

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Gustav Kauders

Claim Number: 216614/MB

Award Amount: 63,480.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Gustav Kauders (the “Account Owner”) at the St. Gallen branch of [REDACTED] (the “Bank”).

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 owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form and supporting documentation identifying Gustav (Gustave) Kauders as his father, who was born on 3 October 1894 in Vienna, Austria to [REDACTED] and [REDACTED]. According to information provided by the Claimant, Gustav Kauders’s father, [REDACTED], lived at Hauptstrasse 80 in Vienna, Austria. The Claimant stated that Gustav Kauders married [REDACTED] (also known as [REDACTED]) [REDACTED] on 25 April 1925 in Vienna and that they had three children, one of whom is the Claimant, between 1926 and 1931. The Claimant indicated that Gustav Kauders, who was Jewish, was deported to Dachau in 1938 where he was imprisoned until 1939, and that after his release he moved to Tel Aviv. According to the Claimant, Gustav Kauders emigrated to the United States in 1941 where he lived until his death in 1971. The Claimant is the only one of Gustav Kauders’s three children who has submitted a claim to the Tribunal.

Information Available in the Bank Records

The bank records consist of copies of account opening cards with notations by the Bank. According to these records, the sole Account Owner was Gustav Kauders and the Power of Attorney Holder was [REDACTED]. The bank records indicate that the Account Owner held two current accounts and one safe deposit box account. According to the bank records, the

Account Owner was a partner in “*Firma* [REDACTED]” at Hauptstrasse 80 in Vienna. The current accounts were opened on 8 August 1936 and the safe deposit box was opened on 5 September 1936. The current accounts were closed on 1 October 1938 and the safe deposit box was closed on 11 February 1939. The bank records do not indicate the amounts in the accounts on the dates of their closure.

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. In the records of the Austrian State Archives (Archive of the Republic, Finance), are documents concerning the assets of Gustav Kauders. These records indicate that Gustav Kauders was born on 3 October 1894, was married to [REDACTED], and had an address at Hauptstrasse 80 in Vienna, Austria. The records include information about personal and real property Gustav Kauders owned, but do not refer to a Swiss account.

The Tribunal’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father’s name matches the published name of the Account Owner. The unpublished name and address of the Account Owner’s firm contained in the bank documents matches the name and address the Claimant provided for the father of the Account Owner. Further, the name of the Claimant’s mother, [REDACTED], is substantially similar to the unpublished name of the Power of Attorney Holder, [REDACTED]. In support of his claim, the Claimant submitted documents, including copies of his grandfather’s passport, his parents’ passports, his father’s birth certificate and the Claimant’s own birth certificate.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and lived in Austria until 1938 when he was deported and imprisoned near or in Dachau.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that he is the son of Gustav and [REDACTED]Kauders. The Claimant indicates that there are two other surviving heirs of the Account Owner, neither of whom has submitted a claim to the Tribunal. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning his relationship to the Account Owner.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the accounts 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. Moreover, Swiss banks were authorized, under certain conditions, to forcibly open safe deposit boxes in order to recover unpaid rental fees. Thus, since the funds in this case apparently were not paid to the Account Owner or his family as described below, there is a substantial likelihood that these funds went to the Nazis.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts, the Tribunal concludes that it is plausible that neither the Account Owner nor his heirs received the proceeds.¹ The application of confiscatory laws in Austria by the Nazi Regime after the *Anschluss* of March 1938, as described in more detail in the footnote below, makes it unlikely that the Account Owner received the proceeds himself. In this case, the current accounts were closed in October 1938 and the safe deposit box was closed in February 1939. Since the Claimant stated that the Account Owner was deported to Dachau in 1938 it is unlikely that he closed the current accounts in October 1938 or had access to the safe deposit box in February 1939. The Tribunal's conclusion also is required by Article 34(a) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where the account was closed after the date of occupation of the Account Owner's country of residence and before 1945, the Tribunal shall presume that neither the Account Owner nor his heirs received the proceeds of the account. In this case, the Account Owner lived in Austria, and the *Anschluss* occurred in March 1938, prior to the date of closure for all three accounts. Moreover, there is no

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.

evidence in the bank records suggesting that the Account Owner closed the account and received the proceeds himself.

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 Owner was his father, and that relationship justifies an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

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 current account was 2,140.00 Swiss Francs, and there were two such accounts in this case. Based on the ICEP Investigation, in 1945 the average value of a safe deposit box was 1,240.00 Swiss Francs. The present value of these three accounts, totaling 5,520.00 Swiss Francs, is calculated by multiplying by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce an award amount for the two current accounts and the safe deposit box of 63,480.00 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. In this case, the value of the accounts at issue is based on the Article 35 presumptions. 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, 35% of the total award amount is 22,218.00 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 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).

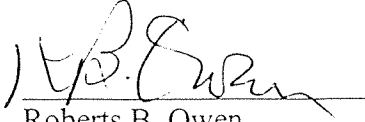
Certification of the Award

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 plausible 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 provide that when 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 of the Rules 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 2002
Date


Roberts B. Owen
Senior Claims Judge