

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Annelies Herzl

in re Account of Irma Lustig-Löwenthal

Claim Number: 214359/MC

Award Amount: 45,425.00 Swiss Francs

This Certified Award is based upon the claim of Annelies Herzl (the “Claimant”) to the account of Irma Lustig-Löwenthal (the “Account Owner”) at [REDACTED] (the “Bank”).

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 identifying the Account Owner as her mother, who was born on 14 August 1891 in Bad Kissingen, Germany, and was married to Seli Lustig in Bad Kissingen. According to the Claimant, who was born in Würzburg, Germany on 30 November 1924, her mother was Jewish and lived in Neustadt, Germany until 1934. The Claimant indicated that her mother left Germany in 1934, and from 1934 to 1938 resided in Voorburg, Holland and from 1938 to 1943 in Amsterdam. The Claimant stated that her mother was killed in the Ravensbrück concentration camp in 1943.

Information Available in the Bank Record

The bank record consists of a printout from the Bank’s database. According to this record, the sole Account Owner was Irma Lustig-Löwenthal. The bank record does not indicate what type of account the Account Owner held. Further, the bank record does not show if or when the account at issue was closed, to whom it was paid, or the value of this 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 this 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 this account after 1945.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her mother's name and country of residence match the published name and country of residence of the Account Owner. The Tribunal notes that the bank record does not contain any specific information about the Account Owner other than her name and country of residence. Thus, the additional information provided by the Claimant cannot be compared with the bank information. However, the Tribunal notes that the bank record includes both the Account Owner's maiden and married names, which match the maiden and married names of the Claimant's mother. Since none of the information provided by the Claimant is inconsistent with the information contained in the bank record, the Tribunal finds that it is plausible that the Claimant's mother is the Account Owner. Additionally, as of this date, there are no other claimants claiming the account of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has plausibly shown that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, that she was forced to flee Nazi Germany, and that she was killed in the Ravensbrück concentration camp in 1943. Moreover, the Tribunal notes that a database containing the names of victims of Nazi persecution includes a person named Irma Lustig-Löwenthal. The information in the database indicates that this person's date of birth was 14 August 1891, that her place of birth was Bad Kissingen, Germany, and that she perished in the Ravensbrück concentration camp. This information matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

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 her 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 or her family, 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 her heirs received the proceeds.¹ The Tribunal notes that the Account Owner left Germany in 1934. From 1934 until 1943 when she perished in Ravensbrück, the Account Owner lived in Holland, during which time there is no indication in the bank records that the Account Owner accessed the account or received the proceeds. The application of confiscatory laws in Holland by the Nazi Regime during the 1940s, as described in more detail in footnote 1 below, makes it unlikely that the Account Owner received the proceeds herself. Furthermore, as the Account Owner perished in the Holocaust, she could not have received the assets herself following the Second World War. Moreover, there is no evidence in the bank records suggesting that the Account Owner or her heirs 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 Owner was her mother, and that relationship justifies an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owner nor her 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 an unknown type of account was 3,950.00 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 45,425.00 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

¹ This conclusion is based in part on research cataloguing various ordinances, decrees and laws issued in the Netherlands by the Nazi Regime that were subsequently used to expropriate Dutch Jewish assets abroad. Germany invaded the Netherlands on 9 May 1940. Ordinance 189/40, which took effect on 22 October 1940, ordered Jews to register all property on 3 February 1941. Based on this ordinance and the information obtained from it, the Nazi Regime proceeded to force repatriation of Jewish assets held abroad which were subsequently confiscated and liquidated by October 1941. On 18 July 1941, the Germans moved to centralize all financial transactions by Jews. To this end, they established a separate branch of the Dutch Jewish bank, Lippmann, Rosenthal & Co. ("LiRo"), and on 8 August 1941, compelled Jews to deposit all financial assets, including those held abroad, in this bank and to run all their financial transactions through it. Forced deposits were quickly followed by confiscation, which was largely complete by the late 1942. 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.

account at issue is based on the Article 35 presumptions, and there is the possibility of other competing claims. In this instance, 35% of the total award amount is 15,898.75 Swiss Francs.

Scope of the Award

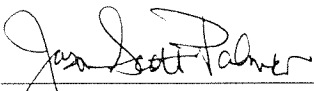
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 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 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. Articles 37(3)(a) and (b) of the Rules provide 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 and is of the opinion that the account at issue may be subject to later competing claims. 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.

8 May 2002
Date



Jason Scott Palmer
Resident Claims Judge