

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Daniel Offenheimer

Claim Number: 208079/EZ

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Daniel Offenheimer (the “Account Owner”) at the Basel branch of [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

The Claimant submitted a Claim Form identifying the Account Owner, Daniel Offenheimer, as his maternal uncle, who was born on 21 October 1891, in Lahr, Germany, and was married to Dora Offenheimer, née Strauss. The Claimant stated that Dora Offenheimer’s brother was Louis Strauss, but could not provide further information about him. The Claimant stated that his family lived in Schmieheim, a small village next to Lahr, Germany. The Claimant further stated that his entire family was deported from Schmieheim to concentration camps in the late 1939 or the early 1940. The Claimant stated that his uncle perished in the Gurs concentration camp in France, on 31 December 1945, and that his aunt Dora Offenheimer perished in the Gurs concentration camp on an unknown date.

The Claimant noted that he survived the Second World War by escaping to Sweden in 1939, and that in 1946 he emigrated to the United States as a war orphan.

Information Available in the Bank Records

The bank records consist of two power of attorney forms. According to these records, the sole Account Owner was Daniel Offenheimer and the Power of Attorney Holders were Dora Offenheimer, née Strauss, and Louis Strauss. The bank documents do not specify the Power of Attorney Holders’ relationships to the Account Owner, but indicate that Louis Straus resided in

New York. The bank records indicate that the Account Owner held a numbered custody account,¹ and that he resided in Lahr, Germany.

The bank records do not indicate when the account was opened, but do indicate that the account was open by 24 October 1930 when Dora Offenheimer signed the power of attorney form, and remained open until at least 29 September 1938, when Louis Straus signed the power of attorney form.

The bank records do not show if or when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. 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”) did not find this account in the Bank’s system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945.

The Tribunal’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The names of his uncle, aunt, and his aunt’s brother match the published names of the Account Owner and the Power of Attorney Holder, respectively. The Claimant stated that his uncle was born in Lahr, Germany, and lived in Schmieheim, next to Lahr, which is consistent with the published information about the Account Owner’s residence contained in the bank documents. In support of his claim, the Claimant submitted documents, including his birth certificate indicating that he was also born in Lahr, Germany.

However, the Tribunal notes that the Claimant filed an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Daniel Offenheimer, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant has based his claim not simply on the fact that a person identified on the ICEP List as owning a Swiss bank account bears the same name as his relative’s, but rather on a direct family relationship that was known to him before the publication of the ICEP list. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP list. This supports the credibility of the information provided by the Claimant.

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

¹ The bank records contain power of attorney forms that reference 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 these power of attorney forms therefore do not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the Tribunal concludes that it is plausible that he held such an account.

Persecution. The Claimant stated that the Account Owner was Jewish and was killed in the Gurs concentration camp.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents including the Claimant's birth certificate demonstrating that his mother's maiden name was Offenheimer. There is no information to indicate that the Account Owner has other surviving heirs. 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 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 ICEP 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, or his family, or the Power of Attorney Holders, there is a substantial likelihood that these funds went to the Nazis or to the Bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the account, the Tribunal concludes that it is plausible that neither the Account Owner nor his heirs received the proceeds.² The account at issue was open until at least 29 September 1938, at which time the confiscatory laws of the Nazi Regime, as described in more detail in footnote 2 below, were in full force. The Claimant stated that his entire family was deported from Schmieheim between

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.

1939 and 1940 and was killed by the Nazis. Therefore, it is plausible that neither the Account Owner nor his family received the proceeds of the account. The Tribunal notes that the power of attorney form related to Louis Straus indicates that he resided in New York, United States from where he could have had access to the account. However, there is no evidence that Louis Straus actually accessed the account and/or withdrew assets deposited in the account.

Moreover, it is plausible that the Power of Attorney Holders and the Account Owner's heirs did not close the account and receive the proceeds themselves after the War. Following the War, Swiss banks adopted a policy, which became official in the mid-1950s, of rejecting inquiries into accounts that were held by victims of Nazi persecution.³ The final report of the Bergier Commission concluded: "Throughout the post-war period the banks relied on a combination of discreetly playing down the problem and erecting barriers to investigation: time and time again they would bring banking secrecy into play in order to legitimise their reluctance to provide information while at the same time charging high search fees for conducting investigations."⁴ Thus, even if the Power of Attorney Holders or the heirs of the Account Owner had contacted the Bank in an effort to close the account and withdraw the proceeds, it is plausible that they would not have been able to do so, because the Bank would not have informed them of the existence of the account. The Tribunal's conclusion that it is plausible that the Power of Attorney Holders and the Account Owner's heirs did not receive the proceeds of the account is also supported in this case by the fact that there is no evidence in the bank records suggesting that the Power of Attorney Holders or the heirs of the Account Owner either contacted the Bank or closed the account and received the proceeds.

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 his uncle, 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 account.

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 a total award amount of 149,500.00 Swiss Francs.

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

³ See Final Report of the Independent Commission of Experts Switzerland--Second World War, at 446; *see also* Independent Committee of Eminent Persons Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks; Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution, paragraphs 3 and 4.

⁴ Final Report of the Independent Commission of Experts Switzerland--Second World War, at 446.

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 account at issue is based on the Article 35 presumptions and the account may be subject to later competing claims. In this instance, 35% of the total award amount 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 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. Articles 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 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 has determined that the account 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.

3 May 2002

Date



Veijo Heiskanen
Senior Claims Judge