

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Elisabeth Hirschfeld

Claim Numbers: 201078/MB

Award Amount: 323,610.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Elisabeth Hirschfeld (the “Account Owner”) at the [REDACTED] (“Bank Number One”) and [REDACTED] (“Bank Number Two”).

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 indicating that Elisabeth Hirschfeld (born Heiden-Heimer), who was Jewish, was his mother and that she lived at Mommsenstrasse 55, Berlin- Charlottenberg, Germany until she fled to the United States in 1938. The Claimant stated that Elisabeth Heiden-Heimer was born 23 April 1883 in Mainz, Germany and that she married [REDACTED] on 14 September 1908 in Mainz. The Claimant stated that the Nazis confiscated almost all of his mother’s assets, including her bank accounts, prior to the time that she fled Germany. The Claimant indicated that he held a Power of Attorney for the accounts of his mother. The Claimant also stated that [REDACTED], who was born on 9 June 1873 in Berlin, died 4 January 1930 in Berlin.

Information Available in the Bank Records

According to the bank records of Bank Number One, the Account Owner was Elisabeth Hirschfeld with addresses at Mommsenstrasse 55, Berlin-Charlottenberg, Friedrich-Karl-Strasse 15, Berlin-Wannsee and Am Sandwerder 43, Berlin-Wannsee, all in Germany. She held two accounts at Bank Number One, a custody account and a current account. Both accounts were opened on 10 February 1930 and closed on 15 December 1937. The Power of Attorney holder on the accounts at Bank Number One was Karl Ernst Hirschfeld, listed in the bank documents as “ihr Sohn.”

According to the bank records of Bank Number Two, the Account Owner was Elisabeth Hirschfeld with an address in Berlin-Charlottenberg. She held three current accounts, opened 20 May 1926 and closed 20 February 1932, 20 February 1933 and 31 March 1934, and one custody account, opened 20 May 1926 and closed 20 December 1937.

None of the bank documents contains the values of the accounts held, nor do any of the bank documents show to whom the accounts were paid.

Tribunal's Analysis

Identification of the Account Owner

The Claimant plausibly identified the Account Owner as his mother. The Claimant's mother's name matches the published name of the Account Owner. The Claimant also provided his mother's exact street address in Germany that matches unpublished information contained in the bank documents. Further, the Claimant stated he held a Power of Attorney for the accounts of his mother, and his name matches the name of the Power of Attorney holder for the accounts at Bank Number One, the records of which indicate that the holder was the son of the Account Owner. The records from Bank Number One also indicate that the Account Owner was a widow as of 12 February 1930, and the Claimant stated that his mother's husband died on 4 January 1930. Additionally, an unpublished name listed in the records of Bank Number Two, [REDACTED], matches the name of the Account Owner's husband as provided by the Claimant.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owner, his mother, was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and lived in Germany until 1938 when she fled to avoid further persecution. The Claimant also stated that most of the Account Owner's assets were confiscated by the Germans before she escaped to the United States in 1938.

The Claimant's Relationship to the Account Owner

The Claimant has provided plausible evidence that the Account Owner was his mother. The Claimant has provided documents showing that he is the son of Elisabeth Hirschfeld, the Account Owner, including copies of the Account Owner's United States citizenship papers, the Claimant's marriage certificate, certification of the Claimant's name change from Hirschfeld to [REDACTED], and the Claimant's German and United States passports. The credibility of the other information provided by the Claimant gives the Tribunal no basis for doubting the validity of these documents.

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. 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 in this case went to the Nazis.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts at Bank Number One, the Tribunal considers it plausible that the proceeds of the custody and current accounts at Bank Number One, closed on 15 December 1937, and the custody account at Bank Number Two, closed on 20 December 1937, were paid to Nazi authorities.¹ The application of confiscatory laws by the Nazi Regime during the 1930s, as described in more detail in footnote one below, makes it unlikely that the Account Owner received the proceeds herself. In this case, the Claimant stated that the Account Owner’s assets were confiscated by Germans before she fled Germany in 1938. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the account and received the proceeds herself.

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. 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 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.

With respect to the three accounts held at Bank Number Two, closed on 20 February 1932, 10 February 1933 and 31 March 1934, the Tribunal has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or her heirs received the proceeds of that 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 because the accounts belonged to a Victim of Nazi Persecution, and the claim meets the other admissibility criteria. Second, the Claimant has plausibly demonstrated that his mother is the Account Owner, a relationship that justifies an award. Finally, the Tribunal has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the custody accounts at Bank Number One and Bank Number Two or the current account at Bank Number One.

Amount of the Award

The bank records do not indicate balances for the accounts to be awarded. 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 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 custody accounts was 13,000.00 Swiss Francs, and the average value of current accounts was 2,140.00 Swiss Francs. Using these average values, the total value of the two custody accounts and the current account is 28,140.00 Swiss Francs. The present value of the accounts is obtained by multiplying this amount by a factor of 11.5, in accordance with Article 37(1) of the Rules, giving a total award amount of 323,610.00 Swiss Francs.

According to Article 37(3) of the Rules, in cases where the amount in the account is not known, an initial payment of 35% of the total award amount is made. After all claims are processed, subject to approval by the Court, a subsequent payment of up to the remaining 65% of the total award amount may be made. In this instance, 35% of the total award amount is 113,263.50 Swiss Francs.

Scope of the Award

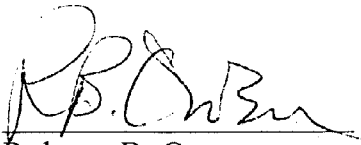
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 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. 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.

24 Jan. 2002
Date


Roberts B. Owen
Senior Claims Judge