

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: :
HOLOCAUST VICTIM ASSETS :
LITIGATION :
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Case No. CV 96-4849 (ERK)(MDG)
(Consolidated with CV 96-5161
and CV 97-461)

MEMORANDUM & ORDER

This Document Relates to: All Cases
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KORMAN, Chief Judge.

Article 30 of the CRT Rules sets forth the general principles by which appeals may be made from CRT decisions concerning documented accounts. At my direction, the CRT continues to work toward streamlining its operations with a view toward completion of the Deposited Assets Class program within the next two years. To that end, in order to streamline the appellate process as well, I have decided to make changes to Article 30. Specifically, the purpose of this order and the accompanying amendment of the CRT Rules is to ensure that the CRT appellate rules conform to the normal paradigm of what an "appeal" is supposed to be.

Article 30(3) of the CRT Rules, "Authorization for Summary Denials," as it presently reads, states that appeals "submitted without either a plausible suggestion of error or *relevant new evidence* may be summarily denied" (emphasis supplied). Article 30(3) appears to permit the submission of new evidence on appeal that has not been presented to the CRT. The purpose of the amendment that I adopt here is to preclude an appeal based on evidence not previously provided by claimants to the CRT.

In the event that a claimant decides to appeal from a CRT decision, the claimant should provide a succinct statement as to why he or she believes the decision was improper; i.e., there must be a “plausible suggestion of error” as required under Article 30. It is especially important that the claimant make reference to specific facts and documents that the claimant believes were not adequately considered. The record on appeal must be limited to the facts that were presented to the CRT. The appeal cannot be supplemented with what is contended to be (and most often is not) new information.

The amendment to the CRT Rules that I now adopt reflects my view that an appeal is not intended to be an open-ended period of submission (or resubmission) of evidence and continuing reevaluation of a record that already has been reviewed exhaustively in connection with the original determination. Rather, it is intended to provide the claimant with an opportunity to explain why the original decision allegedly was made in error. In the CRT’s case, submission of new material *on appeal* is particularly inappropriate and unnecessary because of the CRT’s exhaustive effort to explore all possible resources in investigating a claim prior to recommending its approval or denial as a “Certified Award” or “Certified Award Denial.” As I explained in my Memorandum & Order of November 29, 2006, “CRT claimants have been offered every opportunity to elaborate upon their claims. Where relevant data were not originally provided by the claimants or available from the bank records, the CRT has sought such information on its own initiative, ranging from direct communications with claimants and family members, to exhaustive archival research in Austria, Germany, Switzerland and elsewhere. The CRT also continues to pursue ‘Voluntary Assistance’ from the defendant banks to obtain additional data, and in many instances has received relevant materials.” Given the CRT’s extensive investigation prior to rendering a decision on a claim, its ongoing

communications with claimants, and its frequent requests for additional documents that may not have been included with the original application, the submission (or more typically, resubmission) of evidence on appeal is not productive and interferes with the CRT's ability to investigate other claims in which a decision has not yet been reached.

I recognize, however, that there may be instances in which a claimant possesses information that for some reason was not submitted to the CRT prior to the issuance of the Certified Award or Certified Award Denial. The significance of the information may not have become clear until after the claimant has reviewed the CRT's decision and the facts upon which the CRT has based its conclusions. The claimant may believe that had this additional documentation been available to the CRT, the CRT would have reached a different outcome. Rather than filing an "appeal," the claimant should request that the CRT reconsider its decision in light of the new evidence, just as a litigant would move for reconsideration before a court that had rendered the original determination. Reconsideration by the CRT is the most efficient way to ensure that those who investigated the original claim -- and therefore are in the best position to assess the relevance of the new data -- can promptly respond to claimant concerns and report their findings to the Court for final determination. This also formalizes the practice under which the CRT currently operates in view of its continuing communications with claimants prior to rendering a decision.

Accordingly, in clarification of the CRT review process, it is hereby ORDERED that Article 30(3) of the CRT Rules is amended to read as follows:

"Authorization for Summary Denials

Appeals submitted without a plausible suggestion of error shall be summarily denied."

It is further ORDERED that Article 30 of the CRT Rules is amended to add the following new provision, Article 30(4), addressing the circumstances under which new documents may be submitted for review once a Certified Award or Certified Award Denial has been authorized by the Court:

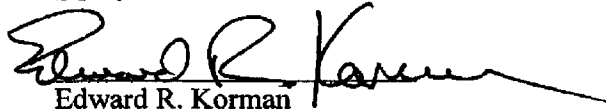
“Article 30(4): Request for Reconsideration

Claimants possessing documentary evidence that was not previously presented to the CRT, and who upon review of the Certified Award or the Certified Award Denial believe that that evidence would have resulted in a different outcome, may request that the CRT reconsider its decision on the claim. A request for reconsideration shall be sent to the CRT within 90 days of the date of the letter accompanying the decision, at the address specified in the Certified Award or Certified Award Denial. The CRT shall review only those requests for reconsideration in which claimants present documentation not previously submitted to the CRT. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the Certified Award or Certified Award Denial.”

This amendment will go into effect for all requests for reconsideration or appeals filed in connection with Certified Awards and Certified Award Denials authorized by the Court on or after the date of this Memorandum & Order.

Brooklyn, New York
December 14, 2006

SO ORDERED:


Edward R. Korman
United States District Judge