 2 February 1937: 4 New York Central Railroad Co. shares, value 172.93 Swiss Francs

The value of the assets in Bank II totaled 6,076.89 Swiss Francs. All of these assets were held in custody account number 40768.

The value of these assets in Bank I and Bank II totaled 67,411.59 Swiss Francs

Neukirchner also found a receipt from Bank I for 1,800.00 Pounds Sterling in English gold coins, valued at 64,260.00 Swiss Francs. This receipt shows that on 29 January 1937, the Bank sold these assets upon the request of the Otto Strakosch, in connection with the closure of a custody account.

In his letter to his superior officer, Neukirchner described how he compared the census form Otto Strakosch submitted to the Nazi authorities and his flight tax receipt to the above-mentioned list and noticed that Otto Strakosch had withheld the first three assets on the list and had not reported

them to the Nazis before he left for France. Neukirchner further reported that Otto Strakosch had more assets invested in gold at Bank I than what he had reported to the Nazis.

Otto Strakosch must have been contacted about these discrepancies in some way, because, in November 1938, he responded to Neukirchner's allegations in a letter to Neukirchner and Redlich. In that letter, Otto Strakosch stated that, although these assets were invested in his name, they did not belong to him but rather to his cousin in the United States. He apologized and explained that he had paid all his taxes before he left Austria, that he did not list these assets because they were not his, that he sold the gold in order to buy shares and bonds in American railroad companies and that, in any case, these shares and bonds had lost two-thirds of their value. He offered, however, to turn over all the assets which he took with him when he left Austria, which he estimated to be worth 43,000.00 Reichsmarks, if the Nazis would remove the warrant issued for his arrest for tax evasion.

A Nazi document, dated 2 March 1941, indicates that Otto Strakosch's citizenship was removed and all his assets were confiscated.

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 Owner

The Claimant has plausibly identified the Account Owner. The Claimant has provided her uncle's street address in Vienna, which matches the unpublished address contained in the bank records. Additionally, the Claimant has provided her uncle's date of birth, which matches the information contained in the Austrian census records.

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 and was killed in Auschwitz in 1942.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner. The Claimant stated that she and her sister are the sole living family members.

The Issue of Who Received the Proceeds

The Custody account numbered 57822 and the demand deposit account, both at Bank I, and the custody account numbered 40768 at Bank II, were all closed in late April 1938, after the Nazi occupation of Austria, the Account Owner's country of residence. In addition, the custody account numbered 57822 at Bank I and the custody account numbered 40768 at Bank II were declared by the Account Owner in the Nazi census of Jewish assets. The bank records also contain evidence that the heirs of the Account Owner sought information related to the accounts held at Bank I. The bank records reveal that Bank I deliberately withheld relevant information regarding these accounts to the Account Owner's representatives.

With regard to the custody account numbered 57822 at Bank I, given the existence of Nazi confiscatory legislation in Austria in 1938, the fact that the Account Owner was murdered in Auschwitz, and the application of Presumptions (d), (e), (f), and (j), contained in Appendix A¹, the CRT concludes that it is plausible that the account 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.

With regard to the demand deposit account at Bank I, given the application of Presumptions (a), (e), (f), and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds closed in 1938 were not paid to the Account Owner or his heirs.

With respect to the custody account at Bank I closed on 6 February 1937, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or his heirs received the proceeds of this account.

With regard to the custody account numbered 40768 at Bank II, given the application of Presumptions (a), (d), (e), (f), and (j), contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

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 uncle, 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 numbered custody accounts and the demand deposit account.

Amount of the Award

The Austrian census records indicate that the value of custody account number 57822 at Bank I as of February 1937 was 61,334.70 Swiss Francs. The records also indicate that the value of the

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

custody account numbered 40768 at Bank II as of February 1937 was 6,076.89 Swiss Francs. The combined value of the two accounts is 67,411.59 Swiss Francs. The present value of this amount is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a combined value of 808,939.08 Swiss Francs for the two custody accounts.

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case with the demand deposit account held at Bank I, 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 determined by multiplying the value as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an award amount of 25,680.00 Swiss Francs for this account.

Accordingly, the total award amount in this case is 834,619.08 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, however, the Claimant is age 75 or older and is therefore entitled to receive 100% of her portion of the total award amount. The Claimant's sister, whom she is representing, is under 75 years of age, and is thus entitled to receive 65% of her portion of the award amount based on the value presumptions.

Accordingly, the initial payment amount is 830,125.08 Swiss Francs, which is comprised of 100% of the award amount for the custody accounts of known value (or 808,939.08 Swiss Francs), 100% of the Claimant's share of the award amount for the demand deposit account of account of unknown value (or 12,840.00 Swiss Francs), and 65% of the Claimant's sister's share of the award amount for the demand deposit account of unknown value (or 8,346.00 Swiss Francs).

Division of the Award

The Claimant is representing her sister in these proceedings. According to Article 29 of the Rules, her sister is entitled to receive 50% of any amount awarded.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal 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).

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claim 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).