

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED], [REDACTED], [REDACTED], [REDACTED], and
[REDACTED]

and Claimant [REDACTED 2]

in re Account of Ernst Menko

Claim Numbers: 213812/AY, 220208/AY

Award Amount: 14,880.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the account of Ernst Menko (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her paternal uncle, Ernst Menko (the brother of her father [REDACTED]), who was born on 9 July 1908 in Enschede, The Netherlands. Claimant [REDACTED 1] stated that her uncle worked in the textile factory owned by his father, [REDACTED], which was established in 1857 and was called *N.J. Menko N.V.*, and that he resided at M. H. Tromplaan 55 in Enschede. Claimant [REDACTED 1] further stated that her uncle traveled to Switzerland for both business and pleasure. According to Claimant [REDACTED 1], her uncle, who was Jewish, was deported in 1942 to Auschwitz, where he was murdered by the Nazis on 12 October 1944. In support of her claim, Claimant [REDACTED 1] submitted a detailed family tree and an official governmental certificate, issued on 29 November 1940, indicating that on 14 September 1940 the family factory was confiscated by the Nazi authorities. This document indicates the name and addresses of Claimant [REDACTED 1]’s relatives including that of Ernst Menko. Claimant [REDACTED 1] indicated that she was born on 8 May 1933 in Enschede, and that she is representing her sister, [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED], the spouse of her

deceased brother, [REDACTED], as well as her cousins [REDACTED], [REDACTED], and [REDACTED], née [REDACTED] (the children of Ernst Menko's brother, [REDACTED]).

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her mother's first cousin, Ernst Menko, who was born on 9 July 1908 in Enschede, The Netherlands. Claimant [REDACTED 2] stated that, to the best of her recollection, her relative lived in Enschede. According to Claimant [REDACTED 2], Ernst Menko, who was Jewish, was murdered on 12 October 1944 in Auschwitz. The Claimant explained that she was unable to provide more information about Ernst Menko because her mother, [REDACTED], née [REDACTED], (who was born to [REDACTED] (Ernst Menko's paternal uncle) and [REDACTED], née [REDACTED]), died in September 1944, and all the documents concerning her family were destroyed during the Second World War. In support of her claim, Claimant [REDACTED 2] submitted an excerpt from the Registry Office of The Hague, The Netherlands, showing that Ernst Menko was born on 9 July 1908. Claimant [REDACTED 2] also submitted copies of records from the Registry Office indicating names, dates of birth, and places of residence of her relatives. Claimant [REDACTED 2] stated that she was born on 1 September 1937 in Ryswyk, The Netherlands.

Information Available in the Bank's Record

The Bank's record consists of a list of closed safe deposit box accounts. According to this record, the Account Owner was Ernst Menko, from Enschede, The Netherlands. The Bank's records indicate that the Account Owner held a safe deposit box account, numbered 1878. The Bank's record shows that the safe deposit box was forced open on 27 May 1941, but does not contain any information about the contents of the safe deposit box account as of that date, nor does it indicate who closed the account. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimants in one proceeding, as it is clear from the information provided by the Claimants that they are related.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their relative's name and place of residence match the published name and place of residence of the Account Owner. The CRT notes that the Bank's record does not contain any specific information about the Account Owner other than his name and place of residence. However, the CRT notes that a database containing

the names of victims of Nazi persecution includes a person named Ernst Menko, and indicates that his date of birth was 9 July 1908 and place of birth was Enschede, The Netherlands, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Furthermore, the CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that he was murdered in 1944 in Auschwitz. As noted above, a person named Ernst Menko was included in the CRT's database of victims.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting family trees and consistent information about the Account Owner. Claimant [REDACTED 1] indicated that the Account Owner was her maternal uncle, and Claimant [REDACTED 2] indicated that the Account Owner was her mother's first cousin.

The Issue of Who Received the Proceeds

Given that the Account Owner's property was confiscated by Nazi authorities in September 1940, he was deported in 1942, murdered in October 1944, his safe deposit box was forced open in May 1941, and the application of Presumptions (a), (h) and (j) as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was her uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one safe deposit box account. Pursuant to Article 29 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 current value of the account being awarded. Based on the investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or "ICEP Investigation"), in 1945 the

average value of the contents of a safe deposit box account was 1,240.00 Swiss Francs. The current value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 14,880.00 Swiss Francs.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1], her sister, and her cousins are direct descendants of the Account Owner's parents and therefore have better entitlement to the account than Claimant [REDACTED 2], who is a descendant of the Account Owner's grandparents. [REDACTED], whom Claimant [REDACTED 1] is also representing, is related to the Account Owner by marriage, and is therefore not entitled to share in the Award. Accordingly, Claimant [REDACTED 1] and her sister, [REDACTED], née [REDACTED], as descendants of the Account Owner's brother [REDACTED], are each entitled to one quarter of the total award amount; Claimant [REDACTED 1]'s cousins [REDACTED], [REDACTED], and [REDACTED], née [REDACTED], as descendants of the Account Owner's brother [REDACTED], are each entitled to one-sixth of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
June 23, 2003