

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Egon Hesky

Claim Number : 214653/AA

Award Amount: 14,260.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Egon Hesky (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 identifying the Account Owner as her uncle, Egon Hesky, who was born in Hungary, and was married to [REDACTED]. The Claimant stated that she is the niece of the Account Owner and that she was born in Budapest on 12 June 1917. According to the Claimant, her uncle was a businessman who traveled throughout Europe before the Second World War. The Claimant submitted further that her uncle was a citizen of Hungary and Austria, and was living in Austria during the Second World War. The Claimant stated that her uncle was deported, and he probably perished soon thereafter. In support of her claim, the Claimant stated that her uncle resided in Vienna before the Second World War.

Information Available in the Bank Records

The bank records consist of a safe deposit box registry card. According to these records, the sole Account Owner was Egon Hesky of Vienna, Austria. The bank records indicate that the Account Owner held a safe deposit box, which was opened on 7 January 1929. The bank records do not show if or when the safe deposit box at issue was closed, or to whom it was paid, nor do these records indicate the value of the safe deposit box’s contents. 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 indicated that there was no evidence of activity with regard to this safe deposit box after 1945. The bank records show, nonetheless, that the Bank performed an administrative update of the safe deposit box on 9 August 1947, but there is no indication that the Bank had any further contact with Egon Hesky.

Information Available From the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. No records concerning the assets of any persons named Egon Hesky were found in the records of the Austrian State Archives (Archive of the Republic, Finance).

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner as her uncle, Egon Hesky. His name matches the published name of the Account Owner. Additionally, the Claimant has presented information regarding her uncle's city of residence in Vienna before the Second World War, which matches unpublished domicile information about the Account Owner contained in the bank documents.

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. Accordingly, the Claimant stated that the Account Owner was Jewish and was persecuted by the Nazis while living in Austria during the Second World War. Specifically, her uncle was deported by the Nazis and was never heard from again. Moreover, the Tribunal noted that a database containing the names of victims of Nazi persecution includes a person named Egon Hesky. 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 the niece of the Account Owner. She has provided general historical information about her family, specific information about the Account Owner, and a detailed family tree illustrating exactly how she is linked to the Account Owner. 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 Owner.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the account was 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. Moreover, Swiss banks were authorized, under certain conditions, to forcibly open safe deposit boxes in order to recover unpaid rental fees. 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 Bank.

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 his heirs received the proceeds. In this case, the account was still open in 1947, when the Bank performed an administrative update of the safe deposit box. The Claimant's assertion that her uncle was deported and likely perished thereafter supports the conclusion that he could not have received any of the contents of his safe deposit box. 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 because the claimed account belonged to a Victim of Nazi Persecution. Second, the Claimant has plausibly demonstrated that the Account Owner was her uncle, 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 account at issue.

Amount of the Award

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 safe deposit box was 1,240.00 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 14,260.00 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 account at issue is based 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 4,991.00 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 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 provide that where the value of an award is calculated using the value presumptions provided in Article 35, and 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 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 to calculate the account value and is of the opinion that the account at issue may be subject to later competing claims. On this basis, the Tribunal certifies this award for approval by the Special Masters in accordance with Article 37(3) of the Rules.

26.03.02
Date

Dov Rubinstein
Dov Rubinstein
Resident Claims Judge