

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

To Claimants [REDACTED]and [REDACTED]

In re Account of Josef Pokorny

Claim Numbers: 215814/AA, 215210/AA

Award Amount: 24,610.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED]and [REDACTED] (the “Claimants”), to the account of Josef Pokorny (the “Account Owner”) at the [REDACTED].

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

The Claimants submitted Claim Forms indicating that the Account Owner’s name, Josef Pokorny, was an alias used by their grandfather, [REDACTED], for special financial transactions. According to the Claimants, [REDACTED]was born on 6 June 1876 in Susice, Czech Republic, and married [REDACTED] on 10 June 1900 in Vienna, Austria. [REDACTED] and [REDACTED] had four children, [REDACTED], who was Claimant [REDACTED]’s mother, [REDACTED], who was Claimant [REDACTED]’s father, [REDACTED], and [REDACTED]. [REDACTED]and [REDACTED] stated that they are the grandsons of the Account Owner and that they were born on 4 April 1937 in Vienna, Austria and on 8 September 1934 in Brno Czechoslovakia, respectively.

The Claimants submitted further that their grandfather resided in Vienna at Meytengasse 36 and on Fichterngasse and was the general manager and part-owner of Textile Werke Seiden und Schafwollwarenfabriken AG. According to the Claimants, their grandfather had business connections throughout Europe and owned factories in various cities in the Czech Republic including Teschen, Decin, Prague, Lomnitz, and Brünn. The Claimants explained that their grandfather was deported to Theresienstadt and was later deported to Auschwitz, where he subsequently perished. In support of their claims, the Claimants submitted their grandfather’s company guide, a settlement document that refers to the surname Pokorny, and their grandfather’s *Einantwortungsurkunde* (inheritance certificate).

Information Available in the Bank Records

The bank records consist of an account registry card. According to these records, the sole Account Owner was Josef Pokorny of Teschen, Czechoslovakia. The record shows that he held three accounts: two demand deposit accounts, one closed on 28 February 1931 and one closed on 20 June 1942 and a custody account, which was closed on 12 April 1934. The bank documents do not indicate the value of the accounts, nor do they show to whom the accounts were paid.

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. No records concerning the assets of any persons named Josef Pokorny were found in the records of the Austrian State Archives (Archives of the Republic, Finance).

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 the claims of Claimant [REDACTED] and of Claimant [REDACTED] in one proceeding.

Identification of Account Owner

The Claimants have plausibly identified the Account Owner as their grandfather, [REDACTED] (alias Josef Pokorny). The alias, Josef Pokorny, used by their grandfather matches the published name of the Account Owner. The Claimants have presented information indicating their grandfather had a factory in Teschen that was destroyed by a fire, which is consistent with Account Owner Josef Pokorny's unpublished city of residence contained in the bank documents. In support of their claims, the Claimants submitted documents, including settlement papers that reference [REDACTED] and the surname Pokorny which support the assertion that their grandfather used the alias Josef Pokorny for certain financial transactions.

Status of Account Owner as 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 was deported by the Nazis to Auschwitz where he subsequently perished.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents including their grandfather's inheritance certificate, which names Claimant [REDACTED]'s mother as the daughter of the Account Owner and Claimant [REDACTED]'s father as the son of the Account owner. There is no information before the Tribunal to indicate that the Account Owner has other surviving heirs. The credibility of other

information provided by the Claimants gives the Tribunal no basis to question the veracity of this information concerning their relationship to the Account Owner.

The Issue of Who Received the Proceeds of Account Owner

Since the Claimants would not be entitled to an award if the accounts were 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 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 Nazis.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts, the Tribunal concludes that a plausible showing has been made that neither the Account Owner nor his heirs received the proceeds of the demand deposit account that was closed on 20 June 1942.¹ The application of confiscatory laws in Austria by the Nazi Regime after the *Anschluss* of March 1938, as described in more detail in footnote one below, makes it unlikely that the Account Owner received the proceeds himself. Specifically, the Claimants' assertion that the Account Owner was deported to Auschwitz and perished thereafter supports the conclusion that subsequently he could not have received the funds of his accounts. The Tribunal's conclusion is also required by Article 34(a) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where an account was closed after the date of occupation of the country of residence of the Account Owner, and before 1945, the Tribunal shall presume that neither the account owners nor their heirs received the proceeds of the claimed account, which, as already noted previously, is the case for Josef Pokorny's demand

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.

deposit account closed on 20 June 1942. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the accounts and received the proceeds himself.

With regard to the demand deposit account closed on 28 February 1931, the Tribunal determines, in accordance with Article 34, it is plausible that the Account Owner or his heirs received the proceeds of the account since the account was closed before the Nazi Regime came to power in Germany and seven years before the Anschluss. However, with respect to the custody account closed on 12 April 1934, the Tribunal has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or his heirs received the proceeds of that account.

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimants. First, the Claims are admissible because the claimed account belonged to a Victim of Nazi Persecution. Second, the Claimants have plausibly demonstrated that the Account Owner was their grandfather 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 account at issue.

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 a demand deposit account was 2,140.00 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 24,610.00 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. In this case, the value of the account at issue is based on the Article 35 presumptions and there is also 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% of the total award amount. In this case, 35% of the total award amount is 8,613.50 Swiss Francs.

Division of the Award

In accordance with Article 29 of the Rules, the award should be divided equally between the two Claimants.

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 of the Rules, the Tribunal 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

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. Article 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, and 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 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.

26.03.02
Date

Dov Rubinstein
Dov Rubinstein
Resident Claims Judge