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

Certified Award

to Claimant [REDACTED],
represented by [REDACTED],

in re Account of Helene Rudnicki

Claim Number: 213215/JS

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the "Claimant") to the Account of Helene Rudnicki (the "Account Owner") at the Zürich 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 a Claim Form indicating that the Account Owner was her father's sister, Helene Rudnicki. The Claimant stated that her aunt, who was Jewish, was born in Erfurt on 30 March 1891, and was married to Dr. Max Rudnicki, who was born on 3 June 1887. Her aunt and uncle lived at Herderstr. 17, Erfurt, Germany. The Claimant stated that they fled to England on 6 November 1939, but did not provide any information about their subsequent history.

According to the Claimant's submissions, her aunt and uncle had two children, [REDACTED], born on 23 January 1916 in Erfurt, and [REDACTED], born on 7 January 1923 in Erfurt. The Claimant stated that [REDACTED] died in Australia, and that [REDACTED] possibly died in Belgium, but did not provide further detail.

Information Available in the Bank Records

According to the bank records, the Account Owner was Helene Rudnicki, and the Power of Attorney Holder was Dr. Max Rudnicki, both of whom lived in Erfurt. The bank records consist of a power of attorney authorization dated 12 August 1930, and printouts from the Bank's database. The bank records plausibly indicate that the Account Owner held a custody

account.[1] The bank records do not show if or when the Account was closed, or to whom it was paid, nor do they indicate the value of the 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 (the "ICEP Investigation") did not find the account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on the account after 1945.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified her aunt as the Account Owner. The Claimant provided documentation which shows that she had an aunt with precisely the same maiden and married names as the Account Owner, who was married to a man who had the same name as the person with power of attorney. The documents show that the Claimant's aunt and uncle lived in the same town as the Account Owner and the Power of Attorney Holder. Furthermore the Claimant identified Max Rudnicki as having the title "Dr.," which matches unpublished information about Power of Attorney Holder contained in the bank documents.

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 stated that the Account Owner was a Victim of Nazi Persecution because she Jewish and lived in Germany under the Nazi regime until 1939, and has supported her statements with family records and registries.

The Claimant' Relationship to the Account Owner

The Claimant has provided plausible evidence that the Account Owner was her aunt, by providing family documents which indicated that her father and the Account Owner were siblings. The credibility of other information provided by the Claimant gives the Tribunal no basis for doubting this evidence.

The Claimant stated that the Account Owner and her husband had two children. Neither these children nor their heirs have submitted claims to the account. In these circumstances, under Article 29(c) of the Rules Governing the Claims Resolution Process (the "Rules"), the Tribunal may make an award to a descendant of a child of the Account Owner's parents who has submitted a claim. Thus, the claimant is eligible to receive an award.

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 her heirs, the Tribunal must consider the question of what happened to the funds in this case.

[1] The bank records contain a power of attorney form that references a "*Titeldepot*" which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the Tribunal concludes that it is plausible that she held such an account.

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 or to the Swiss bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the account, the Tribunal concludes that a plausible showing has been made that neither the Account Owner nor her heirs received the proceeds.[2] The Account Owner and her husband fled Germany in 1939. As a result of laws and policies in force in Nazi Germany during the 1930s, a Jewish person fleeing Germany in 1939 would have been unlikely to escape without her assets being subject to the confiscatory laws described in the footnote below. Moreover, there is no evidence before the Tribunal that the Account Owner or the Power of Attorney Holder closed the account and received the proceeds themselves. Instead, the Tribunal considers it reasonable to assume in this case that the proceeds were paid to Nazi authorities.

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimant for the following reasons: the claim is admissible as the claimed Account belonged to a Victim of Nazi Persecution, and the Claimant has provided information establishing that her aunt is the Account Owner (a relationship that justifies making an award).

Amount of the Award

The bank records do not indicate a balance for the account. 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 similar type of account in 1945 is used to calculate the present value of the account

[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. 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.

being awarded. The Tribunal has determined that the Account Owner's account was plausibly a custody account. Based on the ICEP Investigation, in 1945 the average value of custody accounts was 13,000.00 Swiss Francs. The present value of the account is obtained by multiplying the 1945 value by a factor of 11.5, in accordance with Article 37(1) of the Rules, giving a total award amount of 149,500.00 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 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 carry out further research on 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.

31 Jan. 2002

Date

Roberts B. Owen
Senior Claims Judge