

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Account of Alexander and Anna Berkowitz

Claim Number: 224169/EZ

Award Amount: 154,042.50 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Alexander Berkowitz. The Award is to the account of Alexander and Anna Berkowitz (the “Account Owners”) at 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 owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her father’s cousin, who was born in Czechoslovakia and was a French citizen. The Claimant stated that she is a relative of the claimed Account Owner, and that she was born in Czechoslovakia on 25 July 1947. The Claimant stated that her relative was a leather goods manufacturer and lived in France. She provided the Tribunal with her relative’s specific street address at 189 Fg. Poissonnière, Paris, France. The Claimant stated that her relative was hiding in France during the Second World War and died in the 1970s or 1980s. The Claimant further stated that her relative was married and had no children. However, the Claimant could not recall her relative’s spouse’s name.

Information Available in the Bank Records

The bank records consist of printouts. According to these records, the account owners were Alexander and Anna Berkowitz. The bank records indicate that the Account Owners held a demand deposit account (the “Demand Deposit Account”) and a custody account (the “Custody Account”). The bank records show that the Account Owners resided in Paris, France.

The bank records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of the Custody Account. However, the bank records indicate the accounts were dormant in 1959 and the Demand Deposit Account had a balance of

170.00 Swiss Francs in 1959. 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 these accounts in the Bank’s system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these account after 1945.

The Tribunal’s Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant’s relatives’ name matches the published name of one of the Account Owners. The Claimant stated that her relatives resided in Paris which matches published information about the Account Owners contained in the bank documents.

Status of the Account Owners as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Alexander Berkowitz was a Victim of Nazi Persecution. The Claimant stated that her relative was Jewish, and that he survived the Second World War by hiding in France.

The Claimant’s Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners. There is no information to indicate that the Account Owners have other surviving heirs. The Claimant also stated that her relatives had no children. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning her relationship to the Account Owners.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the accounts at issue were paid to the Account Owners or their heirs, the Tribunal must consider the question of what happened to the funds in this case.

The historical evidence developed by the ICEP during its investigation of Swiss banks (the “ICEP Investigation”) demonstrates that the funds of Nazi victims in Swiss banks were disposed of in various ways. In some cases, the account owners and/or their families withdrew and received the funds. In other cases, Nazi authorities coerced account owners to withdraw the balances in their Swiss accounts and transfer the proceeds to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but account values were consumed by regular and special bank fees and charges, which resulted ultimately in closure without any payment to the account owners. In still other cases, particularly after a period of inactivity or dormancy, the proceeds were paid to bank profits. Thus, since the funds in this case apparently were not paid to the Account Owners or their family, there is a substantial likelihood that these funds went to the Bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts, the Tribunal concludes that it is plausible that neither the Account Owners nor their heirs received the proceeds.

The accounts were dormant by 1959 and were closed at an unspecified later date. Therefore, it is clear that the Accounts Owners did not receive the proceeds of the accounts prior to 1959. The bank records do not show the exact date of closure nor who closed the accounts. There is no evidence in the bank records suggesting that the Account Owners closed the accounts and received the proceeds after 1959.

The Tribunal's conclusion also is required by Article 34(b) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that in cases where the account was closed after 1955 or ten years after the freeze of accounts from the country of residence of the Account Owner was lifted (whichever is later), the Tribunal is required to presume that neither the account owners nor their heirs received the proceeds of the claimed account.

Basis for the Award

The Tribunal 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 one of the Account Owners was her father's cousin and that relationship justifies an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case with the Custody Account, 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. The present value of this amount is calculated by multiplying it by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 149,500.00 Swiss Francs.

The bank records indicate that the value of the Demand Deposit Account as of 1959 was 170.00 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 225.00 Swiss Francs, which reflects standardized bank fees charged to the Demand Deposit Account between 1945 and 1959. Consequently, the adjusted balance of the Demand Deposit Account is 395.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted balance by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 4,542.50 Swiss Francs.

The total award amount for the Custody Account and the Demand Deposit Account is 154,042.50 Swiss Francs.

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, or where the Tribunal has determined that an account may be subject to later competing valid claims, claimants shall receive an initial payment of 35% of the total award amount. In this case, the value of the accounts at issue is based in part on the Article 35 presumptions and there is the

possibility of other competing claims. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65% of the total award amount. In this case, 35% of the total award amount is 53,914.88 Swiss Francs.

Division of the Award

The Claimant is representing her mother in these proceedings. According to Article 29(1)(e) of the Rules, if the account owner's spouse, the children or descendants of the account owner's parents, or the children of the account owner have not submitted claims to the account, the award will provide for an equal division among any of the children of the account owner's grandparents or their descendants who have submitted claims. While the Claimant is one of the Account Owners' grandparents' descendants, the Claimant's mother is not one of these descendants and therefore only the Claimant is entitled to the amount of the Award.

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).

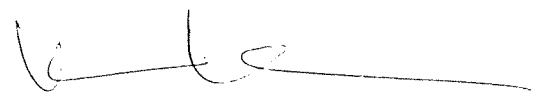
Certification of the Award

At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a plausible case for entitlement to an award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same account will be forthcoming. Article 37(3)(a) and (b) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, and/or the Tribunal determines that an account may be subject to later competing claims, the initial payment to the claimant shall be 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. Thus, the Rules instruct and require the Tribunal to certify and recommend an initial 35% payment in awards submitted for Court approval in particular cases where either the Tribunal has used the value presumptions of Article 35 of the Rules or it has determined that the account may be subject to later competing claims, or both.

In this case, the Tribunal has used the value presumptions of Article 35 of the Rules to calculate the account value and is of the opinion that the accounts at issue may be subject to later competing claims. On this basis, the Tribunal certifies this Award for approval by the Court and for payment by the Special Masters in accordance with Article 37(3) of the Rules.

26 March 2002

Date



Veijo Heiskanen
Senior Claims Judge