

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Max Neisser

Claim Number: 207324/PJ¹

Award Amount: 299,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the accounts of Max Neisser (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the name 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 two Claim Forms identifying the Account Owner as her grandfather, Max Neisser, whose daughter, [REDACTED] née [REDACTED], is the Claimant’s mother. The Claimant stated that her grandfather was born in Germany on 19 June 1869, and that he was a medical doctor, a professor at the University of Frankfurt, and a director at the Institute of Hygiene and the Institute for Experimental Therapy. The Claimant further stated that her grandfather married [REDACTED] née [REDACTED] in Frankfurt am Main, Germany on 1 September 1901, and had three children: [REDACTED], [REDACTED] and [REDACTED]. The Claimant also indicated that her grandfather lived in Frankfurt am Main, Germany, where he died on 25 February 1938.

Information Available in the Bank Records

The bank records consist of a bank registry card. According to this record, the sole Account Owner was Max Neisser. The bank record indicates that the Account Owner held two custody accounts.

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 207324 and 207325. The Tribunal has determined that these claims are duplicate claims and is treating them under the Consolidated Claim Number 207324.

The bank record also indicates that Max Neisser was a professor and had a doctorate in medicine. The bank record further shows that Max Neisser resided in Frankfurt am Main.

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 determined that the accounts were closed on 10 June 1937 and 5 July 1937. The amounts in the accounts on the dates of their closure are unknown.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her grandfather's name matches the published name of the Account Owner. The Claimant also indicated that her grandfather lived in Frankfurt am Main, Germany, which matches unpublished information contained in the bank records. Furthermore, the information provided by the Claimant about his grandfather's profession matches unpublished 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 or Target of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and was living in Frankfurt am Main, Germany under the Nazi Regime until his death in 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documentation, including her parents' marriage certificate, on which appears the name of the Claimant's grandfather. The Claimant submitted a family tree that identifies the Claimant's brother and the Claimant's three cousins as potential heirs of the Account Owner. The Claimant indicated, however, that only one of her cousins is still alive. Thus, while there is information before the Tribunal that other heirs of the Account Owner exist, it does not appear that these persons have submitted claims to the Account. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of the 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 at issue 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 went to the Nazis or to the Swiss bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts, the Tribunal concludes that a plausible showing has been made that neither the Account Owner nor his heirs received the proceeds.² The bank records show that the Account Owner's two accounts were closed on 10 June 1937 and 5 July 1937. However, the application of confiscatory laws by the Nazi Regime during the 1930s, as described in more detail in the footnote below, makes it unlikely that the Account Owner received the proceeds himself. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the accounts 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 in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her grandfather, 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 claimed accounts.

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 custody account was 13,000.00 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 the amount of 149,500.00 Swiss Francs. As the Account Owner had two custody accounts, which would each be valued at 149,500.00 Swiss Francs, the total award amount is 299,000.00 Swiss Francs.

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. 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.

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. 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, the value of the accounts at issue is based on the Article 35 presumptions, and there is the possibility of other competing claims. In this instance, 35% of the total award amount is 104,650.00 Swiss Francs.

Scope of the Award

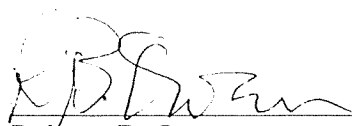
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 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 of the Rules, and/or 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 of the Rules 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 of the Rules to calculate Account value and is of the opinion that the accounts at issue may be subject to later competing claims. On this basis, the Tribunal certifies this Award for approval by the Court and for payment by the Special Masters in accordance with Article 37(3) of the Rules.

26 March 2002
Date


Roberts B. Owen
Senior Claims Judge