

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

**in re Account of Alice Abraham (née Scherer), Reine Scherer (née Weill),
Joseph Scherer and Alfred Scherer**

Claim Numbers: 210797/MB; 210799/MB; 210877/MB; 211099/MB

Award Amount: 174,110.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the Account of Alice Abraham née Scherer, Reine Scherer née Weill, Joseph Scherer and Alfred Scherer (the “Account Owners”) at the Geneva branch of the [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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted claim forms indicating that Alice Abraham (née Scherer) was his aunt, Reine Scherer (née Weill) was his grandmother, Joseph Scherer was his grandfather and Alfred Scherer was his uncle, and that all were Jewish. The Claimant stated that Alice Scherer was born in 1910 in Colmar, France, married [REDACTED] in 1937 in Colmar and lived in Paris during the Second World War, after which she divorced her husband and died in Paris in 1970. The Claimant stated that Reine Weill was born on 18 October 1873 in France, married Joseph Scherer in 1898 in France, owned and operated a store called the “Maison Scherer” jointly with her husband at 44-46, rue Vauban in Colmar, fled Colmar for the South of France when the Nazis arrived in the city, and died in France on 26 October 1941. The Claimant stated that Joseph Scherer was born on 11 August 1871 in Colmar, married Reine Weill in 1898 in France, co-owned and operated the “Maison Scherer,” fled Colmar for the South of France when the Nazis arrived in the city, and died in the United States on 11 October 1946. The Claimant stated that Alfred Scherer was born in 1913 in Colmar, was never married, was the youngest child in his family and worked in his parents’ dry goods store in Colmar until 1941. The Claimant stated that Alfred Scherer tried to join the French Resistance and subsequently was killed by the Nazis, possibly at Auschwitz, sometime around 1942.

The Claimant stated that he is the only heir of the above mentioned individuals.

Information Available in the Bank Records

According to the bank records, which consist of a bank account opening card with notations by the Bank, the joint Account Owners were Monsieur Alfred Scherer, Monsieur Joseph Scherer, Madame Joseph Scherer (née Reine Weill) and Madame Sylvain Abraham (née Alice Scherer), with addresses at 44, rue Vauban, Colmar, France and 12, avenue Junot, Paris, France. They held a custody account (with gold deposits) and a demand deposit account, both of which were closed on 24 March 1941. The bank documents do not identify the values of the accounts held nor do they show to whom the accounts were paid. The last known contact with the Account Owners was on 15 September 1938, the date the accounts were opened.

Tribunal's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The names of his aunt, grandmother, grandfather and uncle match the published names of the Account Owners. The Claimant identified the unpublished maiden names of his grandmother and his aunt as contained in the bank records. Further, the Claimant has provided the precise street address in Colmar, France before the Second World War for his grandmother, grandfather and uncle, which exactly matches unpublished address information contained in the bank documents. Moreover, the Claimant submitted documents demonstrating the Claimant's relationship with the Account Owners, which matches unpublished information contained in the bank documents. Claimant also submitted documentation of his own identity as well as documentation regarding his parents' marriage and the store owned and operated by three of the Account Owners prior to the Second World War.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owners were Victims of Nazi Persecution. The Claimant has shown that the Account Owners, his aunt, grandmother, grandfather and uncle, were Jewish, and that they lived in France during the Second World War. Further, the Claimant has stated that Joseph Scherer and Reine Scherer fled Colmar for the South of France, and that Alice Scherer lived in Paris during the German occupation of the city. He also stated that Alfred Scherer was captured, turned over to Nazi authorities in 1941, and was killed by the Nazis, probably at Auschwitz, around 1942.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly shown that the Account Owners are his relatives by providing documentation including copies of Claimant's birth certificate, passport and drivers' license and Claimant's parents' marriage certificate. The Claimant has stated that his relatives had no other surviving heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis to question this statement.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the account 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 in this case 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 it is plausible that neither the Account Owners nor their heirs received the proceeds. In this case, bank records indicate that the accounts were closed on 24 March 1941, and there is no evidence as to whom the proceeds were paid. The Claimant states that after Germany invaded France on 10 May 1940, Account Owners Joseph Scherer and Reine Scherer fled to unoccupied southern France (the French Free Zone), Account Owner Alice Scherer remained in occupied France, living in Paris, and Alfred Scherer was captured and turned over to the Nazis. After Germany's invasion of France in May 1940, Switzerland froze all accounts belonging to residents of France, which makes it highly unlikely that any of the Account Owners received the proceeds of the accounts when they were closed in 1941. The Tribunal's conclusion is also required by Article 34(a) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where a claimed account was closed after the date of occupation of the country of residence of the Account Owner, and before 1945, the Tribunal shall presume that neither the Account Owner nor his heirs received the proceeds of the Account unless there is evidence to the contrary. Moreover, there is no evidence in the bank records suggesting that the Account Owners closed the accounts and received the proceeds themselves.

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimant for the following reasons: the claim is admissible as the claimed accounts belonged to Victims of Nazi Persecution, and the Claimant has provided information establishing that the Account Owners were his aunt, his grandfather, his grandmother and his uncle (relationships that justify making an award).

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, and the average value of a demand deposit or current account was 2,140.00 Swiss Francs, giving a total value of 15,140.00 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 174,110.00 Swiss Francs.

According to Article 37(3) of the Rules, in cases where the amount in the account is not known, 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 instance, 35% of the total award amount for the Account is 60,938.50 Swiss Francs.

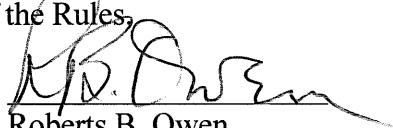
As noted above, the claimed accounts were joint accounts. According to Article 31 of the Rules, the Tribunal has determined that each of the Account Owners had an equal share of the Account. Because the Claimant is the only heir to each of the Account Owners, according to Article 29 of the Rules he is thus entitled to the entire amount, representing the shares of Account Owners Alice Abraham (née Scherer), Reine Scherer (née Weill), Joseph Scherer and Alfred Scherer.

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 strong 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 accounts will be forthcoming. The Special Masters appointed by the Court to supervise the Claims Resolution Process for Deposited Assets Claims have stressed the importance of moving ahead quickly to begin to make awards to Holocaust victim claimants or their heirs. They therefore have instructed the Tribunal that in particular cases where the Tribunal is satisfied that the currently identified claimant has a strong claim and that the risk of future competing claims is low, the Tribunal should prepare an award to that claimant and submit it to the Court for approval. This is such a case.

In this case, the Tribunal is of the opinion that the Claimant has presented a strong claim to the Account, thus substantially reducing the likelihood of competing claims. On this basis, and taking into account the instructions of the Special Masters, the Tribunal recommends approval of the present Award by the Court for payment by the Special Masters in accordance with Article 37(3) of the Rules.

31 Jan. 2002
Date


Roberts B. Owen
Senior Claims Judge