

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Gerard Roland Thalheimer
represented by Christophe Aubrun and Denis Delcros

in re Account of Dr. Marcel and Marguerite Thalheimer

Claim Number: 221969/LK

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of Gerard Roland Thalheimer (the "Claimant") to the account of Dr. Marcel and Marguerite Thalheimer (the "Account Owners") at the Geneva 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 Owners as his parents, Marcel Simon Thalheimer, who was born on 13 April 1893 in Paris, France, and Marguerite Francoise Thalheimer, née Stern, who was born on 3 July 1898. The Claimant stated that his parents, who were Jewish, were married on 14 June 1922 in Paris and lived at 24 Avenue du Recteur, Paris. The Claimant further stated that his father, who was a surgeon, fled Paris with his family because of the Nazis and went to Montauban, France. According to the Claimant, at the end of 1942, his father was arrested and interned in the Drancy concentration camp. The Claimant asserted that his father escaped and found refuge with his family in Geneva and Zurich, Switzerland in December 1942. The Claimant further asserted that his father remained in Switzerland until August 1944, when he returned to France, where he was joined by his family in 1948. According to the Claimant, his father died on 29 November 1972, and his mother died on 29 March 1984 in Paris. In support of his claim, the Claimant submitted documents, including the marriage and death certificates of his parents. The Claimant indicated that he was an only child and he was born on 26 June 1925 in Paris.

Information Available in the Bank Records

The bank records consist of an account opening card, an extract from a book of reference of French citizens whose last names begin with "T," a power of attorney form dated 4 September

1944 in Geneva, and a printout from the Bank's database. According to these records, the Account Owners were Dr. Marcel Thalheimer, a surgeon, and Marguerite Thalheimer, née Stern, (originally an American citizen) who lived at 24 Avenue du Recteur, Paris, and who at one point directed correspondence to the Hotel de la Paix in Geneva before notifying the Bank to hold all mail. The bank records show the Account Owners jointly held a demand deposit account in Swiss Francs that was frozen pursuant to the Swiss Federal Decree adopted on 6 July 1940 regarding the freeze of French assets in Switzerland. The bank records indicate that there was no money in the account in July 1944, and they contain a repetition of the word "nothing" dated 27 June 1950, apparently signifying either that the account did not exist at that time or had no balance. The bank records also show that by 10 July 1950 the account had been previously closed, but they do not indicate to whom the account was paid. The extract from the book of reference has a circle around the listing "*Thalheimer (Dr. Marcel) O., chirurgien des Hôpitaux, av. Recteur-Poincaré, 24 (XVI^e).*" There is no evidence in the bank records that the Account Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His father's name and city of residence match the published name and city of residence of one of the Account Owners. The Claimant identified his mother's name, father's profession, parents' street address, and connection to Geneva, which match unpublished information about the Account Owners contained in the bank records. In support of his claim, the Claimant submitted documents, including a family tree and the marriage and death certificates of his parents. Finally, the Claimant submitted documents bearing his father's signature, which matches the signature contained in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and fled Paris because of the Nazis, and that his father was interned in the Drancy concentration camp.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes people named Marcel Simon Thalheimer and Marguerite Françoise Thalheimer, and indicates that their dates of birth were 13 April 1893 and 3 July 1898, respectively, which match the information about the Account Owners provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that they were his parents.

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 a Nazi concentration camp for a relatively short time, and then Swiss accounts held by the account owners 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 Presumption (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 Owners or their 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 his 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 account.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown or less than the average value, 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. Based on the investigation carried out to identify accounts of Victims of Nazi persecution pursuant to instructions of the Independent Committee of Eminent Persons ("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 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive payment of 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 his claim to determine whether there are additional Swiss bank accounts to which he 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).