

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Gil Makov and Dan Makov

in re Account of Acatiu Nemeth

Claim Numbers: 670005/BW; 736343/BW^{1,2}

Award Amount: 99,259.50 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Acatiu Nemeth (the “Account Owner”) at the New York branch of the [REDACTED] (the “Bank”).³ The account awarded is from the Total Accounts Database (“TAD”) at 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

The Claimant submitted both an Initial Questionnaire and a claim to the Holocaust Claims Processing Office (“HCPO”), identifying the Account Owner as his father, Acatiu (Akos) Nemeth, who was born on 24 February 1895 in Tirgu-Mures, Romania, and was married to [REDACTED]. The Claimant stated that his father, who was Jewish, was an architect and engineer, who resided in Tirgu-Mures. The Claimant further stated that his father, despondent after having witnessed incidents of Nazi persecution, committed suicide on 11 December 1940 in Hungary. Moreover, the Claimant stated that his mother, [REDACTED], who was later married

¹ [REDACTED] submitted a claim, numbered B-00867, on 8 April 1998, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 670005.

² In addition to his HCPO claim, in 1999, [REDACTED] submitted an Initial Questionnaire (“IQ”), numbered RUM-0015-070, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 736343.

³ The CRT notes that this account was included on the list published as Official Notification by the World Jewish Congress: List of Known Swiss Bank Accounts.

to [REDACTED], was deported to Auschwitz, where she perished on 9 May 1945. The Claimant also stated that he is the only child of his father, and that he was adopted in 1945 by [REDACTED].

In support of his claim, the Claimant submitted several documents evidencing account ownership by his father at the Bank; this documentation is further described below. The Claimant indicated that he was born on 25 December 1937 in Tirgu-Mures.

Information Provided by the HCPO and Available in the Bank's Records

The CRT notes that 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 ("ICEP" or the "ICEP Investigation") did not investigate the New York branch of the Bank, nor did the auditors report an account belonging to Acatiu (Akos) Nemeth.⁴ The Bank's documents were obtained by both the Claimant and the HCPO, and were forwarded to the CRT. In addition, the account of Acatiu Nemeth, which was not part of the Account History Database at the CRT, was identified as a result of matching and research carried out at the Bank and using the Total Accounts Database ("TAD") at the Bank. The TAD at the Bank is one of the several databases that comprise a total of approximately 4.1 million accounts. These are part of the approximately 6.9 million accounts that were identified by the ICEP auditors as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 million accounts, in databases located at the 59 ICEP audited Swiss banks,⁵ are composed of 1.9 million savings accounts with a 1930-1940s value of 250 Swiss francs or less and accounts with Swiss addresses, and 2.2 million accounts that ICEP concluded should not be included within the Account History Database, that is within the 36,000 accounts that ICEP determined were "probably or possibly" owned by victims of Nazi persecution. The account awarded is part of a group of accounts identified in the TAD.

The records from these three sources consist of an account card, correspondence between the Bank and a law firm, correspondence between the Bank and the United States Office of Alien Property, correspondence between the Bank and [REDACTED], internal Bank memoranda, various reports of abandoned property compiled by the State of New York Department of Audit and Control, a copy of a newspaper advertisement from 1978, giving notice that certain individuals were the owners of unclaimed property, debit notes, a receipt issued by the State of New York Department of Audit and Control, Bureau of Abandoned and Court Funds to the Bank, a United States tax form, and correspondence between the HCPO and the Office of Unclaimed Funds in the Office of the State Comptroller of the State of New York.

According to these records, the Account Owner was Acatiu Nemeth, who resided in Targu Mures, Romania. The records indicate that the Account Owner held a demand deposit account,

⁴ The CRT notes that the Claimant recently received a decision noting that no accounts located in his relative's name was located in the Account History Database ("AHD"). That decision addressed only accounts in the "AHD." The account which is the subject of this Award was identified in documents obtained from the HCPO and in the Total Accounts Database at the Bank.

⁵ These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

and that in June 1941, the account was reported as a blocked account under the United States' Trading With the Enemy Act. These documents indicate that the account contained a balance of 3,330.10 United States Dollars ("US \$") as of 16 October 1940. These records also include a letter from the Bank to a law firm indicating that the Bank filed an Estate Preliminary Tax Notice in March 1941 and requested the law firm to obtain a waiver from the Estate tax. In its response to the Bank's request, the law firm explained that the Bank needed to prepare affidavits stating that the Account Owner had not been a resident of the United States or the State of New York. Thus, these records indicate that the account was deemed to be held by the Estate of the Account Owner on or before March 1941. The Bank's records further indicate that the account appeared on the list of blocked accounts in September 1950. The Bank's records also indicate that the Bank sent a letter to the United States Office of Alien Property in March 1951, to which it attached an official certificate issued on 21 April 1950 by the Municipality of Targu-Mures regarding the interest of the Claimant as successor of the Account Owner's Estate. The Bank's records indicate that the account remained blocked as of April 1960.

The records also show that [REDACTED] contacted the Bank in February 1974, indicating that he was aware that the Account Owner opened an account with the Bank, that the Claimant was the Account Owner's son but was unable to contact the Bank directly because he lived in Romania, and that he had therefore asked [REDACTED], the Account Owner's cousin, to inquire with the Bank regarding the account. In his letter, [REDACTED] asked what documents were required to claim the account. The records indicate that the Bank replied to this inquiry by demanding various documents, including documentation proving that the Account Owner was deceased. The records further indicate that the assets in the account were paid over to the State of New York as abandoned property on 26 October 1978 after a publication of the Notice of Abandoned Property in relation to the account. At the time of transfer, the account contained a balance of US \$3,117.08.

These documents also include a letter from the Office of the State Comptroller of the State of New York to the HCPO, dated 9 December 1998, indicating that the Office of the State Comptroller transferred on 10 November 1998 the amount of US \$4,981.52, representing US \$3,117.08 principal and US \$1,864.44 interest, to the Claimant's bank in Tel Aviv, Israel. These documents also indicate that an amount of US \$207.16 was withheld, based on a tax treaty between the U.S. and Romania that required the withholding of 10 percent of the accrued interest.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name, city and country of residence match the published name, city and country of residence of the Account Owner. Further, the Bank's records contain a letter written by the cousin of the Account Owner in 1974, informing the Bank of the Claimant's existence and his familial relationship to the Account Owner. The CRT notes that there are no other claims to this account.

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 of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, and that he committed suicide in Nazi-allied Hungary in December 1940. In addition, the Claimant stated that the Account Owner's wife perished at Auschwitz.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant's father. The CRT notes that both the Bank's records and the documentation forwarded to the CRT by the HCPO include a letter from the Account Owner's cousin, confirming that the Claimant is the son of the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was frozen, that its assets were paid over to the State of New York as abandoned property in 1978, and that, in 1998, the Claimant received a total amount of US \$4,981.52, which included the value of the account's assets and interest generated thereon, from the Office of the State Comptroller of the State of New York.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his father, and that relationship justifies an Award. Third, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account before the Claimant was partially reimbursed for the same through the Office of the State Comptroller of the State of New York.

Amount of the Award

The CRT notes that, before the CRT adjudicated the Claimant's claims, the Claimant filed a claim with the HCPO, and with the aid of the HCPO, on 10 November 1998, the Claimant was reimbursed from the Office of the State Comptroller of the State of New York in the amount of US \$4,981.52, representing US \$3,117.08 principal and US \$1,864.44 interest. An amount of

US \$207.16 was withheld, based on a tax treaty between the U.S. and Romania that required the withholding of 10 percent of the accrued interest. This Award adjusts the amount previously paid to the Claimant to reflect the amount the Claimant would have received under the Rules.

In this case, the Account Owner held one demand deposit account. The Bank's records indicate that the value of this account as of October 1940 was US \$3,330.10, or 14,685.74 Swiss Francs ("SF").⁶ As noted above, in 1998, the Claimant received US \$4,981.52, which was equal to SF 6,744.98 in 1945. The difference between the 1945 value of the original deposit, SF 14,686.05, and the 1945 value of the amount paid to the Claimant in 1998, SF 6,744.98, is SF 7,940.76, which represents the value of the original deposit which has yet to be reimbursed to the Claimant. The current value of this amount is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 99,259.50.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claims 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) at banks other than the Bank.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
23 June 2006

⁶ The CRT uses official rates when making currency conversions.