

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED],
acting on behalf of himself and [REDACTED]
and
to Claimant [REDACTED]

in re Account of Ernst Victor

Claim Numbers: 213981/JS; 213982/JS; 214900/JS; 214901/JS

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED], acting on behalf of himself and his brother [REDACTED], and of [REDACTED] (collectively, the "Claimants") to the Account of Ernst Victor (the "Account Owner") at the [REDACTED] (the "Bank").

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, the account owner, and the bank have been redacted.

Information Provided by the Claimants

Each Claimant submitted a Claim Form indicating that the Account Owner was their maternal grandfather, Ernst Georg Robert Victor, who had the designation Dipl. Ing. The Claimants both stated that he lived in Rosenhagenstrasse 22, Hamburg, Germany, which is in the Bahrenfeld area of the Altona district of Hamburg. Both Claimants stated that their grandfather, who was Jewish, was forced by the Nazis to sell the family company, Regenhardt AG, in 1936. He sought asylum in Zürich in 1938, and, after asylum was denied, committed suicide in December 1938, hoping to save his non-Jewish wife and children from further persecution.

Each Claimant also submitted an additional Claim Form indicating that [REDACTED], their great grandmother's brother and the uncle of the Account Owner, had an account. He was Jewish, was born in Danzig in 1853 and died in Florence in 1937. He was removed from his position at the German Art History Institute in 1933.

Information Available in the Bank Records

According to the bank records, the Account Owner, Ernst Victor, lived in Bahrenfeld, Altona, and had the designation Dipl. Ing. He held two accounts at the Bank, a custody account and a current account. The former was opened on 15 June 1929 and closed on 9 December 1936. The latter was opened on 18 June 1929 and closed on 20 June 1935. The bank documents do not contain the values of the accounts held, and they do not show to whom the accounts were paid.

Tribunal's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same account or related accounts may be joined in one proceeding at the discretion of the Claims Judges. In this case the Tribunal determines it appropriate to join the Claimants' claims in one proceeding.

Identification of the Account Owner

The Claimants plausibly identified the Account Owner, Ernst Victor, as their grandfather. The Claimants' grandfather's name matches the published name of the Account Owner. The Claimants also provided their grandfather's title and address which are consistent with unpublished information about the Account Owner contained in the bank documents.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have provided plausible evidence that the Account Owner, their grandfather, was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and was persecuted as a result by the Nazi regime in Germany. In particular, he was suspended from his position as Chair of the Chemical Engineers Association in Northern Germany. Together with other family members he was forced to sell a company which the family owned. He committed suicide in 1938 in an attempt to protect his wife and children, who were not Jewish, from the Nazis' anti-Semitic legislation.

The Claimants' Relationship to the Account Owner

The Claimants have provided plausible evidence that Account Owner, Ernst Victor, was their grandfather. Claimant [REDACTED] has provided documents which show that he is the son of [REDACTED], the daughter of the Account Owner, who was effectively entitled to half of the Account Owner's estate. Claimant [REDACTED] has provided documents showing that her father [REDACTED] was the son of the Account Owner, effectively entitled to half of his estate. In addition the credibility of the other information provided by the Claimant gives the Tribunal no basis for doubting the asserted entitlements.

The Issue of Who Received the Proceeds

Since the Claimants would not be entitled to an award of the account proceeds if they were in fact 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 a plausible showing has been made that neither the Account Owner nor his heirs received the proceeds of the custody account closed on 9 December 1936. During the course of the 1930s, Nazi legislation requiring repatriation of custody accounts held abroad became increasingly stringent, particularly in its application against Jews. In particular, the Tribunal notes legislation which came into force in November and December 1936 relating to custody accounts held abroad, which severely tightened previous legislation and would have compelled account owners to repatriate those assets through specific Nazi-designated German clearing banks. Furthermore, a family-owned company, of which the Account Owner was a board member, was subject to forced purchase in the same year. Moreover, there is no evidence before the Tribunal that the Account Owner closed the account and received the proceeds himself.

With respect to the current account closed on 20 June 1935, the Tribunal has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or his heirs received the proceeds of that account.

Basis for the Award

As demonstrated above, the Tribunal has determined that an Award may be made in favor of the Claimants. First, the claim is admissible because the claimed custody account belonged to a Victim of Nazi Persecution, and the claim meets the other admissibility criteria. Second, the Claimants have plausibly demonstrated that their grandfather is the Account Owner, a relationship that 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 custody account.

Amount of the Award

The bank records do not indicate a balance for the account. 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 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 custody accounts was 13,000.00 Swiss Francs. The present value of the account is obtained by multiplying the 1945 value by a factor of 11.5, in accordance with Article 37(1) of the Rules, giving a total award amount of 149,500.00 Swiss Francs.

According to Article 37(3) of the Rules, in cases where the amount in the account is not known, an initial payment of 35% of the total award amount is made. After all claims are processed, subject to approval by the Court, a subsequent payment of up to the remaining 65% of the total award amount may be made. In this instance, 35% of the total award amount is 52,325.00 Swiss Francs.

Division of the Award

Article 29(c) of the Rules provides that grandchildren of an Account Owner who have claimed their grandparent's account share equally that portion of the account to which their parent, the Account Owner's child, would have been entitled.

The Account Owner had two children, [REDACTED] and [REDACTED]. As the only descendant of [REDACTED] who has claimed, [REDACTED] is entitled to his half share of the award, a total amount of 74,750.00 Swiss Francs. Pursuant to Art. 37(3), as described above, she is to receive an initial payment of 26,162.50 Swiss Francs.

Claimant [REDACTED] is representing his brother in these proceedings. They are together entitled to the half share to which their mother [REDACTED] would have been entitled, a total amount of 74,750.00 Swiss Francs. Pursuant to Art. 37(3) they are entitled to an initial payment of 26,162.50 Swiss Francs. This amount will be paid to [REDACTED]. Under Article 29(c) of the Rules, [REDACTED] is entitled to half of this and any other such payment.

Scope of the Award

This Award concerns the account of Ernst Victor which appears in the Account History Database prepared by the auditors who conducted a several-year investigation of the Swiss banks under the auspices of ICEP to identify accounts owned by Victims of Nazi Persecution. That database did not contain records of any account belonging to [REDACTED], who the Claimants also indicated may have owned an account. The Tribunal is unable to further process this element of their claims at this time.

The Claimants should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they might be entitled, including research of

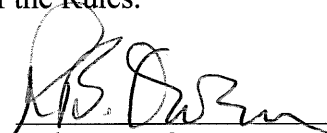
the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

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 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 have therefore 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 Claimants have presented strong claims 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