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

Certified Award

to Claimant [REDACTED]

in re Account of Karl Rosenthal and Hedwig Rosenthal

Claim Number 206199/RD

Award Amount: 348,220.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the "Claimant") to the Account of Karl Rosenthal and Hedwig Rosenthal (the "Account Owners") at the Zurich 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 Karl Rosenthal was her mother's brother, who was born on 25 May 1893 in Karlsruhe, Germany. The Claimant stated that her uncle was never married and she is his only surviving relative.

The Claimant stated that Karl Rosenthal was a businessman who owned and operated a company named Dreyfuss & Siegel in Karlsruhe, Germany, where he also lived. In addition, the Claimant stated that her uncle regularly travelled to Switzerland on business, especially from late 1938 to mid 1939. In an Initial Questionnaire the Claimant stated that Karl Rosenthal made his trips to Switzerland specifically to deposit family assets to protect them against Nazi confiscation. The Claimant further stated that due to business commitments Karl Rosenthal was unable to flee Germany in May 1939 with his family, and committed suicide when the Gestapo subsequently attempted to arrest him. The Claimant stated that Karl Rosenthal's business was confiscated by the Nazis.

According to the Claimant's submission, [REDACTED] and [REDACTED] were Karl Rosenthal's parents. Furthermore, the Claimant stated that Hedwig Rosenthal, and Karl Rosenthal's company, [REDACTED], may have also been involved with the Swiss bank account. The Claimant further stated that Hedwig Rosenthal survived a concentration camp and died in Nice, France, in approximately 1954-55.

Information Available in the Bank Records

According to the bank documents, Karl Rosenthal, who used an address in Karlsruhe, Germany, held two custody accounts accompanied by two demand deposit accounts. It is apparent from the bank records that one custody account and accompanying demand deposit account were held jointly by Karl and Hedwig Rosenthal. Furthermore, the records relating to the jointly held accounts also record the name "[REDACTED]." It is also apparent from the bank records that the name of the company "[REDACTED]" is recorded as the address for correspondence in the documents relating to the accounts held by Karl Rosenthal.

According to the account opening cards, the jointly held custody and demand deposit accounts were closed on 4 March 1939, and the custody and demand deposit accounts in the name of Karl Rosenthal were closed on 3 October 1939. The bank documents do not identify the values of the accounts held, nor do they indicate to whom (if anyone) the accounts were paid.

Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. The Claimant has provided information about Karl and Hedwig Rosenthal that is consistent with unpublished information about them contained in the bank records, such as the name of the business owned by Karl Rosenthal, which appears in the bank records as an address for correspondence. Furthermore, the Claimant has provided the name of Karl Rosenthal's father and Hedwig Rosenthal's husband, [REDACTED], which also appears in records for the jointly held custody and demand deposit accounts.

Status of Account Owner as a Victim of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owners were Victims of Nazi Persecution. The Claimant has shown that the Account Owners were Jewish and were persecuted by the Nazis, Karl Rosenthal committing suicide as the Nazis arrived to arrest him and Hedwig Rosenthal surviving a Nazi concentration camp.

Relationship between the Claimant and the Account Owners

The Claimant has plausibly shown that the Account Owners are her mother's brother and her grandmother, by providing documentation including her birth certificate and that of her uncle and her mother. The Claimant stated that her uncle had no other surviving heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis for questioning this information.

The Issue of Who Received the Proceeds

Since the Claimant 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 in this case 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 Owners nor their heirs received the proceeds. [1] As previously noted, the bank records indicate that all four accounts were closed in 1939, and there is no evidence as to whom the proceeds were paid. The application of confiscatory laws by the Nazi Regime during the 1930s, as described in more detail in the footnote below, makes it unlikely that the Account Owners received the proceeds themselves. Furthermore, the Claimant stated that Karl Rosenthal committed suicide sometime after May 1939 when the Gestapo arrived to arrest him, and Hedwig Rosenthal was taken to a concentration camp. 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 the account was closed after the imposition of Swiss visa requirements on January 20, 1939, or 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. Moreover, there is no evidence in the bank records suggesting that the Account Owners closed the accounts and received the proceeds themselves.

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[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. Although some of these laws were promulgated before the Nazis came into power, and although many of the laws were facially non-discriminatory, the Nazi Regime increasingly 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 Germany and special confiscatory taxes for emigrants who wished to flee Germany. Until 1937, the laws generally did not explicitly target Jews, although in practice the laws were enforced more stringently against Jews. After 1937, however, the spoliation process became increasingly wholesale and systematic and Nazi expropriations of Jewish assets held in Swiss banks and elsewhere became 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.

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 mother's brother and her grandmother, and these 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 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, 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, and the average value of a demand deposit account was 2,140.00 Swiss Francs. In the present case, there were two custody accounts and two demand deposit accounts giving a 1945 total Account value of 30,280.00 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 348,220.00 Swiss Francs.

According to Article 37(3) of the Rules, in cases where the amount in the account is not known, 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 instance, 35% of the total award amount for the Account is 121,877.00 Swiss Francs.

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 therefore have 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.

31 Jan. 2002
Date

Roberts B. Owen
Senior Claims Judge