

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Henry Brecher

in re Account of Norbert Brecher, Szidonie Brecher and Ernst Brecher

Claim Numbers: 207620/FC; 207621/FC; 207622/FC

Award Amount: 240,350.00 Swiss Francs

This Certified Award is based upon the claims of Henry Brecher (the "Claimant") to the Accounts of Norbert Brecher, Szidonie Brecher and Ernst Brecher (the "Account Owners").

Information Provided by the Claimant

The Claimant submitted three Claim Forms indicating that the Account Owners Norbert Brecher, Szidonie Brecher and Ernst Brecher were his uncle, aunt and father, respectively. The Claimant stated that the Account Owners were siblings. According to the Claimant's submissions, his relatives owned a business called "Tuchhaus Rendi" in Graz, at Joanneumring 5. His father's home address was Geidorfgürtel 24, Graz, Austria.

The Claimant submitted a document issued by the Jewish Community of Graz showing that he is the son of Ernst Brecher, who was a merchant in Graz.

During a telephone conversation with a Tribunal Staff Attorney, the Claimant confirmed that he has no siblings. He also confirmed that his aunt Szidonie had no children of her own and that she married a man who already had grown children. The Claimant did not think that her aunt adopted these children, who were deported and perished in the Holocaust. Finally, the Claimant stated that his uncle Norbert never married and had no children.

According to the information provided by the Claimant, his father, aunt and uncle, who were Jewish, were deported to concentration camps where they were murdered by the Nazis.

Information Available in the Bank Records

The Account Owners held three accounts in two different banks.

Account Held at [BANK I-REDACTED]

According to bank documents, which consist of three cards bearing the Account Owners' signatures and two letters to the bank signed by Ernst Brecher and Norbert Brecher, respectively, the Account Owners were Ernst Brecher, Norbert Brecher and Szidonie Brecher. The account was opened under the name *Geschwister Brecher* (that is, Brecher siblings), and the Account Owners provided their address as Joanneumring 5, Graz.

In a letter dated 20 June 1936 and signed by Ernst Brecher, the Brecher siblings informed the bank that they gave a power of attorney to their cousin "Ing." Otto Rendi, authorizing him to access their account. Hence, it is highly plausible that the account was a joint account held by the Brecher siblings.

The bank records do not indicate the type of account the Account Owners held. The bank records do not show if or when the account was closed, or to whom (if anyone) it was paid, nor do they indicate the value of the account. 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 did not find the account in the bank's system of open accounts, and they therefore presumed that it was closed. These auditors could not determine whether there was activity on the account after 1945.

Two Accounts Held at the [BANK II-REDACTED]

According to bank documents, the Account Owners were Ernst, Norbert and Szidonia Brecher. The bank documents show that the [BANK II-REDACTED] accounts were transferred to a bank in Austria (*Oesterreicher Creditanstalt Graz*) on 22 July 1938, but they do not contain the values of the accounts held. The auditors who carried out the investigation of the banks to identify Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons determined that the amount in the account had been paid to the Nazi authorities.

During their investigation, the auditors found a second account held by *Geschwister Brecher* at the [BANK II-REDACTED]. The auditors determined that the power of attorney holders were Ernst, Norbert and Szidonio Brecher.

According to the bank documents, which consist of a printout of the bank's database, the second account was a custody account identified by the number 32513. Next to the number of the account, there is an abbreviation "sol." which could stand for *solidaire* (joint account) in French or *solidar* (joint account) in German. In light of the information about the other accounts, the Tribunal is of the opinion that this account was also a joint account held by Ernst, Norbert and Szidonia Brecher, who were not mere power of attorney holders.

The bank documents show that this account was closed on 31 March 1938; they do not contain the value of the account, nor do they show to whom (if anyone) the account was paid.

The Tribunal's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The names of his father, aunt and uncle match the published names of the Account Owners. The Claimant has provided his relatives' precise business street address in Graz before the Second World War, which matches that contained in the bank documents. Moreover, the Claimant has indicated that the Account Owners were siblings, which also matches the unpublished information 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 relatives were Jewish and that they lived in Austria after the *Anschluss*. They all were deported to concentration camps, where they were murdered.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly shown that the Account Owners were his father, aunt and uncle. The Claimant has submitted official documentation showing that his father was Ernst Brecher, a merchant who lived in Graz, Austria. The Claimant stated that he is his father's sole living heir. During a telephone conversation with a Tribunal Staff Attorney, the Claimant confirmed that he had no siblings and that neither his aunt Szidonie nor his uncle Norbert had living heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis for questioning this information provided by the Claimant.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award of the accounts proceeds if they were in fact paid to the Account Owners or their families, the Tribunal must consider the question of what happened to the funds in this case.

As previously noted, one account held at [BANK II-REDACTED] was paid to the Nazi authorities on 22 July 1938 (a few months after the *Anschluss*).

With regard to the second account at [BANK II-REDACTED] and the account at [BANK I-REDACTED], 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 owner 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 as described below, there is a substantial likelihood that they went to the Nazis or the Swiss bank.

Under the circumstances of this case, the Tribunal considers it reasonable to assume that the proceeds were paid to Nazi authorities.¹ The second account held at [BANK II-REDACTED] was closed on 31 March 1938, (that is, shortly after the *Anschluss*), whereas the bank documents do not contain the date of closure of the account held at [BANK I-REDACTED]. In both cases, there is no evidence as to whom the assets were paid. As to the critical issue of whether the assets were paid to the Account Owners or their heirs, considering the legislation that was in force in Austria after the *Anschluss*, which compelled Jews to deliver their foreign assets to the Nazi authorities, the Tribunal has determined that there is plausible evidence that neither the Account Owners nor their heirs received the proceeds of any of the accounts. Moreover, in that period, travel by Austrian Jews to Switzerland was restricted, making it unlikely that the Account Owners came to Switzerland to receive the proceeds of either account. In these circumstances, the Tribunal determines that it is plausible that the second [BANK II-REDACTED] account was paid to the Nazis. Although there is no information about when the [BANK I-REDACTED] account was closed, the Tribunal notes that there is no information indicating that the Account Owners closed the account prior to the *Anschluss* and that subsequent to the *Anschluss*, this account would have been subject to the same legal restrictions as applied to the [BANK II-REDACTED] accounts. In addition, the fact that the Account Owners perished in concentration camps also makes it implausible that they were free to receive funds from any bank at any time in the period 1938-1945. Accordingly, the Tribunal determines that it is plausible that the Nazis also received the proceeds of the [BANK I-REDACTED] account.

Although the Tribunal cannot determine with certainty who received the proceeds of the Account Owners' deposits, the Tribunal concludes that it is plausible that neither the Account Owners nor their heirs received the proceeds.

With respect to the second account held at [BANK II-REDACTED], the same conclusion is required by Article 34(a)ii) of the Rules Governing the Claims Resolution Process (the "Rules") specifying that where an account was closed after the date of occupation of the country of residence of the Account Owner, and before

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.

1945, the Tribunal shall presume that neither the Account Owners nor their families received the proceeds. With respect to the account held at [BANK I-REDACTED], pursuant to Article 34(f) of the Rules, the Tribunal shall also presume that neither the Account Owners nor their heirs received the proceeds if the Account Owners had other accounts (in this case, the first account held at [BANK II-REDACTED]) that were closed to Nazi authorities.

Basis for the Award

The Tribunal has determined that the Claim is admissible for the following reasons: the claimed Accounts belonged to Victims of Nazi Persecution, and the Claimant has plausibly demonstrated that the Account Owners were his father, aunt and uncle (relationships that justify making an award). Consequently, an Award may be made in favor of the Claimant.

Amount of the Award

The Account Owners held two accounts of an unknown type and one custody account, the value of which are unknown. When the value and type of an account is unknown, as is the case here, 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, the average value of such account shall be 3,950.00 Swiss Francs. When the type of account is known, but the value is unknown, 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. In 1945, the average value of accounts of unknown type was 3,950.00 Swiss Francs, and the average value of a custody account was 13,000.00. As the Account Owners held two accounts of unknown type and one custody account, the 1945 total value was 20,900.00 Swiss Francs. The present value of this amount is calculated by multiplying by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 240,350.00 Swiss Francs.

The Claimant should note that, 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. 35% of the total award amount for these accounts is 84,122.50 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

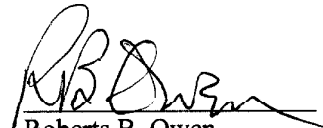
At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a strong case for entitlement to

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