

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Irina Rimán
represented by Alexander Rimón

in re Account of Marta Berkowitz

Claim Number: 208548/YL

Award Amount: 45,379.00 Swiss Francs

This Certified Award is based upon the claim of Irina Rimán (the "Claimant") to the Account of Marta Berkowitz (the "Account Owner"),

Information Provided by the Claimant

The Claimant submitted a Claim Form and an Initial Questionnaire indicating that the Account Owner Marta Berkowitz was her mother, who was born on 13 April 1896, in Leipzig, Germany. She was married to Boris Berkowitz (the Claimant's father who died in 1966) whom she divorced in 1937 or 1938, when she remarried Koplman Solomon who died in 1966. The Claimant, who was born on 26 March 1922, in Berlin, Germany, stated that she was her mother's only child.

The Claimant identified Marta Berkowitz as a medical doctor practicing in the field of radiology who lived in Berlin, Germany. The Claimant stated that on 30 June 1933, her mother was expelled from her position at a clinic in Berlin because she was Jewish, and in July 1933, she fled together with the Claimant to Milan, Italy. The Claimant further stated that she and her mother stayed in Milan until 1935 when they moved to Riga, Latvia, before settling in 1936 in Moscow, Union of Soviet Socialist Republics, where her mother died in 1970. In support of her submissions, the Claimant attached her own birth certificate and a translated copy of the expulsion letter dated 30 June 1933 from the Berlin clinic where her mother practiced medicine.

Information Available in the Bank Records

The bank records consist of printouts from the bank's database and a survey dated 1959 of accounts where account owners directed the bank to hold all correspondence and where there had been no correspondence with the account owners since the 1930s. According to these records, the Account Owner was Marta Berkowitz, who was a doctor of medicine and used an address in Milan, Italy, and who held an Account which comprised of two demand deposit accounts. The bank documents

record that the total value of the two demand deposits which constituted the Account in 1959 was 2,746.00 Swiss Francs, and that the Account was transferred to a collective account by 1959 for administrative and bookkeeping purposes. In addition, the bank documents show that the Account was opened in 1934, and that the last known contact with the Account Owner was also in 1934.

The bank records do not show if or when the collective account to which the Account was transferred was closed, or to whom (if anyone) it was paid. 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 did not find the collective account in the bank's system of open accounts, and they therefore presumed that it was closed.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The name of the Claimant's mother matches the published name of the Account Owner, and the Claimant has provided her mother's profession and that she resided in Milan, Italy, which exactly matches the profession and address for the Account Owner recorded in the unpublished bank records. In addition, the opening date of the Account is 1934, and this is also the date of last contact with the Account Owner. The address recorded for the Account Owner at this time is Milan and this corresponds with the Claimant's account of living in Italy from July 1933 to 1935.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owner was a Victim of Nazi Persecution. The Claimant has shown that the Account Owner, her mother, was Jewish, and that prior to her flight to Milan, Italy, in 1933, she was dismissed from her job in Berlin, Germany, because she was Jewish.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that the Account Owner is her mother, by providing a copy of her own birth certificate that shows that her mother was Marta Berkowitz. In the Claim Form, the Claimant stated that she was the Account Owner's only child and that her mother had no other surviving heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis for questioning this information provided by the Claimant.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award of the account proceeds if they were in fact paid to the Account Owner or her heirs, the Tribunal must consider the question of what happened to the funds in this case.

The historical evidence developed by the Independent Committee of Eminent Persons 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 may have withdrawn and received the funds. In other cases, account owners who were subject to Nazi coercion sent to their banks requests for closure and transfer to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but the amount in the account was consumed by regular and special bank fees and charges resulting ultimately in closure without any payment to the account owners; and in still others, particularly after a period of inactivity or dormancy, the proceeds were paid to bank profits. Thus, if the funds were not in fact paid to an account owner or her family, as is apparently the case here as described below, there is a substantial likelihood that they went to the Nazis or the Swiss bank.

As previously noted, the bank records do not indicate when the collective account to which the Account was transferred was closed, and there is no evidence as to whom the proceeds were paid. As to the critical issue of whether the Account was paid to the Account Owner or her heirs, there is no evidence in the bank records suggesting that the Account Owner closed the Account and received the proceeds herself. In this regard, the Claimant stated that her mother told her about the deposit and that she could not access it because "*of the situation in the Soviet Union at the time.*" In this regard, the Tribunal notes that living in Communist Eastern Europe after the Second World War would have made it extremely difficult and dangerous for the Account Owner to access her Account prior to her death, which the Claimant stated was in 1970. There is no evidence of such access; on the contrary the bank documents show that the Account with a balance of 2,746.00 Swiss Francs, was transferred to a collective account by 1959. This collective account was closed at an unknown date.

Although the Tribunal cannot determine with certainty who received the proceeds of the Account Owner's deposits, the Tribunal concludes that the Claimant has made a plausible showing that neither the Account Owner nor her heirs received the proceeds. It would appear instead that the collective account was closed by an internal bank procedure after 1959. Moreover, the same conclusion is required by Article 34(b) of the Rules Governing the Claims Resolution Process (the "Rules") specifying that where an account has been closed after 1955, the Tribunal shall presume that neither the Account Owner nor her heirs received the proceeds.

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimant for the following reasons: the Claim is admissible as the claimed Account belonged to a Victim of Nazi Persecution, and the Claimant has provided information establishing that her mother is the Account Owner (a relationship that justifies making an Award).

Amount of the Award

The present value of the Account is calculated by multiplying the adjusted amount in the Account by a factor of 11.5, in accordance with Article 37(1) of the Rules. In the present case, the bank records indicate that the assets in the Account as of 1959 were valued at 2,746.00 Swiss Francs. This amount is increased by an adjustment of 1,200.00 Swiss Francs which reflects standardized bank fees of 600.00 Swiss Francs

charged between 1945 and 1959 to each of the two demand deposits constituting the Account. Consequently, the adjusted amount in the Account is 3,946.00 Swiss Francs, and the amount of the Award is 45,379.00 Swiss Francs.

The Claimant should note that, according to Article 37(3) of the Rules, in cases where the Tribunal determines that an account may be subject to later competing claims, the initial payment to claimants shall be 35% of the total award amount. Such claimants may receive a second payment of up to the remaining 65% of the total award amount when so determined by the Court, but not later than when all claims have been processed. In this case, 35% of the total award amount is 15,882.65 Swiss Francs.

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).

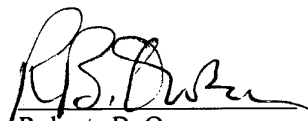
Certification of the Award

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 strong 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 accounts will be forthcoming. Moreover, the new process of analyzing the Initial Questionnaires to determine those that can be treated as claim forms adds another element of uncertainty about the possibility of future complementary or competing claims.

The Special Masters appointed by the Court to supervise the Claims Resolution Process for Deposited Assets Claims have stressed the importance of moving ahead quickly to begin to make awards to Holocaust victim claimants or their heirs. They have therefore instructed the Tribunal that in particular cases where the Tribunal is satisfied that the currently identified claimant has a strong claim and that the risk of future competing claims is low, the Tribunal should prepare an award to that claimant and submit it to the Court for approval. This is such a case.

In this case, the Tribunal is of the opinion that the Claimant has presented a strong claim to the Account, thus substantially reducing the likelihood of competing claims. On this basis, and taking into account the instructions of the Special Masters, the Tribunal recommends approval of the present Award by the Court for payment by the Special Masters in accordance with Article 37(3) of the Rules.

Nov. 5, 2001
Date


Roberts B. Owen
Senior Claims Judge