

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Richard Newton

in re Account of Hugo Neubauer

Claim Number: 217345/MD

Award Amount: 90,850.00 Swiss Francs

This Certified Award is based upon the claim of Richard Newton (the “Claimant”) to the Account of Hugo Neubauer (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has not requested confidentiality, as in this case, only the name of the bank is redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form in which he stated that the Account Owner was his father, who was born in 1903 in Vienna, Austria. The Claimant asserted that his father lived in Vienna before the Second World War and that he worked, among other jobs, as the director of the department store “*Brüder Schiffmann*” until May 1938. The Claimant stated that his father, who was Jewish, was detained in police custody and in a Gestapo prison after the annexation of Austria by Nazi Germany in March 1938. Further, the Claimant stated that his father was deported to the concentration camps in Buchenwald and Dachau after 28 May 1938, and that he escaped in May 1939. According to the information provided by the Claimant, his father remained in hiding after his escape, and he eventually went to England in September 1939. The Claimant stated that his father served in the British and American armies during the Second World War.

According to the information in the Claim Form and in the documents attached thereto, Hugo Neubauer’s first wife, Ida Dag, and their daughter, Liesel Neubauer, were murdered by the Nazis in Riga, Latvia, in 1941. In England, Hugo Neubauer changed his name to Hugh Charles Newton and in 1947 married Ethel May Jones with whom he had two children: a daughter who died in 1949 and the Claimant. The Claimant attached a death certificate indicating that his father died in 1982.

Information Available in the Bank Records

The bank records, which consist of a copy of a letter from the Account Owner to the Bank dated 3 May 1938, and printouts from the Bank's database, indicate that the Account Owner was Hugo Neubauer from Vienna, Austria, and that he owned two accounts. The bank records do not indicate the type of accounts owned, nor do they indicate a value for the assets therein. On 3 May 1938, the Account Owner wrote to the Bank to request that it not correspond with him and that if it needed to contact him in an emergency, it do so through Dr. Kurt Stavenhagen of Genoa, Italy, to whom he granted a power of attorney. The Account Owner marked the letter "secret." The auditors who carried out the investigation of the 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 accounts 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 accounts after 1945.

Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner as his father. His father had precisely the same name as the published account owner, and the Claimant has submitted documents showing that his father lived in Vienna before the Second World War, thus matching the place of residence of the Account Owner contained in the bank records. As noted, the bank records also contain a copy of a secret letter from the Account Owner dated 3 May 1938 urging the Bank not to communicate with him in Vienna, which date would be consistent with documents provided by the Claimant indicating that his father was briefly out of Nazi custody on that date. Although the bank records do not contain enough identifying information about the Account Owner to be able to match this information with the plentiful information and documentation provided by the Claimant about his father, the Tribunal, noting that there are no other claims to the accounts at issue, finds that it is plausible that the Claimant's father and the Account Owner are the same person.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that his father, who was Jewish, was arrested and detained by the police and by the Gestapo after the annexation of Austria, and subsequently deported to the concentration camps in Dachau and Buchenwald. In support of his statement, the Claimant produced a decision of the Vienna Regional Government Office granting Hugh Newton, formerly Hugo Neubauer, compensation for detention in police custody and in the aforementioned concentration camps.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that the Account Owner was his father by providing his birth certificate. According to the information provided by the Claimant, his father died in 1982. The Claimant submitted his father's will in which he bequeathed his entire estate to his wife, Ethel Newton. As evidenced by the documents submitted by the Claimant in support of his claim, Ethel Newton, who died in 1992, bequeathed her entire estate to her son, the Claimant. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning his relationship to the Account Owner.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the accounts at issue were 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, since the funds in this case apparently were not paid to the Account Owner there is a substantial likelihood that these funds went to the Nazis.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts, the Tribunal concludes that it is plausible that neither the Account Owner nor his heirs received the proceeds.¹ The application of the confiscatory laws in Austria by the Nazi Regime after the *Anschluss* of March 1938, as described in more detail in the footnote below, makes it unlikely that the Account Owner received the proceeds himself.

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. After the annexation of Austria, German laws were extended to apply there as well, and these laws applied to foreign assets of Austrian citizens as a result of a law promulgated on 23 March 1938. Although many of the laws were facially non-discriminatory, the Nazi Regime 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 the Reich and special confiscatory taxes for emigrants who wished to flee. After the occupation of Austria, wholesale and systematic Nazi expropriations of Jewish assets held in Swiss banks and elsewhere were 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.

The bank records do not show if or when the account was closed or to whom it was paid. The Tribunal notes that the Account Owner was detained in police custody and in concentration camps after the annexation of Austria, and could not access his account himself. In addition, the fact that the Account Owner was kept in Nazi custody makes it likely that he was forced to comply with the Nazi confiscation laws which were in force at that time, and that he did not receive the proceeds from his accounts. 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 Governing the Claims resolution Process (the “Rules”). Second, the Claimant has plausibly demonstrated that the Account Owner was his father 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 and type 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, the average value of such an unknown type of account was 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying the balance by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce 45,425.00 Swiss Francs for each account, and a total award amount of 90,850.00 Swiss Francs for both accounts.

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 31,797.50 Swiss Francs.

Scope of the Award

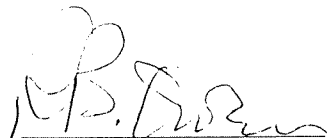
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 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 account will be forthcoming. Article 37(3)(a) and (b) of the Rules provides 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 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 the 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