

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Joseph Kareth

in re Account of Moritz Kreisberg

Claim Number: 210198/KB

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of Joseph Kareth (the "Claimant") to the Account of Moritz Kreisberg (the "Account Owner").

Information Provided by the Claimant

The Claimant submitted a Claim Form indicating that the Account Owner Moritz Kreisberg was his father, who was born in Stry in 1895, Austro-Hungary (as it was then known), and who married Rifka Tilde Scherf in 1923. The Claimant stated that he is his father's only child and that he was born on 11 January 1928 in Vienna.

The Claimant identified his father as a chartered accountant and legal advisor who lived at Kühnplatz 4, Wien IV.

The Claimant stated that his father fled from Vienna to France in July 1938 to escape Nazi persecution, but perished together with his wife, probably in Auschwitz in 1942.

Information Available in the Bank Records

According to the bank records, the Account Owner was Moritz Kreisberg, the Power of Attorney Holder was his wife Tilde, and they lived at Kühnplatz 4, Wien IV. The bank records consist of a power of attorney authorization dated 21 June 1931, and printouts from the bank's database. The bank records indicate that the Account Owner held a custody account. 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 indicated that there was no evidence of activity on the Account after 1945.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The names of the Claimant's parents match the published names of the Account Owner and Power of Attorney Holder recorded in the bank documents, and the precise street address which the Claimant provided for his parents in Vienna before the Second World War exactly matches the address for the Account Owner and his wife recorded in unpublished bank records.

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, his father, was Jewish, and that he and his wife, the Claimant's mother, were murdered by the Nazis.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that the Account Owner is his father by providing supporting documentation including a passport and a birth certificate. The Claimant has provided no information to indicate that his parents have other surviving heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis for questioning his assertion that he was the Account Owner's only child.

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 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 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 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 As previously noted, the bank records do not indicate when the Account was closed, and there is no evidence as to whom the proceeds were paid. As to the critical issue of whether the Account was paid to the Account Owner or his heirs, there is no evidence in the bank records suggesting that the Account Owner closed the Account and received the proceeds himself. Additionally, 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 repatriated and expropriated those assets, which makes it highly unlikely that the Account Owner received the proceeds after that date. In addition, the Claimant's statement that the Account Owner and his wife, the Power of Attorney Holder, perished in a concentration camp in 1942, means that they could not have received the funds subsequent to that time.

Although the Tribunal cannot determine with certainty who received the proceeds of the Account Owner's Account, the Tribunal concludes that the Claimant has plausibly shown that neither the Account Owner nor his heirs received the proceeds.

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

Amount of the Award

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, 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 Governing the Claims Resolution Process (the "Rules"), is used to calculate the present value of the account being awarded. In 1945, the average value of custody accounts was 13,000.00 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 149,500.00 Swiss Francs.

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.

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, and, after all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to 65% of the total award amount. 35% of the total award amount for the Account 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 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

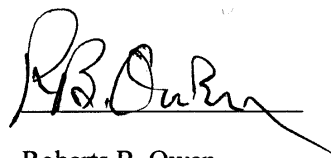
At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a strong case for entitlement to an Award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same accounts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