

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED]

in re Accounts of Charles and Yvonne Pollacchi

Claim Numbers: 218898/FC; 218899/FC

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”), to the accounts of Charles and Yvonne Pollacchi (the “Account Owners”) at the Basel 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 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 two Claim Forms to the Tribunal stating that the Account Owners were her parents, Charles Pollacchi and Yvonne Pollacchi, née [REDACTED]. The Claimant identified her father as a merchant and a military man who was born in Paris, France, on 30 November 1897 and died in the same city on 22 November 1978, and she identified her mother as a housewife who was born in Paris on 12 August 1913 and died in Aix-en-Provence on 29 September 1980. The Claimant indicated that her parents married in Cannes on 19 August 1930 and that they divorced on 29 May 1951. The Claimant further asserted that her parents lived in Paris at 9, rue Duhesme and at 107, rue de Sèvres in the 1930s and at 11, rue du Laos, Paris, during the Second World War. Finally, the Claimant provided copies of her parents’ birth and death certificates as well as a copy of her own birth certificate and indicated that she is her parents’ only child. According to the Claimant’s submissions, her mother was Jewish and lived in Paris during the Occupation, whereas her father was “considered to be Jewish” because he was married to a Jewish woman.

Information Available in the Bank Records

According to the bank records, which include an account-opening card, the Account Owners were Mr. Charles Pollacchi and Mrs. Yvonne Pollacchi, née [REDACTED], who lived at 21, rue Danremont, Paris, France. The Account Owners held a custody account, which was closed on 12

March 1975.¹ The bank records do not show to whom the account was paid, nor do these records indicate 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 indicated that there was no evidence of activity on this account after 1945.

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 that it is appropriate to join the Claimant's claims in one proceeding.

Identification of the Account Owners

The Claimant has provided plausible evidence that the Account Owners were her parents. Specifically, the Claimant's parents' first and last names and the Claimant's mother's maiden name match exactly those of the published Account Owners. In addition, the Claimant's parents' city of residence before and during the Second World War matches the Account Owners' published city of residence. None of the street addresses provided by the Claimant matches the Account Owner's street address as recorded in the bank documents. Nevertheless, considering the other information provided by the Claimant, the Tribunal considers that it is plausible that the Claimant's parents and the Account Owners were the same persons.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owners were Victims of Nazi Persecution. The Claimant has shown that her mother was Jewish and that she was the target of Nazi persecution while living in France during the occupation. The Claimant has further indicated that her father was considered to be Jewish because he was married to a Jewish woman.

The Claimant's Relationship to the Account Owners

The Claimant has provided plausible evidence that she is the daughter of the Account Owners. In particular, the Claimant provided copies of her parents' birth and death certificates as well as a copy of her own birth certificate. The Claimant has indicated that the Account Owners had no other children. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information.

¹ The bank records also indicate that the Account Owners held a demand deposit account, which was closed by fees on 12 March 1975. This account will be addressed in a separate decision.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award of the account proceeds if they were in fact 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, 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 custody account, the Tribunal concludes that it is plausible that neither the Account Owners nor their heirs received the proceeds. In this case, the Account Owners died more than thirty years after the end of the Second World War. However, the auditors who investigated the Bank determined that there was no evidence of contact between the Account Owners and the Bank after 1945. The custody account was closed on 12 March 1975. In this respect, it is plausible that like the demand deposit account, which was closed by fees on 12 March 1975, this account was closed as a result of the imposition of bank fees. The Tribunal's conclusion also is required by Article 34(f) of the Rules, which provides that where the account owner had other accounts that are closed by fees, 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 or their 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 Claims are admissible because the claimed accounts belonged to Victims of Nazi Persecution. Second, the Claimant has demonstrated that the Account Owners were her parents and that relationship justifies an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the accounts 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 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.

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, there is the possibility of other competing claims and the value of the custody account is based on the Article 35 presumptions. In this instance, 35% of the total award amount is 52,325.00 Swiss Francs.

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 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).

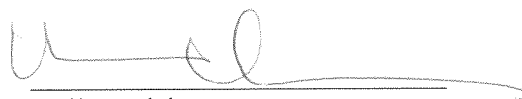
Certification of the Award

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 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 of the Rules 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 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.

3 May 2002

Date



Veijo Heiskanen
Senior Claims Judge