

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Ernestine Marx

Claim Numbers: 220961/MC; 220960/MC

Award Amount: 24,610.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (hereinafter “Claimant [REDACTED 1]”) and Artur Isenberg (hereinafter “Claimant [REDACTED 2]”) (collectively, the “Claimants”) to the account of Ernestine Marx (the “Account Owner”) at [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 Claimants

The Claimants, who are brothers, submitted Claim Forms claiming the account of a Swiss firm, *Altino Aktiengesellschaft*, in which they were major shareholders. The Claimants stated that the Nazis confiscated the assets of the firm in 1938. In their Claim Forms, the Claimants identified their mother as Ernestine [REDACTED], *née* Marx, who was born in Saarbrücken, Germany and who was married to [REDACTED]. The Claimants stated Ernestine and [REDACTED] had two sons, the Claimants.

In a telephone conversation with the Tribunal, Claimant [REDACTED 1] stated that his mother, who was Jewish, lived in several different countries prior to the Second World War. Claimant [REDACTED 1] stated that his father, [REDACTED], also had a residence in Liechtenstein. From 1930 to 1932, the Isenberg family lived in Zurich. Claimant [REDACTED 1] further stated that, after 1932, the family moved to Lorrach, Germany, where he and his brother, Claimant [REDACTED 2], went to school. According to Claimant [REDACTED 1], as the situation for Jews worsened, he and his family fled Germany and immigrated to the United States. Claimant [REDACTED 1] could not remember the exact year that his family fled.

Information Available in the Bank Records

The bank records consist of an account opening card and printouts from the Bank's database that indicate that the sole Account Owner was Miss Ernestine Marx. The bank records indicate that the Account Owner held a demand deposit account in a foreign currency. The bank records also indicate that the Account Owner provided an Italian address as a place of residence. The records indicate that the account was closed unknown by whom on 20 November 1940. The amount in the account on the date of its closure is unknown.

The Tribunal's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the discretion of the Claims Judges. In this case, the Tribunal determines it appropriate to join the claims of Claimant [REDACTED 1] and of Claimant [REDACTED 2] in one proceeding.

Identification of the Account Owner

The Claimants filed Claim Forms stating that *Altino Aktiengesellschaft* owned a Swiss bank account to which they are entitled. With the information that the Claimants provided, the Tribunal made a thorough search of the records kept by the Swiss banks, using the Account History Database prepared by the auditors who conducted a three year investigation of the Swiss banks under the auspices of the Independent Committee of Eminent Persons to identify accounts of Victims of Nazi Persecution. The Account History Database does not contain any accounts belonging to the *Altino Aktiengesellschaft*. However, the Tribunal also researched other names provided by the Claimants in their Claim Forms, including that of their mother, Ernestine [REDACTED], *née* Marx, and located one account that matched to this name.

The Tribunal finds that the Claimants have plausibly identified their mother as the Account Owner. The maiden name of the Claimants' mother matches the unpublished name of the Account Owner, who is identified as being unmarried. The Tribunal notes that the bank records do not contain any specific information about the Account Owner other than her name, marital status, and country of residence. Thus, the additional information provided by the Claimants cannot be compared with the bank information. However, Claimant [REDACTED 1] stated that his mother lived in several countries, including Switzerland, before the Second World War. Thus, the Tribunal considers it plausible that the Claimants' mother also resided for a period of time in Italy, at which time she could have opened the account at issue.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and lived in Nazi-controlled Germany. The Claimants further stated that the Account Owner and her family were forced to flee Germany.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner. In a telephone conversation with the Tribunal, Claimant [REDACTED 1] has provided a detailed family history. The credibility of other information provided by the Claimants gives the Tribunal no basis to question the veracity of this information concerning their relationship to the Account Owner.

The Issue of Who Received the Proceeds

Since the Claimants would not be entitled to an award if the account at issue was 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 the Swiss 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 her 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 herself. Because the account was closed on 20 November 1940, after these confiscatory laws were in effect, and because the Account Owner fled Germany to avoid persecution, the Tribunal considers it reasonable to conclude that the assets in the account were confiscated by the Nazis. The Tribunal's conclusion also is required by Article 34(a)(i) of the Rules, which provides that where the account was closed after the imposition of

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.

Swiss visa requirements on January 20, 1939, the Tribunal shall presume that neither the account owners nor their heirs received the proceeds of the claimed account. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the account and received the proceeds herself.

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their mother and that relationship 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 claimed account.

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 demand deposit account was 2,140.00 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 24,610.00 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 8,613.50 Swiss Francs.

Division of the Award

The total award amount is 24,610.00 Swiss Francs, of which Claimant [REDACTED 1] is entitled to 12,305.00 Swiss Francs (representing 50% of the total amount of the award), and of which Claimant [REDACTED 2] is entitled to 12,305.00 Swiss Francs (representing 50% of the total amount of the award). Claimant [REDACTED 1] shall receive an initial payment of 4,306.75 Swiss Francs, and Claimant [REDACTED 2] shall receive an initial payment of 4,306.75 Swiss Francs.

Scope of the Award

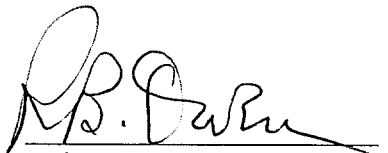
The Claimants should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they might be entitled, including research of the Total Accounts Database (consisting of records 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. 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 plausible claim and that the risk of future competing claims is low, the Tribunal shall 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 Claimants have presented a plausible claim to the account at issue, thus reducing the likelihood of competing claims. On this basis, and taking into account the instructions of the Special Masters, the Tribunal recommends approval by the Court of the present Award for payment by the Special Masters in accordance with Article 37(3) of the Rules.

1 Mar. 2002
Date


Roberts B. Owen
Senior Claims Judge