

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Erika Tabor

in re Account of Felix Wertheimer

Claim Numbers: 208328/EC; 216675/EC

Award Amount: 906,775.00 Swiss Francs

This Certified Award is based on the claim of Erika Tabor (the "Claimant") to the Account of Felix Wertheimer (the "Account Owner").

Information Provided by the Claimant

The Claimant submitted two Claim Forms indicating that the Account Owner was her father's brother, born on 25 October 1871. The Claimant stated that she is the daughter of the Account Owner's brother Paul.

The Claimant indicated that her uncle lived at Weissgärberlande 38, Vienna, until the property was aryanized and her uncle moved to Ebendorferstraße 8/7. The Claimant further stated that her uncle briefly fled to Switzerland, and that, after being deported from Switzerland, he committed suicide in the Jewish Hospital in Vienna on 26 June 1942.

The Claimant stated that she is the Account Owner's niece. She filed an Initial Questionnaire in relation to her uncle's account in 1999. With that Initial Questionnaire, the Claimant submitted a bank statement showing that her uncle had a custody account numbered 22124, which contained securities worth 76,710.00 Swiss Francs on 26 April 1938.

Information Available in the Bank Records

According to the bank records, the Account Owner was Felix Wertheimer, born in 1871, who resided at Weissgärberlande 38, Vienna, and died on 26 June 1942. He held a custody account numbered 22124, which contained securities worth 76,710.00 Swiss Francs on 26 April 1938 as recorded in a census of Austrian Jewish assets.

The bank records also contain an internal notation that, as of 4 May 1938, Mercurbank in Vienna was to be kept informed of all transactions on the Account. Assets in the Account were later put at the disposal of Mercurbank during the course of 1938, and all securities remaining in the account had been paid out before 14 April 1939.

Correspondence in the bank records between the bank and the Account Owner refers to a "*Depot und Konto*," that is a custody account which contained both securities and an auxiliary current account used for managing those securities. There is no indication if, or when, the funds remaining in the current portion of the Account were paid out or to whom. The bank records indicate that in 1943 a lawyer in Vienna made an attempt to claim the remaining assets in the Account on behalf of a presumed heir of the Account Owner named Berta Moscari, but that the bank did not pay the remaining assets in the Account out at that time due to insufficient authorization. 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 on Eminent Persons did not find the current account in the bank's system of open accounts, and they therefore presumed that it was closed. These auditors also indicated that there was no evidence of activity on the Account after 1945.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant indicated an address for her uncle that precisely matches the unpublished address of the Account Owner contained in the bank records. The Claimant further provided her uncle's dates of birth and death, which also match information included in the bank records. Finally, the Claimant provided the name of the bank, the account number, and the value of the securities, exactly as the information appears in the bank records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant provided plausible evidence that the Account Owner was a Victim of Nazi Persecution. She has shown that her uncle was born Jewish and, notwithstanding a conversion in 1922, would have been considered Jewish by the Nazi Regime. Furthermore, the documents that the Claimant and the bank have provided indicate that the Account Owner lived in Vienna after the *Anschluß*, and the Claimant has further indicated that the Account Owner committed suicide in the Jewish Hospital in Vienna in 1942.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that the Account Owner is her uncle. She has provided documentation to show that her father and the Account Owner were brothers, and that she is her father's child. The credibility of other information provided by the

Claimant gives the Tribunal no basis for questioning the information provided by the Claimant that she is the Account Owner's only surviving relative.

Although the bank records indicate that a Viennese lawyer informed the bank of the Account Owner's death, held himself out as the executor of the Account Owner's estate, and attempted to secure payment of any remaining assets to the Account Owner's presumed heir, the Tribunal has determined that these Nazi-era documents, which were not accepted by the bank at the time, are not of themselves conclusive evidence that someone else was entitled to the account. Furthermore, from the Claimant's submissions it would appear that she is the closest living relative of the Account Owner, but as someone of Jewish descent would not have been in a position to assert her rights at the time of the Account Owner's death in 1942.

The Issue of Who Received the Proceeds

Since the Claimant 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 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 may have withdrawn and received the funds. In other cases, account owners who were subject to Nazi coercion sent to their banks requests for closure and transfer to banks designated by the Nazi authorities and the funds fell into Nazi hands. For other accounts, no transfers occurred, but the amount in the account was consumed by regular and special bank fees and charges resulting ultimately in closure without any payment to the account owners; and in still others, 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 an account owner or his family, as is apparently the case here, there is a substantial likelihood that they went to the Nazis or the Swiss bank.

The Tribunal has determined that there is plausible evidence that neither the Account Owner nor his heirs received the proceeds of the Account. Bank records indicate that the Account Owner was forced to report the assets contained in the Account to the Nazi Regime on an Austrian census of Jewish assets on 26 April 1938, and that thereafter any transactions on the Account had to be reported by the bank to Mercurbank in Vienna. From this information, combined with other evidence in the files showing that the securities in the account were gradually liquidated over the course of 1938 in favor of Mercurbank in Vienna, as well as correspondence between the Account Owner and the bank indicating that the assets in the account which formerly belonged to him were no longer under his control, the Tribunal must conclude that the assets in the Account were expropriated by the Nazi Regime. Moreover, this same conclusion is required by Article 34(a) of the Rules Governing the Claims Resolution Process ("Rules") specifying that where an account has been closed and there is evidence of persecution, and Article 34(d)

specifying that where an account appeared in a Nazi census of Jewish assets, the Tribunal shall presume that neither the Account Owner nor his heirs received the proceeds.

Although the bank records do not indicate a date of closure for the auxiliary current account, the Tribunal has determined that there is plausible evidence that neither the Account Owner nor his heirs received those proceeds either. The Account Owner committed suicide in 1942 and it is not possible that he received these assets after that date. Bank records further indicate that the assets were not paid in 1943 subsequent to a request. The auditors also report that there is no evidence of activity on the Account after 1945 (when the heirs would have had the possibility to communicate with the bank or come to Switzerland). The Claimant has also affirmed, in her Initial Questionnaire of 1999 with which she submitted evidence of the Account, that she has never before received any assets. Therefore, the Tribunal determines that it is plausible that the Account Owner's heirs did not receive the proceeds of the current account.

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 because the Account belonged to a Victim of Nazi Persecution and the Claimant has plausibly demonstrated that the Account Owner was her uncle (a relationship that justifies making an award).

Amount of the Award

Both the bank records and the Claimant's submissions indicate the value of the securities in the custody account as 76,710.00 Swiss Francs on 26 April 1938, after which time the Account Owner no longer had control over the assets, which were gradually confiscated by the Nazi Regime. The present value of this portion of the Account is calculated by multiplying the historic value by a factor of 11.5, in accordance with Article 37(1) of the Rules. Consequently, the amount to be awarded for the securities portion of the Account is 882,165.00 Swiss Francs.

The bank records do not indicate a balance for the auxiliary current account at that time. When the value of an account is unknown, the award to the Claimant shall be the present value of the average value of similar types of accounts in 1945 as calculated according to the investigation of Swiss banks carried out by the Independent Committee of Eminent Persons. In 1945 the average value of current accounts was 2,140.00 Swiss Francs. Multiplying this 1945 value by a factor of 11.5, in accordance with Article 37(1) of the Rules, gives an award amount of 24,610.00 Swiss Francs for the auxiliary current account. The total award amount for both accounts combined is therefore 906,775.00 Swiss Francs.

The Claimant should note that, according to Article 37(3) of the Rules, in cases when the amount in the Account is not known, or the Tribunal determines that an account may be subject to later competing claims, the Claimant shall receive an initial payment of 35% of the total award amount. Such claimants may receive a second payment of up to 65% of

the certified award when so determined by the Court, but not later than when all claims have been processed. In this case, the value for the custody account is known but for the current account is unknown. 35% of the award amount for the current account in this case is 8,613.50 Swiss Francs. Furthermore, 35% of the total award amount for the custody account is in this case 308,757.75 Swiss Francs. 35% of the total award amount for both accounts combined is 317,371.25 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 her claim to determine whether there are additional Swiss bank accounts to which she 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).

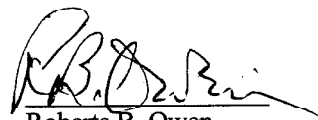
Certification of the Award

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. Moreover, the new process of analyzing the Initial Questionnaires to determine those that can be treated as claim forms adds another element of uncertainty about the possibility of future complementary or competing claims.

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 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.

Nov 5, 2001
Date


Roberts B. Owen
Senior Claims Judge