

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Arnold Fleischmann

in re Account of Nelly Fleischmann

Claim Number: 223889/MC

Award Amount: 287,500.00 Swiss Francs

This Certified Award is based upon the claim of Arnold Fleischmann (the “Claimant”) to the accounts of Nelly Fleischmann (the “Account Owner”) at the Zurich 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 is redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner, Nelly Fleischmann, as his mother, who was born on 18 October 1900 in Bayreuth, Germany, and married to Ludwig Fleischmann in 1923 in Bayreuth. The Claimant stated that his mother lived at Badstrasse 30 in Bayreuth, and that she was persecuted by the Nazis because she was Jewish. The Claimant indicated that his mother died on 17 August 1938 in the Jewish Hospital in Fuerth, Germany, and was buried in the Jewish Cemetery in Bayreuth. The Claimant stated that he is the only child of the Account Owner and that he was born on 7 November 1925 in Bayreuth.

The Claimant also submitted a copy of a claim he filed with the Swiss Banking Ombudsman at the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (the “Swiss Banking Ombudsman”) in March 1997. According to the Claimant’s submission, he paid the Swiss Banking Ombudsman a fee of 300.00 Swiss Francs to consider his claim to accounts belonging to his father, Ludwig Fleischmann. The Claimant also submitted a copy of his letter, dated 21 August 1997, to the Swiss Banking Ombudsman, in which he acknowledged receiving a check from that office, drawn on the [REDACTED], in the amount of 200.00 Swiss Francs as a partial refund of the application fee he had submitted with his claim. The letter indicates that the check was dated 3 February 1997, but was not sent by the Swiss Banking Ombudsman until late July 1997. In his letter, the Claimant stated that after he deposited the check with his bank in the United States on 1 August 1997, his bank returned the check to him on 12 August 1997 with a notice that the foreign bank had declined to honor the check because of a stale date. In his letter,

the Claimant requested that the Swiss Banking Ombudsman promptly send him a replacement check bearing a current date, so that he might deposit it and obtain the benefit of the promised partial refund of the application fee. The Claimant did not indicate whether he ever received any response.

In a letter to the Tribunal dated 3 August 2001, the Claimant stated that he had discovered some documents belonging to his father, including a letter to the Bank dated 20 September 1956, and the Bank's response dated 3 October 1956. The Claimant submitted both documents to the Tribunal to supplement his claim. In the letter to the Bank, the Claimant's father stated that, per the deposit receipt for custody account 43500, the Bank held bonds in the name of his late wife, Nelly Fleischmann, worth approximately 25,000.00 Swiss Francs. The letter then went on to state that, pursuant to German legislation at that time, the Bank was instructed by the Claimant's father in December 1938 to sell the bonds and to transfer the value of the assets to the *Deutsche Golddiskont Bank*. The Claimant's father wrote that the Bank acted pursuant to these instructions. The Claimant's father requested confirmation of the transaction so that he could pursue the possibility of restitution in Germany. The Bank responded that it was not possible to confirm the transaction as it no longer possessed files from 1938.

Information Available in the Bank Records

The bank records consist of an account opening card for Nelly Fleischmann and a list of accounts reported to the Swiss Compensation Office in Bern. According to these records, the Account Owner was Nelly Fleischmann, who resided at Badstrasse 30 in Bayreuth. The account opening card indicates that the Account Owner held a custody account numbered 43500, opened on 31 May 1931 and closed on 10 January 1939.¹

With regard to the Claimant's father's 1956 letter seeking confirmation of the closing of the Account Owner's custody account to Nazi authorities, while the bank documents available to the Tribunal do not contain evidence of the transaction, they do contain files dating back to 1938. Moreover, the bank files contain evidence that an account still existed in the Account Owner's name in 1956, at the time of the Claimant's father's inquiry. There is no indication that the Bank informed the Claimant's father that this account was still in existence. Thus, the Bank clearly misled the Claimant's father by denying the existence of the account belonging to the Account Owner.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His mother's name and city of residence match the published name and city of residence of the Account Owner. The Claimant has also identified his mother's street address, which matches the unpublished street address of the Account Owner contained in the bank documents. In support of his claim, the Claimant

¹The bank records also indicate that the Account Owner held a demand deposit account that was closed on 20 June 1959. This account will be addressed in a separate decision.

submitted documents, including his father's letter to the Bank in which his father identifies the account number of his late wife's custody account.

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 lived in Nazi Germany.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, including his birth certificate and the birth certificate of his mother, demonstrating that he is the son of Nelly Fleischmann. There is no information to indicate that the Account Owner has other surviving heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning his relationship to the Account Owner.

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 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 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 the account owners or their family, as is apparently the case here as described below, there is a substantial likelihood that the funds went to the Nazis or to the Swiss bank.

With respect to the custody account, although the Tribunal cannot determine with certainty who received the proceeds of the account, the Tribunal concludes that a plausible showing has been made that neither the Account Owner nor her heirs received the proceeds.² The application of

² 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. Although some of these laws were promulgated before the Nazis came into power, and although many of the laws were facially non-discriminatory, the Nazi Regime increasingly 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 Germany and special confiscatory taxes for emigrants who wished to flee Germany. Until 1937, the laws generally did not explicitly target Jews, although in practice the laws were enforced more stringently against Jews. Over the course of 1937, however, the spoliation process became increasingly wholesale and systematic and Nazi

confiscatory laws by the Nazi Regime during the 1930s, as described in more detail in footnote two, makes it unlikely that the Account Owner received the proceeds herself. In this case, the Claimant has indicated that the Account Owner died in August 1938. The 1956 letter provided by the Claimant, which is not contradicted by any other evidence, indicates that the Account Owner's spouse, acting pursuant to Nazi confiscatory legislation, instructed the Bank in December 1938 to transfer the assets in the account to the Nazi-controlled *Deutsche Golddiskont Bank*, and that the Bank complied with these instructions. The bank records confirm that the account was closed shortly thereafter, on 10 January 1939. Moreover, there is no evidence in the bank records suggesting that the Account Owner's heirs closed the account and received the proceeds themselves.

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 mother, and that relationship justifies an Award. Finally, the Tribunal has determined that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

Amount of the Award

In cases where the bank records do not contain information on account values, the Tribunal uses the average values of the type of account as specified in Article 35 of the Rules. However, in this case the Claimant has submitted credible information on the value of the claimed account. The Claimant's submissions indicate that the value of the custody account as of December 1938 was 25,000.00 Swiss Francs. As noted above, the Claimant submitted a letter written by the Claimant's father on September 20, 1956 to the Bank stating that his late wife's account held bonds worth 25,000 Swiss Francs. This letter is a relatively contemporaneous statement of the account value by a person who was in a position to know the value of his wife's account. Further, he would have had no motive to undermine the credibility of his claim by exaggerating its value when writing to the Bank, which he knew held the account and had full information concerning its value. The statement of the Account Owner's husband is entitled to even greater weight in the absence of any information on the value in the bank records and in light of the possibility that the account information might not have been retained because of the Bank's concern about the possibility of double liability due to the indications noted above that the account may have been paid to Nazi authorities.³ For these reasons, the Tribunal concludes that it is plausible that the actual value of the account is the amount stated in the letter submitted by the Claimant.

expropriations of Jewish assets held in Swiss banks and elsewhere became 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.

³ See Final Report of the Independent Commission of Experts Switzerland – Second World War, at 443-444; see also Independent Committee of Eminent Persons Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks, at 83 (discussing double liability).

The present value of the amount of the award is determined by multiplying the account value by a factor of 11.5, in accordance with Article 37(1) of the Rules. Consequently, the award amount for this account is 287,500.00 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 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

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

10 May 2022
Date


Veijo Heiskanen
Senior Claims Judge