

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]
([REDACTED 2]acting on behalf of himself and [REDACTED])

in re Accounts of Emil and Frieda Nachum

Claim Numbers: 215320/EC; 003530/EC; 003535/EC; 003536/EC

Award Amount: 194,925.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 2], acting on behalf of himself and his sister, [REDACTED], and [REDACTED 1] (the "Claimants") to the Accounts of Emil and Frieda Nachum (the "Account Owners") 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

Claimant [REDACTED 1] submitted a Claim Form indicating that the Account Owners were his father's first cousins, Emil Israel and Frieda Nachum. He stated that Emil and Frieda Nachum were themselves first cousins married to each other. According to Claimant [REDACTED 1], Emil and Frieda Nachum were born in 1869 and 1873, respectively, and they lived in Hamburg. Emil died of natural causes in Hamburg in 1939, and Frieda perished in Auschwitz in 1944. Emil and Frieda Nachum had three children, [REDACTED], [REDACTED], and [REDACTED], who survived the Holocaust and lived in the United States, Brazil, and Great Britain after the Second World War.

Claimant [REDACTED 1] stated that he did not remember the exact street address of Emil and Frieda Nachum in Hamburg, but he remembered their house near a park, where he used to go every Sunday with his father to play billiards. The Claimant's father was [REDACTED], and the Claimant submitted his own birth certificate which indicated that he was born in Hamburg in 1924.

Claimant [REDACTED 2] also submitted a Claim Form indicating that the Account Owners were his relatives, Israel Emil Nachum and Frieda Nachum (*nee* Nachum), who lived in Hamburg and were born in 1869 and 1873 respectively, and that they had three children, [REDACTED], [REDACTED], and [REDACTED]. Claimant [REDACTED 2] submitted an extensive family tree which indicated that Emil Nachum was the brother of his grandfather, [REDACTED]. The family tree also

indicated that Emil Nachum had another brother, [REDACTED], who was Claimant [REDACTED 1]'s grandfather. Claimant [REDACTED 2] also submitted his own birth certificate which indicated that he was born in Berlin in 1930.

Claimant [REDACTED 2] filed two additional Claim Forms to these accounts regarding other relatives named Emil and Frieda Nachum. The other Emil Nachum was a teacher, was married to [REDACTED], and lived from 1893 to 1942. The other Frieda Nachum was unmarried and lived from 1898 until 1943.

Information Available in the Bank Records

According to the bank records, the Account Owners were Emil and Frieda Nachum, who resided at Beneckestr. 22, Hamburg. Each of them owned one account with the Bank. The account records for Emil's account include a power of attorney authorization in Frieda's favor, signed by both in Hamburg on 31 December 1929. These records contain no indication as to the type of account Emil owned, nor do they record the value of the assets therein.

The account records for Frieda's account include a power of attorney authorization in Emil's favor, signed by both in Hamburg on 14 July 1930, and an assent form the Bank sometimes required husbands to sign to agree that their wives should be allowed to have accounts with the Bank, signed by Emil in Hamburg on 20 July 1930. These records plausibly indicate that Frieda owned a custody account, but they do not indicate a value for the account.¹

The bank records do not indicate when either of the two accounts was closed, nor to whom the proceeds were paid. 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 (the "ICEP Investigation") did not find the account on the Bank's database of open accounts and therefore presumed that the accounts had been closed. The auditors found no evidence of activity on the account after 1945.

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 account 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.

¹ The bank records contain a power of attorney form that references a "*Titeldepot*" which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that the Frieda Nachum held a custody account, in the absence of evidence to the contrary, the Tribunal concludes that it is plausible that she held such an account.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owners as their relatives. The information they each submit is consistent with each other's. The extensive family tree submitted by Claimant [REDACTED 2] indicates that the Claimants are second cousins, and that their grandfathers were Emil Nachum's brothers. The family information supplied by Claimant [REDACTED 1] indicates that Frieda Nachum was not only Emil Nachum's wife, but also his cousin, making each claimant related to her through blood as well as marriage.

The names of the Claimants' relatives match the names of the Account Owners as they appear in the bank documents. Furthermore, the Bank customarily recorded the maiden names of its female clients, and the fact that it did not do so in this case would be consistent with the Claimants' indication that Frieda had the same maiden and married name. Finally, both claimants indicate their family's connection with Hamburg, the place of residence of the Account Owners.

Claimant [REDACTED 2] also claimed two other persons as relatives who had the names Emil and Frieda Nachum. The other Emil Nachum was married to [REDACTED], and the other Frieda Nachum was unmarried. This information is inconsistent with the bank documents which indicate that the Account Owners were married to each other. As noted above, Claimant [REDACTED 2] has already plausibly identified the Account Owners as one set of relatives, and therefore it is apparent that the Account Owners were not the Claimants' other relatives with the same names.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have provided plausible evidence that the Account Owners were Victims of Nazi Persecution. The Claimants have indicated that both Account Owners were Jewish and lived in Germany under the Nazi Regime. As German Jews, they would have been direct targets of the Nazis' anti-Jewish laws. Even though Emil Nachum died in 1939 of natural causes, he would nevertheless have been a Victim of Nazi Persecution. Claimant [REDACTED 1] further indicates that Frieda Nachum perished in Auschwitz.

The Claimant's Relationship to the Account Owner

The Claimants have plausibly shown that the Account Owners are their relatives. Claimant [REDACTED 1] has provided credible family stories and direct reminiscences. Claimant [REDACTED 2] has provided an extensive family tree. The credibility of other information provided by the Claimants gives the Tribunal no basis for questioning the Claimants' assertions that they are related to the Account Owners.

The Claimants both indicated that the Account Owners had three children who survived the Second World War and died years later in the United States, Brazil, and Great Britain. The Claimants further indicated that all three were married and had children, although they indicated that they did not know the whereabouts of any direct descendants of the Account Owners. Neither these grandchildren nor any other direct descendants of the Account Owners have submitted claims to the account. The family

tree submitted by Claimant [REDACTED 2] indicates that Emil Nachum was one of ten children, and that they in turn had dozens of heirs. Aside from the Claimants in this proceeding, none of those other potential heirs have made claims.

In these circumstances, under Article 29(e) of the Rules, the Tribunal may make an award to a descendent of a child of the Account Owner's parents or grandparents who has submitted a claim. The Claimants are the only two descendants of Emil Nachum's parents to have filed a claim. They are also the only two descendants of Frieda Nachum's grandparents to have filed a claim. Thus the Claimants are entitled to receive an award.

The Issue of Who Received the Proceeds

Since the Claimants would not be entitled to an award of the account proceeds if they were in fact paid to the Account Owners or their 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 or to the Swiss bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the Account Owner's Account, the Tribunal concludes that it is plausible that neither the Account Owner nor her heirs received the proceeds.² There is no evidence before the Tribunal that the Account Owners closed the account and received the proceeds themselves. Furthermore, the application of confiscatory laws by the Nazi Regime

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. After 1937, however, wholesale and systematic 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.

during the 1930s (as described in footnote 2) makes it unlikely that the Account Owners received the proceeds themselves. Moreover, as Emil Nachum died in 1939 and Frieda Nachum perished in Auschwitz, it is, of course, impossible that they could have received the proceeds after the Second World War, even if the Nazis had not confiscated them, in which case they could have been consumed by bank fees or charges.

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimants for the following reasons: the claim is admissible as the claimed accounts belonged to Victims of Nazi Persecution, and the Claimants have provided information establishing that they are descended from Account Owner Emil Nachum's parents and from Account Owner Frieda Nachum's grandparents (a relationship that justifies making an award).

Amount of the Award

The bank records do not indicate a balance for the accounts. Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here, the Tribunal shall calculate the present value of the account being awarded based on the average 1945 value of the same or similar type of account, if the account type is known, or the average 1945 value of all accounts, if the account type is not known. The bank records indicate that Frieda Nachum plausibly owned a custody account, and they do not indicate the type of account owned by Emil Nachum. Based on the ICEP Investigation, the 1945 average value of a custody account was 13,000.00 Swiss Francs and of accounts generally was 3,950.00 Swiss Francs, producing a combined value for the two accounts of 16,950.00 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 194,925.00 Swiss Francs.

According to Article 37(3) of the Rules, in cases where the amount in the account is not known, claimants shall receive an initial payment of 35% of the total award amount. 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 instance, 35% of the total award amount is 68,223.75 Swiss Francs.

Under Article 29(e) of the Rules, if the direct descendants of the Account Owners do not claim the account, as they have not in this case, an award may be made to more distant relatives in equal shares by representation. In this case, no direct descendants of either of the Account Owners has made a claim, and the Claimants are the only descendants of Emil Nachum's parents or Frieda Nachum's grandparents to have filed claims. They come from the two branches of the family descended from Emil's brothers (and Frieda's cousins) [REDACTED] and [REDACTED]. Therefore, the award is to be divided in half between those two branches of the family. [REDACTED 2] and his sister [REDACTED], whom he is representing, are together entitled to the half pertaining to [REDACTED] (i.e., one quarter of the award each), and [REDACTED 1] is alone entitled to the half pertaining to [REDACTED].

Scope of the Award

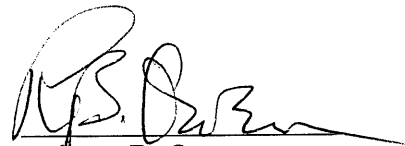
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1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