

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Irene Benedek

Claim Number: 208688/EC

Award Amount: 174,110.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the "Claimant") to the Account of Irene Benedek (the "Account Owner").

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

Information Provided by the Claimant

The Claimant submitted a Claim Form indicating that the Account Owner was his mother, Irene Benedek, born on 9 September 1895. The Claimant stated that he is the Account Owner's only son.

The Claimant stated that his mother was married to [REDACTED] in 1919 and had one child, the Claimant, born in 1921. The Claimant further stated that his mother was a businesswoman who owned a store at Hauptstr. 2, Fohnsdorf, a small town in Styria, Austria, where she also lived. In addition, the Claimant stated that after her property was aryanized in 1938, she fled to the United States in September of that year, before returning to Austria in 1946 to reclaim her property and reopen her shop. She died in Austria in 1976.

Information Available in the Bank Records

According to the bank records, the Account Owner was Irene Benedek, who was married and lived in Fohnsdorf, Austria. The bank records consist of a registration card, which indicates that the Account Owner had several accounts opened as early as 1927. These were closed in 1931 (one account), 1934 (two accounts - demand deposit and custody), and 1938 (two accounts - demand deposit and custody). The bank documents do not

contain the values of the accounts held, and they do not show to whom (if anyone) the accounts were paid.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant provides information about his mother which is consistent with unpublished information about the Account Owner contained in the bank records, such as that Irene Benedek was her married name and that she lived in Fohnsdorf, a small village in Styria, Austria.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owner was a Victim of Nazi Persecution. He has indicated that his mother was Jewish, that she lived in Austria subsequent to its annexation by Nazi Germany in 1938, and that her property was aryanized, forcing her to flee.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that the Account Owner was his mother. The Claimant submitted copies of his birth certificate, showing his mother's name and domicile, as well as other documents attesting to his mother's identity. The credibility of other information provided by the Claimant gives the Tribunal no basis for questioning the information provided by the Claimant that he is the Account Owner's only son and heir.

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 her 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 her family, as is apparently the case here for two of the accounts described below, there is a substantial likelihood that they went to the Nazis or the Swiss bank.

As previously noted, the bank records indicate that three of the Account Owner's accounts were closed several years prior to the German annexation of Austria. There is no evidence to suggest that these accounts would have been paid out to anyone other than the Account Owner herself. Thus, it appears plausible that the Account Owner did receive the proceeds of these accounts.

However, the bank records indicate that one demand deposit account and one custody account were closed on 21 and 23 May 1938, respectively. Under the circumstances of this case, the Tribunal considers it reasonable to assume that the proceeds were paid to Nazi authorities.¹ As previously noted, there is no evidence in the bank records to whom the proceeds were paid. As to the critical issue of whether these accounts were paid to the Account Owner, the Tribunal notes that following the annexation of Austria into the Reich in March 1938, the Nazi Regime systematically required Jews to register their assets held abroad, and subsequently repatriated and expropriated these assets, making it unlikely that the Account Owner received the proceeds after that date. The Nazi Regime also imposed increasingly heavy financial requirements on Jews attempting to emigrate, including the liquidation of foreign assets. Furthermore, travel by Austrian Jews to Switzerland subsequent to March 1938 was restricted, making it unlikely that the Account Owner came to Switzerland to collect the proceeds and return with them to Austria for her own benefit before eventually fleeing. Finally, the Claimant states that the Account Owner's property was aryanized, and that she was forced to flee Austria in September 1938, six months after Austria's annexation. The fact that the Accounts were closed four months before the Account Owner escaped further suggests that the Account Owner did not receive the proceeds.

Although the Tribunal cannot determine with certainty who received the proceeds of the Account Owner's two accounts which were closed in May 1938, the Tribunal concludes, in light of the above considerations, and in the absence of any evidence to the contrary, that it is plausible that the Account Owner did not receive the proceeds of these accounts. Moreover, the 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 after the date of occupation of the country of residence of the Account Owner, the Tribunal shall, in the absence of other plausible evidence to the contrary, presume that the Account Owner did not receive the proceeds.

¹ In reaching this conclusion, the Tribunal is relying in part on research cataloguing more than forty different laws, acts, and decrees used by the Nazi Regime to confiscate Jewish assets abroad. After the annexation of Austria, German laws were extended to apply there as well, and these laws applied to foreign assets of Austrian citizens as a result of a law promulgated on 23 March 1938. Although many of the laws were facially non-discriminatory, the Nazi Regime enforced these laws on a discriminatory basis against Jewish asset holders. These laws included, for example, increasingly stringent registration and repatriation requirements for assets held outside the Reich and special confiscatory taxes for emigrants who wished to flee. After the occupation of Austria, wholesale and systematic Nazi expropriations of Jewish assets held in Swiss banks and elsewhere were widespread. A decree dated 26 April 1938 required Jews to register their assets, and subsequent to that date the Nazi Regime began to enact legislation and orders to repatriate and confiscate foreign assets both for Jews who sought permission to flee the Reich and for those unable to flee. A listing of the principal laws invoked by the Nazi Regime in specific confiscatory situations appears at the CRT-II website, www.crt-ii.org.

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 Account belonged to a Victim of Nazi Persecution, and the Claimant has provided information establishing that his mother is the Account Owner (a relationship that justifies making an Award).

Amount of the Award

The bank records do not indicate a balance for the accounts closed in May, 1938. 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, as determined based on the results of the investigation of Swiss banks by the Independent Committee of Eminent Persons and as required by Article 35 of the Rules, is used to calculate the present value of the account being awarded. The Account Owner had a custody and a demand deposit account. In 1945 the average value of custody accounts was 13,000.00 Swiss Francs, and of current accounts was 2,140.00 Swiss Francs, for a combined value of 15,140.00 Swiss Francs. The present value of the accounts 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 174,110.00 Swiss Francs.

The Claimant should note that, according to Article 37(3) of the Rules, in cases when the amount in an account is not known, the Claimant shall receive an initial payment of 35% of the total award amount. After all claims are processed, subject to approval by the Court, the Claimant may receive a subsequent payment of up to the remaining 65% of the total award amount. 35% of the total award amount in this case is 60,938.50 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 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

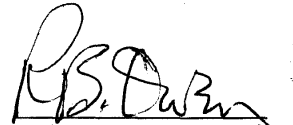
At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a strong case for entitlement to an Award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same accounts 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