

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
acting on behalf of herself, [REDACTED],
[REDACTED], and [REDACTED]

in re Accounts of Samuel Messinger and Georg Messinger

Claim Numbers: 201330/MB; 201331/MB

Award Amount: 271,140.56 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the accounts of Samuel Messinger and Georg Messinger (the “Account Owners”) at [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 Claim Forms and Initial Questionnaires identifying Samuel Messinger as her grandfather who was born on 8 March 1875 in Bratislava, Czechoslovakia. According to the Claimant, Samuel Messinger married Malvine Messinger around 1905 in Bratislava, and subsequently lived in Vienna, Austria, where he was a factory director. The Claimant stated that Samuel Messinger lived at Salesianergasse 8 in Vienna until his death in 1937. The Claimant further stated that Samuel and Malvine Messinger had one child, the Claimant’s father Georg Messinger, who was born on 6 February 1918 in Budapest, Hungary. According to the Claimant, Georg Messinger lived at Salesianergasse 8 in Vienna, where he was a factory manager. The Claimant provided additional documents that indicate Georg Messinger also had an address at Wiesingerstrasse 1 in Vienna. The Claimant stated that Georg Messinger fled Vienna in 1938 and arrived in Bolivia sometime in 1939. The Claimant also stated that Georg Messinger married [REDACTED], whom the Claimant is representing, in Cochabamba, Bolivia, in 1948 and that they had three children: the Claimant and her two sisters, [REDACTED] and [REDACTED], whom the Claimant is also representing. According to the Claimant, Georg Messinger died in Cochabamba, Bolivia, on 26 April 1972.

Information Available in the Bank Records

The bank records consist of a customer card, correspondence from the Account Owners to the Bank, and internal notes and memoranda by the Bank. According to these records, the Account Owners were Samuel Messinger and his son, Georg Messinger, and the Power of Attorney Holder was Malvine Messinger. The bank records indicate that the Account Owners held a custody account.¹ The bank records also indicate that the Account Owners had an address at Wiesingerstrasse 1, Vienna, Austria, and that Account Owner Samuel Messinger was referred to by the title “Herr Direktor.” According to the bank records, the custody account was closed as of 27 April 1938, at which time the amount in the account was 23,577.44 Swiss Francs. The bank records of the accounts referred to in footnote one below indicate that Account Owner Georg Messinger, whose signature is contained in the bank documents, provided the Bank with an alternate contact with a Bolivian address in 1939 or 1940.

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. The records of the Austrian State Archives (Archive of the Republic, Finance) include information regarding a custody account owned by Georg Messinger. According to this information, the Account Owner was Georg Messinger who was born in 1918 and who had an address at Wiesingerstrasse 1, Vienna, Austria. The census data does not include any indication of the value of this account.

The Tribunal’s Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the “Rules”), claims to the same or related accounts may be joined in one proceeding at the discretion of the Claims Judges. In this case, the Tribunal determines it appropriate to join in one proceeding the two claims of the Claimant to the accounts of Samuel Messinger and Georg Messinger.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The names of her grandfather and father match the names of the Account Owners, and the name of her grandmother matches the name of the Power of Attorney Holder. One of the street addresses for the Account Owners provided by the Claimant matches the unpublished street address contained in the bank documents and the Austrian Census information. The relationship between Samuel Messinger and Georg Messinger as described by the Claimant is consistent with unpublished information about their relationship described in the bank documents. Additionally, the year the Claimant’s father was born matches to the unpublished date of birth provided for Account Owner Georg Messinger in the Austrian Census information. Further, the information the Claimant provided

¹ The bank records also indicate that the Account Owners held a demand deposit account. This account will be addressed in a separate decision.

about her father's emigration from Austria to Bolivia is consistent with unpublished information contained in the bank documents. In support of her claims, the Claimant submitted documents, including copies of Georg Messinger's birth certificate, passport, immigration permit, death certificate and copies of Samuel Messinger's birth certificate and travel pass. Finally, the Claimant submitted a sample of her father's signature, which matches the signature sample for Georg Messinger contained in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish and lived in Austria prior to the Second World War. According to the Claimant, Samuel Messinger died in 1937 in Austria, and Account Owner Georg Messinger was forced to flee from Austria in 1938 and immigrated to Bolivia.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that she is the daughter of Georg Messinger, the only child of her grandparents, Samuel and Malvine Messinger. The Claimant has indicated that she is representing her mother and her two sisters, the only other surviving heirs of Georg Messinger. There is no information to indicate that the Account Owners have other surviving heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning her relationship to the Account Owners.

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 Owners or their 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 Owners or their family as described below, 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 Owners nor their heirs

received the proceeds.² In this case, the account at issue was closed one day after the Nazi Regime required certain Jews residing in Austria, including the Account Owner, to register their assets, suggesting that the Nazi Regime may have appropriated the proceeds of the account when it was closed on 27 April 1938. It is thus plausible that the account was paid to the Nazi authorities. In addition, 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 of the custody account when it was closed. The Tribunal's conclusion also is required by Article 34(d) of the Rules, which provides that where "the account had been declared in a Nazi census of Jewish assets or other Nazi documentation," the Tribunal shall presume that neither the account owners nor their heirs received the proceeds of the claimed account. Moreover, there is no evidence in the bank records suggesting that the Account Owners closed the custody 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 Owners were her grandfather and father, and those relationships justify an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed custody account.

Amount of the Award

The Bank records indicate that the value of the account as of 27 April 1938 was 23,577.44 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 11.5, in accordance with Article 37(1) of the Rules. Consequently, the award amount in this case is 271,140.56 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, there is the possibility of other competing claims. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65%

² 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.

of the total award amount. In this case, 35% of the total award amount is 94,899.20 Swiss Francs.

Division of the Award

As noted above, the custody account was a joint account. Joint Account Owner Samuel Messinger died in 1937, prior to the date that the custody account was closed. In the absence of any evidence that a different disposition was intended, the Tribunal will assume that upon the death of Samuel Messinger, his interest passed to the surviving joint Account Owner Georg Messinger. Therefore, the sole Account Owner at the time the account was closed was Georg Messinger.

According to the principles of distribution set forth in Article 29(1)(b) of the Rules, when the Account Owner's spouse and the Account Owner's children have submitted claims to the account, the spouse will be awarded half of the value of the account, and the remainder will be divided in equal shares among the children of the Account Owner. Consequently, pursuant to Article 29, the Claimant's mother, [REDACTED], who was the spouse of the Account Owner, is entitled to one half of the value of the account, while the Claimant and her two sisters, [REDACTED] and [REDACTED], are each entitled to one-third of the remainder of the value of the account.

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 claims 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).

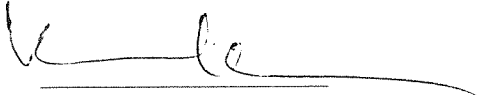
Certification of the Award

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 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 when 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 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 2012

Date



Veijo Heiskanen
Senior Claims Judge