

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Gerald Schwab
acting on behalf of himself and Margo Ross, née Schwab

in re Account of Schwab D. & Co.

Claim Number: 217988/JA

Award Amount: 34,155.00 Swiss Francs

This Certified Award is based upon the claim of Gerald Schwab (the “Claimant”) to the account of Schwab D. & Co. (the “Account Owner”) at the Basel branch of [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 identifying the Account Owner as the plumbing supplies company D. Schwab & Cie. which was owned by the Claimant’s father, David Schwab. The Claimant stated that his father’s company was located in St. Louis/Haut Rhin, France.

The Claimant stated that his father, the owner of the D. Schwab & Cie., was born on 20 November 1887 in Breisach, Germany, and married to Paula Schwab, née Kleefeld. The Claimant stated that his father started a plumbing supply business in Freiburg, Germany, in the 1920s. He further stated that his father had clients in Germany, Switzerland and France. The Claimant indicated that in 1933 his father transferred his business to St. Louis, France, where he ran it under the corporate name “D. Schwab & Cie.” The Claimant stated that in 1935 or 1936 his father moved his business to Lörrach, Germany, from where he operated the German and French branches of his company.

The Claimant stated that his father was Jewish and that he was detained in the Dachau concentration camp in November and December 1938. The Claimant stated that the Nazis confiscated his father’s passport so that he was no longer able to visit his clients in Switzerland. The Claimant finally stated that his father was able to emigrate to the United States in May 1940, where he died in 1960. In a telephone conversation with the Tribunal on 3 May 2002, the Claimant stated that his mother, in 1962, contacted the Swiss banks where her father had accounts in order to retrieve the assets. The Claimant further stated that her mother was told by

the banks that the banks were not obliged by law to keep account files longer than a certain number of years and that there weren't any records concerning an account belonging to the Claimant's father.

In support of his claim, the Claimant has submitted copies of several documents, including his parent's wills and documents relating to his father's business.

Information Available in the Bank Records

The bank records consist of a balance sheet, a receipt and several printouts from the Bank's database. According to these records, the Account Owner was (*Firma*) D. Schwab & Co, which was located in St. Louis, France. The bank records indicate that the Account Owner held a savings account and a demand deposit account.

The bank records do not show if or when the demand deposit account 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 pursuant to instructions of the Independent Committee of Eminent Persons 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 bank records indicate that the savings account was transferred to a suspense account on 21 April 1936 because the account was dormant. The bank records indicate that the suspense account is still open today. The amount in the account on the date of its transfer is unknown.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The name of the Claimant's father's company matches the published name of the Account Owner, and the initial "D." in the company's name matches with the first name of the Claimant's father. Furthermore, the Claimant stated that his father's business, between 1933 and 1936, was located in St. Louis, France, which matches published information about the Account Owner contained in the bank documents. In support of his claim, the Claimant submitted documents, including a French insurance contract showing that "D. Schwab & Cie." was located in St. Louis/Haut Rhin, France.

Determination of the Status of a Victim of Nazi Persecution

The Claimant has made a plausible showing that his father, who was the owner of the Account Owner D. Schwab & Cie, was a Victim of Nazi Persecution according to Articles 27(1)(d) and Article 52(27) of the Rules Governing the Claims Resolution Tribunal Process (the "Rules"). The Claimant stated that his father was detained in the Dachau concentration camp, that the Nazis confiscated his father's passport, and that he finally emigrated to the United States in 1940.

Determination of Relationship

The Claimant has plausibly demonstrated that he is related to David Schwab, the owner of the Account Owner D. Schwab & Cie., by submitting documents showing that David Schwab was his father. The documents submitted by the Claimant also show that his father was the owner of the Account Owner D. Schwab & Cie. There is no information to indicate that the Account Owner has surviving heirs other than the Claimant and the Claimant's sister. 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 accounts at issue were paid to the Account Owner or any individual entitled to the assets of the Account Owner, 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 or any individual, there is a substantial likelihood that these funds went to the Swiss bank.

In this case, on 21 April 1936, because of dormancy, the Bank transferred the savings account to a suspense account, which is a grouping of open and dormant accounts, and the account is still suspended today. Therefore, it is clear that neither the Account Owner nor any individual entitled to the Account Owner's assets has received the proceeds of this account.

With respect to the demand deposit account, although the Tribunal cannot determine with certainty who received its proceeds, the Tribunal considers it plausible that neither the Account Owner nor any individual entitled to the assets of the Account Owner received the proceeds. The Tribunal's conclusion is required by Article 34(f) of the Rules, which provides that where the account owner had other accounts that are suspended, the Tribunal shall presume that neither the account owners (nor their heirs) received the proceeds of the claimed account.

Further, it is plausible that the Account Owner or his heirs did not close this 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.¹ 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

¹ 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.

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."² Thus, even if the Account Owner or his heirs 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 notes that, in this case, the Claimant stated that in 1962, his mother tried to retrieve the assets of her late husband's accounts, but was told by the Swiss banks that they were not obliged to keep any records for longer than a certain amount of time. The Tribunal's conclusion that it is plausible that the Account Owner or his 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 Account Owner or his heirs closed the demand deposit 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 owner of 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 any individual entitled to the Account Owner's assets received the proceeds of the claimed accounts.

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 savings account was 830.00 Swiss Francs and the average value of a demand deposit account was 2,140.00 Swiss Francs. The present value of these amounts is calculated by multiplying them by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 34,155.00 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 claims, claimants shall receive an initial payment of 35% of the total award amount, and the accounts may be subject to later competing valid claims. In this case, the value of the accounts at issue is based on the Article 35 presumptions. 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, 35% of the total award amount is 11,954.25 Swiss Francs.

² Final Report of the Independent Commission of Experts Switzerland--Second World War, at 446.

Division of the Award

The Claimant is representing his sister in these proceedings. According to Article 29 of the Rules, his sister is entitled to receive one half (1/2) of any payment made to the Claimant.

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. 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.

07 May 2012
Date

Dov Rubinstein
Dov Rubinstein
Resident Claims Judge