

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

in re Account of Leo Wertheimer

Claim Number: 224508/MO

Award Amount: 337,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Leo Wertheimer (the “Account Owner”) at the Basel branch of the [REDACTED] (“Bank I”) and at 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 bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her grandfather, Leo Leopold (Yehuda) Wertheimer, who was born on 14 January 1869 in Buehl Baden, Germany, and was married to [REDACTED] on 15 May 1889 in Buehl Baden. The Claimant stated that her grandfather was the son of [REDACTED] and [REDACTED], née [REDACTED]. She indicated that her grandfather had four children: [REDACTED], née [REDACTED], who was born in 1890 in Buehl Baden; [REDACTED], née [REDACTED], who was born there on 24 June 1901; [REDACTED], the father of the Claimant, who was born on 24 August 1893 in Buehl Baden; and Otto Wertheimer, who was born there in 1896. Furthermore, the Claimant stated that her grandfather was a merchant and the owner of a metal and agricultural equipment shop and he resided at Gartenstrasse 10 in Buehl Baden, Germany until 1939. The Claimant further asserted that her grandfather’s first cousin (a member of the [REDACTED] family) resided in Basel, Switzerland, and that her uncle, Otto Wertheimer, resided there during the Second World War. She indicated that following *Kristallnacht* (the “Night of Broken Glass”), her grandparents, who were Jewish, moved to their daughter’s house at Sackenheimerstrasse 69, Mannheim, Germany, and were deported from there by the Nazis in October 1940 with their daughters to the Gurs concentration camp in France. The Claimant further indicated that her grandfather perished in Gurs on 5 December 1940. Moreover, the Claimant indicated that Leo Wertheimer’s daughters perished in Auschwitz in 1942 and that his wife died in March 1948 in

Jerusalem, Palestine. According to the Claimant, her uncle, Otto Wertheimer, died in Paris, France, in 1973, and her father, [REDACTED], died in Jerusalem, Israel, on 28 March 1978. The Claimant is representing her three sisters and her cousin, [REDACTED], who is the son of [REDACTED], née [REDACTED] in these proceedings. In a phone conversation with the CRT, [REDACTED] indicated that his uncle, Otto Wertheimer, held a position at the department of History of Art at the University of Berlin until 1933, when he moved to Paris. He further stated that Otto Wertheimer stayed in the Vichy Government zone during the Second World War, and that he managed to release his mother from the concentration camp, probably through payment of a bribe. In support of her claim, the Claimant submitted various documents, including copies of her grandparents' marriage certificate, her grandfather's death certificate, her father's birth certificate and death certificate, and her birth certificate. The Claimant was born 10 May 1945.

Information Available in the Bank Records

The bank records of Bank I consist of a power of attorney form, dated 22 September 1936, a mail instructions form and a custody account receipt, both dated 6 June 1932. According to these records, the Account Owner was Leo Wertheimer from Gartenstrasse, Buehl Baden, Germany, and the Power of Attorney Holder was Dr. Otto Wertheimer, the Account Owner's son, from 3 Avenue George V, Paris 8^e, France. The bank records indicate that the Account Owner held a custody account, numbered 37691. The bank records do not show when the account at issue was opened or closed, or to whom it was paid, nor do these records indicate the value of this 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 this account in Bank I'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. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the account and received the proceeds themselves.

The bank records of Bank II consist of a custody account sheet. According to these records, the Account Owner was Leo Wertheimer from Buehl Baden, Germany. The bank records indicate that the Account Owner held a custody account, numbered F5442, and a demand deposit account. According to these records, the Account Owner also held an account at the Basel branch of Bank I. It is indicated that the Account Owner deposited various securities in the custody account in Bank II, commencing on 8 June 1932. On 25 September 1936, securities held in the custody account of a nominal value of 7,000.00 Swiss Francs, were withdrawn from the account. The bank records do not show when the accounts at issue were opened or closed, or to whom they were paid, nor do these records indicate the value of the account. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The names of her grandfather and her uncle match the published names of the Account Owner and the Power of Attorney Holder. The Claimant identified her grandfather's city of residence, which matches published information about the Account Owner contained in the bank records. She also identified her grandfather's street address, her uncle's city of residence and the relationship between the Account Owner and Power of Attorney Holder, all of which matches unpublished information about the Account Owner. Finally, the bank records of Bank II refer to a bank account in Bank I, which supports the conclusion that the Account Owner of all the accounts at issue is the Claimant's grandfather.

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 that he perished in the Gurs concentration camp in France.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Leo Wertheimer, and indicates that his place of residence was Mannheim, Germany, and that he died in the Gurs concentration camp on 5 December 1940, which matches the information about the Account Owner 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 Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is the daughter of [REDACTED], the Account Owner's son.

The Issue of Who Received the Proceeds

Given that the Account Owner was German with a German address in the bank records, the existence of Nazi confiscatory legislation in Germany at this time and the Nazi campaign to confiscate the foreign and domestic assets of its Jewish nationals, the death of the Account Owner in the Gurs concentration camp and the applicability of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that in this case it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether 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 the Account Owner was her grandfather, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor the Power of Attorney Holder nor their heirs received the proceeds of the accounts.

Amount of the Award

In this case, the Account Owner held one custody account at Bank I and one custody account and one demand deposit account at Bank II.

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 a custody account was 13,000.00 Swiss Francs and the average value of a demand deposit account was 2,140.00 Swiss Francs. Although the bank records in this case indicate that on 25 September 1936, securities in the amount of 7,000.00 Swiss Francs were withdrawn from the Account Owner's custody account at Bank II, no evidence is available as to the value of this account at the time of this withdrawal. In the absence of such information, the CRT, in accordance with Article 35 of the Rules, will use the average value of a custody account of 13,000.00 Swiss Francs as provided in this Rule. The total 1945 value of two custody accounts and one demand deposit account is 28,140.00 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 337,680.00 Swiss Francs.

Division of the Award

The Claimant is representing her cousin and her three sisters in these proceedings. According to Article 29 of the Rules, the Claimant's cousin is entitled to one half (1/2) of any payment made to the Claimant and each of the Claimant's sisters is entitled to receive one eighth (1/8) of any such payment.

Initial Payment

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, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value, and 65% of the total award amount is 219,492.00 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).

Certification of the Award

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

Claims Resolution Tribunal

December 31, 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).