

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of David E. Braff and Esther Braff, née Weissberger

Claim Numbers: 211100/VB; 211101/VB

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the "Claimant") to the Account of David E. Braff and Esther Braff, née Weissberger (the "Account Owners") at the Basel branch of the [REDACTED].

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

Information Provided by the Claimant

The Claimant submitted two Claim Forms indicating that the Account Owners David E. Braff and Esther Braff, née Weissberger, were his maternal grandparents, who married in 1883 in Frankfurt am Main in Germany. He also stated that he is one of his grandparents' five grandchildren and that he was born in Frankfurt am Main, on 20 September 1923.

The Claimant identified his grandfather as David E. Braff. In support of his claim, the Claimant submitted his mother's birth certificate which identifies his grandfather as "David Eifig Braff" or "David Eihig Braff." However, the Claimant's mother's death certificate identifies his grandfather as David Isaac Braff. He further stated that his grandfather was a merchant who lived in Frankfurt am Main until 1939, where and when he died. The Claimant stated that his grandmother, Esther Braff, was born in 1870, and died in 1948, in France. Both of his grandparents were Jewish.

Information Available in the Bank Records

According to the bank records, which consist of a joint account agreement and a card signed by the Account Owner David Braff, acknowledging the receipt of the rules of the bank, the Account Owners were Mr. David E. Braff and Mrs. Esther Braff, née Weissberger, who lived in Frankfurt am Main, and who held a custody account that was opened on 30 September 1930 and closed on 15 November 1962. The bank documents do not contain the values of the account held, and they do not show to whom the account was paid. Finally, 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 of Eminent Persons indicated that there was no evidence of activity on the account after 1945.

Tribunal's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Tribunal notes that the Account Owner David Braff's name was published with the middle initial "E". While the Claimant's mother's death certificate identifies his grandfather as David Isaac Braff, his mother's birth certificate identifies him as David Eihig or David Eifig Braff. The Tribunal therefore is satisfied that the Account Owner David Braff and the Claimant's grandfather are the same person. In addition, the Claimant's maternal grandmother's name, which appears on his mother's birth and death certificates, matches the published name of the Account Owner Esther Braff. Moreover, the Claimant has identified the town they lived in before the Second World War, which also matches the published city contained in the bank documents.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owners were Victims of Nazi Persecution. The Claimant has stated that his maternal grandparents were Jewish, and were therefore targets of Nazi Persecution while living in Germany until 1939.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly shown that the Account Owners were his grandparents, by providing documentation including his mother's birth and death certificates. The Claimant has stated that his grandparents had four other grandchildren, one of whom is deceased. The credibility of other information provided by the Claimant gives the Tribunal no basis to question this statement. Moreover, the Tribunal notes that the three other grandchildren have not submitted a claim.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the account was paid to the Account Owners or their 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 Swiss bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the account, the Tribunal concludes that a plausible showing has been made that neither the Account Owners nor their heirs received the proceeds. The account at issue was opened on 30 September 1930 and closed on 15 November 1962. Since one of the Account Owners died in 1939 and the other in 1948, it is impossible that the Account Owners themselves closed the account and received the proceeds in 1962. It is also unlikely that the heirs of the Account Owners received the proceeds, since there is no evidence that they were granted a Power of Attorney on the Account. Finally, the account was closed on 15 November 1962, one month before the Swiss Federal Parliament passed a Federal Decree on December 20, 1962 addressing assets in Switzerland of foreign or stateless persons subject to racial, religious or political persecution. As both the timing and substance of the action of the Swiss Government was a matter of public comment in Switzerland, the circumstances suggest that the account may have been closed by the bank by the application of fees in anticipation of the requirement that the account otherwise would have had to be registered with the Swiss Registration Office. The Tribunal's conclusion is also required by Article 34(b) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where an account was closed after 1955, the Tribunal shall presume that neither the Account Owners nor their heirs received the proceeds. Moreover, there is no evidence in the bank records suggesting that the Account Owners closed the account and received the proceeds themselves.

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 Account Owners were his maternal grandparents and that relationship justifies an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

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 custody account was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce 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, claimants shall receive an initial payment of 35% of the total award amount. 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 instance, 35% of the total award amount for the Account is 52,325.00 Swiss Francs.

In this case, since the children of the Account Owners are all deceased and thus have not submitted a claim, and since the Claimant apparently is the only one of the Account Owners' five grandchildren who has submitted a claim, the Claimant is entitled to the entire proceeds of the Award pursuant to Article 29(1)(c) of the Rules.

Scope of the Award


The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will further research 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. 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.

31 Jan. 2002
Date


Roberts B. Owen
Senior Claims Judge