

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Ernst Helmstedt
acting on behalf of himself, Angelika Pallisch, and Alexander Pallisch
represented by Hans Lesigang

in re Account of Adelheid Schiffmann and Josef Schiffmann

Claim Numbers: 214768/VB; 214769/VB

Award Amount: 45,425.00 Swiss Francs

This Certified Award is based upon the claims of Ernst Helmstedt (the “Claimant”) to the account of Adelheid Schiffmann and Josef Schiffmann (the “Account Owners”) at the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank is redacted.

Information Provided by the Claimant

The Claimant submitted two Claim Forms identifying Adelheid Schiffmann as the adoptive mother of his mother and Josef Schiffmann as Adelheid Schiffmann’s husband. The Claimant provided the Tribunal with documents corroborating his assertions. The Claimant stated that his mother’s adoptive mother, Adelheid Schiffman, (the “Claimant’s grandmother”), was born on 7 December 1878, and her husband, Josef Schiffman, was born on 16 December 1879 in Vienna, Austria. They married in Vienna on 5 August 1919. The Claimant further stated that he was born in Vienna, Austria, on 25 March 1936.

The Claimant identified Josef Schiffman as a Jewish doctor and indicated that both Josef and Adelheid Schiffman lived at Schleifmühlgasse 3/8, Vienna 4, Austria, between 1923 and 1942. The Claimant also indicated that Adelheid Schiffmann died in 1962, and her husband in 1944, both in Vienna. The Claimant submitted his relatives’ wills and official documents demonstrating that Josef Schiffmann named his wife as his sole heir, and that his grandmother named her adoptive daughter, the Claimant’s mother, as her sole heir. These documents also indicate that the Claimant’s mother’s heirs were her two children, the Claimant and his late sister. The Claimant’s sister’s heirs were her two children, Angelika Pallisch and Alexander Pallisch, whom the Claimant is representing in these proceedings.

Information Available in the Bank Records

The bank records consist of printouts from the bank database and a contract with the Bank, dated 5 September 1929. According to these records, the Account Owners were Dr. Josef Schiffmann and Adelheid Schiffmann, who lived at Schleifmühlgasse 3, Vienna IV, Austria.

The bank records do not show if or when the account at issue was closed, or to whom it was paid, nor do these records indicate the type or 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 did not find this 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 this account after 1945.

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. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Josef Schiffmann and Adelheid Schiffman.

These records indicate that Dr. Josef Schiffmann and Adelheid Schiffman were born on 16 December 1879 and 6 December 1878, respectively, and lived at Schleifmühlgasse in Vienna, Austria. They also indicate that Dr. Josef Schiffmann and Adelheid Schiffman held a bank account, but do not record at which bank or in which country.

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 it appropriate to join the two claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. His grandmother's and grandmother's husband's names match the published names of the Account Owners. Their precise street address in Vienna matches unpublished information about the Account Owners contained in the bank documents. Moreover, the Claimant indicated that his grandmother's husband was a doctor, which matches unpublished information about the Account Owner.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that his grandmother's husband was Jewish and lived in Austria until his death in 1944, and his grandmother converted to Judaism after her wedding in 1919, and lived in Austria throughout the War.

Moreover, the Tribunal notes that a database containing the names of victims of Nazi persecution includes a person named Dr. Josef Schiffmann, and indicates that his date of birth was 16 December 1879, which matches the information about Account Owner Josef Schiffmann provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that his mother was adopted by the Account Owners. There is no information to indicate that the Account Owners have surviving heirs other than the Claimant and his nephew and niece that he is representing. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning his relationship to the Account Owners.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the account at issue was 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 the funds went to the Nazis or to the 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 Owners nor their heirs received the proceeds.¹ The application of confiscatory laws in Austria by the

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.

Nazi Regime after the *Anschluss* of March 1938, as described in more detail in footnote 1 below, makes it unlikely that the Account Owners received the proceeds themselves. The Tribunal further notes that in 1938, the Account Owners had to submit a census form registering their assets. The Account Owners lived in Austria during the Second World War. Dr. Josef Schiffmann died in 1944, and his wife died in 1962, both in Vienna, Austria. In addition, there is no information before the Tribunal to indicate that a Power of Attorney was granted to any individual on this account, making it unlikely that the Account Owners' heirs received the proceeds after the Account Owners' death. Moreover, it is not plausible that Adelheid Schiffmann or her heirs closed the account and received the proceeds themselves after the War. Following the War, Swiss banks adopted a policy, which became official in the mid-1950s, of rejecting inquiries into accounts that were held by victims of Nazi persecution.² The final report of the Bergier Commission concluded: "Throughout the post-war period the banks relied on a combination of discreetly playing down the problem and erecting barriers to investigation: time and time again they would bring banking secrecy into play in order to legitimise their reluctance to provide information while at the same time charging high search fees for conducting investigations."³ Thus, even if Adelheid Schiffmann or her heirs had contacted the Bank in an effort to close the account and withdraw the proceeds, it is plausible that they would not have been able to do so, because the Bank would not have informed them of the existence of the account. The Tribunal's conclusion that it is plausible that the Account Owners or their heirs did not receive the proceeds of the account is also supported in this case by the fact that there is no evidence in the bank records suggesting that the Account Owners or their heirs closed the account and received the proceeds. Furthermore, the Tribunal's conclusion is required by Article 34(d) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where the account had been declared in a Nazi census of Jewish assets or other Nazi documentation, the Tribunal shall presume that neither the account owners nor their heirs received the proceeds of the claimed account.

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 his mother's adoptive parents and that relationship justifies an Award. Moreover, the Claimant submitted his relatives' wills, according to which he and the nephew and niece that he is representing are the Account Owners' heirs. Finally, the Tribunal has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

Pursuant to Article 35 of the Rules, when the value and type of an account is unknown, as is the case here, based on the results of the investigation of Swiss banks carried by ICEP and as required by Art. 35 of the Rules, the average value of such account shall be 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 11.5, in

² See Final Report of the Independent Commission of Experts Switzerland--Second World War, at 446; see also Independent Committee of Eminent Persons Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks; Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution, paragraphs 3 and 4.

³ Final Report of the Independent Commission of Experts Switzerland--Second World War, at 446.

accordance with Article 37(1) of the Rules, to produce a total award amount of 45,425.00 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 accounts at issue is based on the Article 35 presumptions. 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 15,898.57 Swiss Francs.

Division of the Award

The Claimant is representing his niece and nephew in these proceedings. According to Article 29 of the Rules, they are each entitled to receive one fourth of any payment made to the Claimant.

Scope of the Award

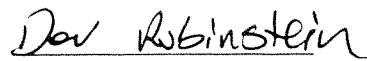
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 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 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. 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.

03 May 2002
Date


Dov Rubinstein
Resident Claims Judge