

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Daniel Nerson

Claim Number 206856/VB

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED](the “Claimant”) to the Account of Daniel Nerson (the “Account Owner”) at the Geneva branch of the [REDACTED].

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 indicating that Daniel Fortuné Nerson was her late husband, who was born on 19 July 1901 in Saint Maurice, and married her on 16 November 1938 in Paris, where he died on 18 January 1990. The Claimant also stated that she was born in Brussels, Belgium, on 13 December 1914.

The Claimant identified Daniel Fortuné Nerson as the owner of a cardbox company who lived in Paris, France, at 45 Rue Michel Ange until 1939. The Claimant’s late husband lived in various towns in France between 1939 and 1943 and from November 1944 until his death in 1990. In support of her claim, the Claimant submitted Daniel Fortuné Nerson’s will, dated 11 July 1983, which bears his signature and in which he names the Claimant as his sole heir.

Information Available in the Bank Records

According to the bank records, which consist of an opening card signed by the Account Owner and an account opening form, both dated 6 May 1939, as well as a signature sample form dated 27 April 1939, the Account Owner was Daniel Nerson, a French citizen, who resided at 50 Cortambert Street in Paris, France. The opening card also indicates that the Account Owner granted a power of attorney to Mrs. [REDACTED], née [REDACTED].

The bank records show that the Account Owner held a custody account, but do not mention if or when this account was closed, nor to whom it was paid, nor do they indicate the value of this account.¹

Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner as her husband, whose name matches the published name of the Account Owner. In addition, the Claimant's name, which appears on her marriage certificate, matches the published name of the holder of a power of attorney on the Account. Furthermore, the signature of the Claimant's late husband shown on his will is identical to that of the Account Owner contained in the bank records. The difference between the Account Owner's one address provided by the Claimant and the information in the bank documents is explained by the Claimant who states the Account Owner was moving around at that time, and this difference does not affect the Tribunal's determination.

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 stated that the Account Owner, her late husband, was Jewish and was the target of Nazi persecution while living in France between 1940 and 1943, and from November 1944 until the end of the Second World War.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that the Account Owner is her late husband, by providing documentation including his will and their marriage certificate. The Claimant also stated that she has two living children. The credibility of other information provided by the Claimant gives the Tribunal no basis to question this information.

The Issue of Who Received the proceeds

Since the Claimant would not be entitled to an award if the account 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

¹ The bank records also indicate that the Account Owner held a demand deposit account that was transferred to a collective account for administrative and bookkeeping purposes on 16 January 1970. This account will be addressed in a separate decision.

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, if the funds were not in fact paid to the account owners or their family, as is apparently the case here as described below, there is a substantial likelihood that the funds went to the Swiss bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the custody account, the Tribunal concludes that neither the Account Owner nor his heirs received the proceeds. As mentioned in the footnote above, according to the bank records, the Account Owner held a demand deposit account that was transferred by the bank to a collective account for bookkeeping and administrative purposes on 16 January 1970, but the bank records do not show if or when the custody account was closed, nor to whom it was paid, nor do they indicate the value of this account. The Tribunal's conclusion is also required by Article 34(f) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where the Account Owner had other accounts that were suspended, the Tribunal shall presume that neither the Account Owner nor his heirs received the proceeds of the Account. Since the demand deposit account was suspended, and since there is no evidence to rebut the foregoing presumption, the Tribunal shall presume that neither the Account Owner nor his heirs received the proceeds of the custody account. This conclusion is further supported by the fact that the Claimant filed a claim to the account, thereby plausibly indicating that, in her capacity as power of attorney holder, she never received the proceeds of her late husband's accounts. Moreover, there is no 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 her husband 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 for the custody account, 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 custody account was 13,000.00 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 149,500.00 Swiss Francs.

According to Article 37(3) of the Rules, in cases where the Tribunal determines that an account may be subject to later competing claims, the initial payment to claimants

shall be 35% of the total award amount. Such claimants may receive a second payment of up to 65% of the certified award when so determined by the Court, but not later than when all claims have been processed. In this case, 35% of the total award amount 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 further research 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 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. 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.

29 Jan. 2002
Date


Roberts B. Owen
Senior Claims Judge