

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Elly Feuerstein
represented by Avraham Ramy Feuerstein

in re Account of Dr. Ludwig Hofbauer

Claim Number: 211017/ KB

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of Elly Feuerstein (the “Claimant”) to the Account of Dr. Ludwig Hofbauer (the “Account Owner”) at the Basel branch of the [REDACTED]. The Claimant has submitted a power of attorney form indicating that she is represented by Avraham Ramy Feuerstein.

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank is redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form indicating that Dr. Ludwig Hofbauer was her father who was born on 19 May 1873 in Vienna, and married Marie Anna Tauber in Budapest, Hungary. The Claimant stated that both she and her only sibling, Ernst Hofbauer, were born in Vienna, on 19 May 1910 and 21 August 1908 respectively, and that Ernst Hofbauer died in Boston in 1981.

The Claimant identified Dr. Ludwig Hofbauer as a medical doctor who lived at Spitalgasse 1, Wien IX, Austria. The Claimant stated that her father was the doctor managing the lung unit at the hospital. The Claimant further stated that she was in Israel when the Nazis entered Vienna, but her father was not able to escape Vienna until six months after the Nazis arrived, when he was able to leave on a plane with a patient. According to the Claimant, the Account Owner went to Italy for six months before he obtained a visa to enter the USA, where he died from meningitis in 1958.

Information Available in the Bank Records

According to the bank records, the owner of the Account was Dr. Ludwig Hofbauer of Spitalgasse 1, Wien IX. These bank records consist of a document dated 12 December 1932 directing that correspondence be forwarded to a Dr. Güldenstein at a Basel address; a document signed by the Account Owner dated 31 March 1933 confirming that he accepted the rules relating to custody accounts held at the bank; and a power of attorney authorization dated 4 January 1938 signed by the Account Owner giving power of attorney to his son, Dr. Ernst Hofbauer. The bank records indicate that the Account Owner held a custody account, but these records do not indicate the value of this custody account, nor when this account was closed nor to whom the proceeds of this account were paid. 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 this custody account in the bank's system of open accounts, and they therefore presumed that it was closed.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. No records concerning the assets of any persons named Ludwig Hofbauer were found in the records of the Austrian State Archives (Archive of the Republic, Finance).

Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her father's name matches the published name of the Account Owner. The Claimant has provided documents recording her father's precise street address in Vienna before the Second World War, which exactly matches the unpublished address contained in the bank documents. The Claimant also has provided documents showing that her father was a medical doctor, corresponding with the bank records, which refer to the Account Owner as "Dr." Finally, the Claimant stated that the Account Owner's son was Ernst Hofbauer, which exactly matches the unpublished relationship between the Account Owner and Ernst Hofbauer recorded in the bank documents.

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. The Claimant has shown that the Account Owner, her father, was Jewish and was the target of Nazi persecution while living in Austria until approximately September 1938.

Relationship between the Claimant and the Account Owner

The Claimant has plausibly shown that the Account Owner is her father by providing documentation including her birth certificate. The Claimant indicated that her father's only children were herself and her brother, who is deceased. She does not indicate that her brother had children. The credibility of other information provided by the Claimant gives the Tribunal no basis to question this information.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the account at issue was 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 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, since the funds in this case apparently were not paid to the Account Owner, his family, or the Power of Attorney Holder, there is a substantial likelihood that these funds went to the Nazis or to the Bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the account, the Tribunal concludes that it is plausible that neither the Account Owner nor his heirs received the proceeds.¹ The account was apparently still open in January 1938, only two months before the *Anschluss*. However, there is no evidence in the bank records suggesting that the Account Owner closed the account during this short period. After the *Anchluss* of March 1938, the application of confiscatory laws by the Nazi Regime in Austria, as described in more detail in footnote 1 below, makes it unlikely that the Account Owner thereafter received the account proceeds. In this case the Account Owner was not able to flee Austria until six months after the *Anschluss*. Moreover, there is no evidence in the bank records suggesting that the Account Owner or his heirs closed the account and received the proceeds themselves after the War.

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 her father is the Account Owner (a relationship that justifies making an award).

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

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, generally through the Economics Ministry, 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.

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.

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, or where the Tribunal has determined that an account may be subject to later competing valid claims, 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 case, the value of the account at issue is based on the Article 35 presumptions. In this instance, 35% of the total award amount is 52,325.00 Swiss Francs.

Scope of the Award

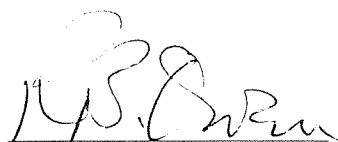
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 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 account will be forthcoming. Article 37(3)(a) and (b) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, and/or the Tribunal determines that an account may be subject to later competing claims, the initial payment to the claimant shall be 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. Thus, the Rules instruct and require the Tribunal to certify and recommend an initial 35% payment in awards submitted for Court approval in particular cases where either the Tribunal has used the value presumptions of Article 35 or it has determined that the account may be subject to later competing claims, or both.

In this case, the Tribunal has used the value presumptions of Article 35 of the Rules to calculate the account value. On this basis, the Tribunal certifies this Award for approval by the Court and for payment by the Special Masters in accordance with Article 37(3) of the Rules.

26 March 2007
Date


Roberts B. Owen
Senior Claims Judge