

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Account of Adolf Egger

Claim Number: 216480/VB

Award Amount: 258,375.10 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”), acting on behalf of himself and his brother, [REDACTED], to the Account of Adolf Eduard Egger (the “Account Owner”) 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 indicating that the Account Owner Adolf Egger was his father, who was born on 5 July 1874 in Vienna, where he married [REDACTED], in 1912. The Claimant stated that he is one of the Account Owner’s two children and was born in Vienna on 2 June 1922.

The Claimant identified Adolf Egger as a managing director of “Fiat Werke AG” in Vienna, where he lived at Blechturm-gasse 10 between 1913 and 1939. The Claimant stated that his father was dismissed from his job because of his Jewish origins on 18 March 1938, and that he and his wife subsequently emigrated to Italy.

Information Available in the Bank Records

The bank records consist of an opening card and database printouts. 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 were able to match the opening card to an entry on the April 1938 Austrian census of Jewish assets. This information, specifically the census entry, shows that the Account Owner was Adolf Egger, born in 1874, who lived at Blechturm-g. 10 in Vienna and held a custody account, which contained securities worth 5000.00 United States Dollars when closed on 28 December 1938. The census entry also records that the Account Owner held a current account, valued at 416.57 Reich Marks in 1938, when it was closed. It is not known to whom the assets in either account were paid.

Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's name matches the published name of the Account Owner. The Claimant has provided his father's precise street address in Vienna before the Second World War, which exactly matches the unpublished address contained in the bank documents. Moreover, the Claimant has submitted documents recording his father's year of birth, which also matches unpublished information contained in the bank documents.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owner had Jewish origins. Nazi racial laws would have considered him to be Jewish, and thus he would have been targeted for persecution by the Nazi Regime. Furthermore, the Claimant has stated that his father was dismissed from his job because of his Jewish origins on 18 March 1938, and that his father's two sisters and brother perished in a concentration camp.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that the Account Owner is his father, by providing documentation including his own birth certificate and the Account Owner's will. The Claimant has stated that his father had no surviving heirs other than the Claimant and his brother. The credibility of other information provided by the Claimant gives the Tribunal no basis to question this statement. Furthermore, the Account Owner's will states that he had two sons, which matches the Claimant's information.

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 his 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 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, if the funds were not in fact paid to an account owner or his family, as is apparently the case here as described below, there is a substantial likelihood that the funds in this case went to the Nazis.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts, the Tribunal concludes it is plausible that neither the Account Owner nor his heirs received the proceeds.¹ The application of confiscatory laws by the Nazi regime during the 1930s, as described in more detail in footnote 1 below, makes it unlikely that the Account Owner received the proceeds himself. In this case, the bank records indicate that the current account was closed sometime in 1938 and the custody account was closed on 28 December 1938, some nine months after the Nazi annexation of Austria into the Reich in March 1938, and before the Account Owner was able to escape Austria to Italy in 1939. Travel by Austrian Jews to Switzerland subsequent to March 1938 was restricted, making it unlikely that the Account Owner came to Switzerland in December 1938 to collect the proceeds and return with them to Austria for his own benefit before eventually fleeing Austria in 1939. The Tribunal's conclusion is also required by Article 34(a) and (d) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where an account was closed after the date of occupation of the country of residence of the Account Owner and had been declared in a Nazi census of Jewish assets, the Tribunal shall presume that neither the Account Owner nor his heirs received the proceeds of the account. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the account and received the proceeds himself.

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 the Account Owner was his father and that relationship justifies an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The bank records indicate that the value of the custody account was 5,000.00 United States Dollars on 28 December 1938. Using the official Swiss bank exchange rate of 0.23 United States Dollars per Swiss Franc, the value of the custody account was 21,739.13 Swiss Francs. The value of the current account was 416.57 Reich Marks in 1938. Using the exchange rate imposed by the Nazi authorities to convert foreign

¹ In reaching this conclusion, the Tribunal is relying in part on research cataloguing more than forty different laws, acts, and decrees used by the Nazi Regime to confiscate Jewish assets abroad. After the annexation of Austria, German laws were extended to apply there as well, and these laws applied to foreign assets of Austrian citizens as a result of a law promulgated on 23 March 1938. Although many of the laws were facially non-discriminatory, the Nazi Regime enforced these laws on a discriminatory basis against Jewish asset holders. These laws included, for example, increasingly stringent registration and repatriation requirements for assets held outside the Reich and special confiscatory taxes for emigrants who wished to flee. After the occupation of Austria, wholesale and systematic Nazi expropriations of Jewish assets held in Swiss banks and elsewhere were widespread. A decree dated 26 April 1938 required Jews to register their assets, and subsequent to that date the Nazi Regime began to enact legislation and orders to repatriate and confiscate foreign assets both for Jews who sought permission to flee the Reich and for those unable to flee. A listing of the principal laws invoked by the Nazi Regime in specific confiscatory situations appears at the CRT-II website, www.crt-ii.org.

assets on the 1938 survey, 0.572 Reich Marks per Swiss Franc, the value of the current account was 728.27 Swiss Francs, yielding a total value of 22,467.40 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. Consequently, the total amount to be awarded is 258,375.10 Swiss Francs.

According to Article 37(3) of the Rules, in cases where 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 65% of the certified award 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 90,431.29 Swiss Francs.

The Claimant is representing his brother in these proceedings. According to Article 29 of the Rules, his brother is entitled to receive one-half of any payment to the Claimant.

Scope of the Award

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

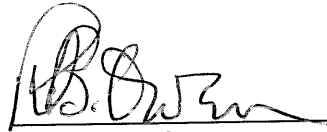
Certification of the Award

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. 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.

31 Jan. 2002
Date


Roberts B. Owen
Senior Claims Judge