

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re account of David Schlein

Claim Number: 213532/FC

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the "Claimant") to the account of David Schlein (the "Account Owner") at the Zurich 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 to the Tribunal stating that the Account Owner was her maternal great uncle, David Schlein, who was born in Silesia in 1881, and married to Sadie Schlein. The Claimant stated that she is a great niece of the Account Owner and that she was born in Berlin on 18 February 1929. The Claimant further stated that as far as she knew, the Account Owner had no children and that she did not know whether her relative had other living heirs.

The Claimant asserted that her great uncle lived in Magdeburg, Germany, that he was Jewish and that, due to political pressure, the Account Owner committed suicide in 1938.

Information Available in the Bank Records

According to the bank records, which consist of a power of attorney authorization dated 17 October 1930, and printouts from the bank's database, the Account Owner was David Schlein and the Power of Attorney Holder was his wife Sadie Schlein, née [REDACTED], both of whom resided at Roonstrasse 1, Magdeburg, Germany. The formulation of the power of attorney form suggests that the Account Owner held a custody account.¹ The bank records do not show if or when the account was closed,

¹ The power of attorney form references a "Titeldepot" or custody account. Such forms apparently were typically used by Swiss banks at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form does not necessarily demonstrate that the

nor to whom (if anyone) it was paid, nor do they indicate the value of the account. The auditors who investigated the Bank 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.

Tribunal's Analysis

Identification of the account Owner

The Claimant has provided plausible evidence that the Account Owner was her great uncle. Specifically, her great uncle's name, country and city of residence before the Second World War match the Account Owner's published name, country and city of residence. The Claimant has also provided her great uncle's spouse's name, which matches that of the Account Owner's spouse. In this respect, the Claimant indicated that the Account Owner was married, which is consistent with the unpublished information about the Account Owner 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 has shown that the account Owner, her great-uncle, was Jewish and was the target of Nazi persecution while living in Germany until 1938. The Claimant further stated that the Account Owner committed suicide in 1938 due to political pressure.

The Claimant's Relationship to the Account Owner

The Claimant has provided plausible evidence that she is the Account Owner's great niece. In particular, the Claimant has provided her birth certificate, which shows that her mother's maiden name was Schlein, the same as the Account Owner's last name. The Claimant stated that as far as she knew, her great uncle had no children and that she does not know whether he has any other living heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis to question this statement.

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 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 assets 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 assets. In other cases, Nazis authorities coerced account owners to withdraw balances in their

Account Owner held a custody account, in the absence of any information to the contrary, the Tribunal assumes that the Account Owner held such an account.

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. 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 Owner or his family as described below, 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 account, the Tribunal concludes that a plausible showing has been made that neither the Account Owner nor his heirs received the proceeds.² The application of confiscatory laws by the Nazi Regime during the 1930's, as described in more detail in footnote 2 below, makes it unlikely that the Account Owner received the proceeds himself. The account was presumed closed, but the date of closure and the identity of the person who closed the account is unknown. In addition, the fact that the Account Owner committed suicide in 1938 makes it impossible that he received funds from the bank at any time subsequent to that date. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the account and received the proceeds himself.

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 Owner was her great uncle 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 claimed account.

Amount of the Award

Pursuant to Article 35 of the Rules governing the Claims Resolution Process (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 in 1945 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

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. Over the course of 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.

with Article 37(1) of the Rules, to produce 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 for the account 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 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 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 plausible 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 plausible claim to the account, thus 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