

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Otto Johanides
represented by Roman Johanides

in re Account of Karl Otto

Claim Number: 216503/TP

Award Amount: 24,610.00 Swiss Francs

This Certified Award is based upon the claim of Otto Johanides (the “Claimant”) to the account of Karl Otto (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published. 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 to the Tribunal identifying the Account Owner as his maternal grandfather, Karl Otto. The Claimant indicated that his grandfather was born on 10 November 1874 in Aussig/Elbe (which was then in the Austro-Hungarian Empire and later part of Czechoslovakia), and that he was married to Melanie Otto née Wessely in 1915. According to the Claimant’s submissions, the couple had two children: Frantisek, born on 13 August 1916, and Eliska (the Claimant’s mother), born on 11 January 1920. The Claimant stated that from 1937 onwards, his grandparents lived at Trzni 5 in Bodenbach, Czechoslovakia, and that her grandfather owned a paper factory in the same city, at Moltkestrasse 5. The Claimant further stated that his grandfather was a Catholic freemason, and his wife, the Claimant’s grandmother, was Jewish. The Claimant indicated that since his grandmother was Jewish, his grandfather was harassed by the Gestapo during the Nazi occupation of Czechoslovakia, and because his grandfather refused to divorce his wife, the Nazis took over his factory. The Claimant also stated that his grandmother only avoided deportation by attempting to commit suicide. The Claimant believes that Karl Otto might have opened a bank account in Switzerland on behalf of his wife, who was from a wealthy family, in order to avoid confiscation by the Nazis. Finally, the Claimant indicated that his grandfather died in Decin, Czechoslovakia, in 1951, and that his grandmother died in Decin in 1966. The Claimant also indicated that his grandparents’ children, Eliska and Frantisek, died in Decin in 1983 and 1990 respectively. Frantisek died without children, and Eliska was survived by two sons from her marriage with Josef Johanides: Otto (the Claimant) and Michael, who died on 11 January 2001.

In support of his claim, the Claimant submitted, among other documents, a copy of his own birth certificate and copies of his parents' and his grandparents' birth certificates, as well as a copy of his grandparents' marriage certificate. The Claimant also submitted a copy of his grandfather's German identity card and a copy of his grandmother's identification card issued by the German police authorities of Bodenbach in the name of Melanie "Sara" Otto.

Information Available in the Bank Records

The bank records consist of two account registry cards. According to these records, the sole Account Owner was Karl Otto, who resided in Bodenbach, Czechoslovakia. The bank records indicate that the Account Owner held a demand deposit account number 390 715, which was opened on 30 November 1934 and closed on 31 December 1957. 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 (the "ICEP Investigation") 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 provided plausible evidence that the Account Owner was his maternal grandfather. Specifically, the Claimant's grandfather's name matches the published name of the Account Owner. In addition, the Claimant stated that his grandparents lived in Bodenbach, Czechoslovakia, which matches the Account Owner's unpublished place of residence as recorded in the bank documents. The Tribunal therefore concludes that it is plausible that the Claimant's grandfather 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 Target of Nazi Persecution. The Claimant has stated that the Account Owner was living in Czechoslovakia during the Nazi occupation. The Claimant has stated that the Account Owner's wife was Jewish, and for this reason the Account Owner was harassed by the Gestapo and was a Target of Nazi Persecution. Further, after the Account Owner refused to divorce his wife, the Nazis took over his factory. Moreover, the Account Owner's wife only avoided deportation by attempting to commit suicide.

The Claimant's Relationship to the Account Owner

The Claimant has provided plausible evidence that he is related to the Account Owner by submitting copies of his grandparents', his mother's and his own birth certificates, which demonstrate that he is the Account Owner's grandson. There is no information indicating that the Account Owner has any other surviving heirs. According to the information submitted by the Claimant, the Account Owner's wife and children are deceased, and the Claimant is the Account Owner's only living grandchild. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information.

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 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 as described below, there is a substantial likelihood that these funds went 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. The bank records indicate that the Account Owner's account was closed on 31 December 1957, which is more than six years after the Account Owner's death. Therefore, the Account Owner could not have closed the account and received the proceeds himself. Further, the Tribunal notes that as the Account Owner's wife and children were living in Communist Eastern Europe after the Second World War, it would have been extremely difficult and dangerous for them to access the account after the Account Owner's death. Moreover, there is no evidence of any such access in the bank records.

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimant. First, the claimed account belonged to a Target of Nazi Persecution. Second, the Claimant has plausibly demonstrated that he is the Account Owner's grandson, and that relationship justifies an Award. Finally, the Tribunal has determined 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 is used to calculate the present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account in 1945 was 2,140.00 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 24,610.00 Swiss Francs.

According to Article 37(3) of the Rules, 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 account 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 8,613.50 Swiss Francs.

Scope of the Award

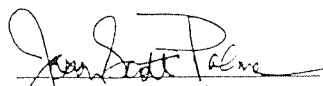
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1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

8 May 2002
Date


Jason Scott Palmer
Resident Claims Judge