

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Erika Sauerteig

in re Account of Louis and Emmy Nagel

Claim Numbers: 212944/FC; 212945/FC

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of Erika Sauerteig (the "Claimant") to the Account of Louis and Emmy Nagel (the "Account Owners").

Information Provided by the Claimant

The Claimant submitted two Claim Forms indicating that the Account Owners were her maternal grandparents, Emmy Nagel, née Jacoby, and Louis Nagel, who were born on 17 January 1871 and in 1863, respectively. The Claimant stated that they married in 1891, and had three children. The Claimant further stated that her grandparents lived in Danzig at Gr. Gerbergasse 6, from 1920 to 1938. According to the Claimant's submissions, the Account Owners moved to Karlsbad in 1938.

The Claimant stated that the Account Owners were Jewish and that they were deported from Karlsbad to a concentration camp where they perished at an unknown date.

In a telephone conversation the Claimant's son stated that his mother was the only living grandchild of Emmy and Louis Nagel. However, the Claimant also informed the Tribunal that the other deceased grandchildren of the Account Owners had descendants, Ruth Zausmer (the Claimant's sister) had two children, Heliana Karger, who lives in Chile, and Manuel Karger, who lives in Germany. Guntaer Cohn (the Claimant's cousin) also had two children, David and Janet, but the Claimant stated that he did not know where they lived. The Claimant's son indicated that it would be too complicated for his mother to locate these people and that she was therefore not willing to represent them.

Information Available in the Bank Record

According to the bank records, which consists of an account opening card, the joint Account Owners were Mrs. Emmy Nagel, née Jacoby, and Louis Nagel who resided at Gr. Gerbergasse 6, Danzig and later in Karlsbad. The Account Owners held a custody account that was opened on 8 January 1938, and closed on 4 August 1939.

The bank record does not indicate the value of the account held, and it does not show to whom (if anyone) the account was paid.

The Tribunal's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her grandparents' names match the published names of the Account Owners. The Claimant has also provided her grandparents' street address and the cities of residence before the War, which match the unpublished information in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owners were Victims of Nazi Persecution. The Claimant has shown that her grandparents, who were Jewish, lived in Danzig from 1920 to 1938 and then in Karlsbad until they were deported to a concentration camp where they perished at an unknown date. According to the information in the bank records, the Account Owners stayed in a *Kurhaus* (sanatorium) in Karlsbad, Germany. Karlsbad was the Czech city of Karlovy Vary, which was a spa resort located in the Sudetenland. Germany annexed this territory in October 1938. In this respect, the Tribunal notes that the Account Owners lived in Nazi-controlled territories as of 1934 and the Claimant has also stated that they perished in a concentration camp.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly shown that the Account Owners are her grandparents by providing documentation including her parents' wedding certificate indicating that the Account Owners were her mother's parents, and her birth certificate indicating that she is her parents' daughter. The Claimant has also indicated that the Account Owners' children and grandchildren are all deceased, but that there were several great-grand-children whom the Claimant was not willing to represent.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award of the account proceeds if they were in fact paid to the Account Owners or their family, 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 demonstrates that the funds of Nazi victims in Swiss banks were disposed of in various ways. In some cases, the account owner and/or their families may have withdrawn and received the funds. In other cases, account owners who were subject to Nazi coercion sent to their banks requests for closure and transfer to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but the amount in the account was consumed by regular and special bank fees and charges resulting ultimately in closure without any payment to the account owners; and in still others, 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 an account owner or his family, as is apparently the case here as described below, there is a substantial likelihood that they went to the Nazis or the Swiss bank.

Under the circumstances of this case, the Tribunal considers it reasonable to assume that the proceeds were paid to Nazi authorities.¹ As previously noted, the Account was closed on 4 August 1939, but there is no evidence as to whom the proceeds were paid. As to the critical issue whether the Account was paid to the Account Owners or their heirs, the fact is that at the time the Account was closed, the Nazi Regime was systematically registering, repatriating and confiscating the foreign assets of Jews residing in German-occupied portions of the former Czechoslovakia, which makes it highly unlikely that the Account Owners received the proceeds in 1939. It is also the fact that travel by Jews to Switzerland from Germany at that time was restricted, making it unlikely that the Account Owners came to Switzerland to collect the proceeds. For these reasons the Tribunal finds it implausible that either the Account Owners or their family received the proceeds at the time of closure, and, of course, it is implausible that the bank would have paid them the proceeds after the closure.

Although the Tribunal cannot determine with certainty who received the proceeds of the Account Owner's deposit, the Tribunal concludes that it is plausible that neither the Account Owners nor their heirs received the proceeds. Moreover, the same conclusion is required by Article 34(a) of the Rules specifying that where an account has been closed after the date of occupation of the country of residence of the Account Owner, the Tribunal shall presume that neither the Account Owner nor his heirs received the proceeds.

Basis for the Award

The Tribunal has determined that an award may be made in favor of the Claimant for the following reasons: the Claim is admissible as the claimed Account belonged to Victims of Nazi Persecution, and the Claimant provided information establishing that her grandparents were the Account Owners (a relationship that justifies making an award).

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. After 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.

Amount of the Award

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, as determined based on the results of the investigation of Swiss banks by the Independent Committee of Eminent Persons and as required by Article 35 of the Rules, is used to calculate the present value of the account being awarded. In 1945, the average value of a custody account was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 149,500.00 Swiss Francs.

The Claimant should note that 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 65% of the total award amount. 35% of the total award amount for the Account is 52,325.00 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 claims 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

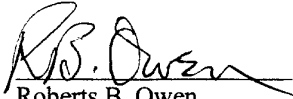
At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a strong case for entitlement to an award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same accounts will be forthcoming. Moreover, the new process of analyzing the Initial Questionnaires to determine those that can be treated as claim forms adds another element of uncertainty about the possibility of future complementary or competing claims.

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 by the Court of the present Award for payment by the Special Masters in accordance with Article 37(3) of the Rules.

Nov. 5, 2001
Date


Roberts B. Owen
Senior Claims Judge