

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Gerald Schwab
acting on behalf of himself and Margo Ross, née Schwab

in re Account of David Schwab

Claim Number: 218010/JA

Award Amount: 14,260.00 Swiss Francs

This Certified Award is based upon the claim of Gerald Schwab (the “Claimant”) to the account of David Schwab (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published, but 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 a Claim Form identifying the Account Owner as his father, David Schwab. The Claimant stated that his father was born on 20 November 1887 in Breisach, Germany, and married to Paula Schwab, née Kleefeld, on 19 July 1919. The Claimant stated that his father started a plumbing supply business in Freiburg, Germany, in the 1920s. He further stated that until 1933 his father lived at Relingstrasse in Freiburg, Germany, that between 1933 and 1936 he lived in St. Louis, France, and that between 1936 and 1940 he lived at Spitalstrasse 54 in Lörrach, Germany.

The Claimant stated that his father was Jewish. The Claimant further stated that his father was detained in the Dachau concentration camp in November and December 1940 and that, approximately at the same time, the Nazi regime confiscated his father’s passport so that he was no longer able to see his clients in Switzerland and France. The Claimant finally stated that, after his release from Dachau, his father emigrated to the United States in 1940, where he died on 8 November 1960.

In a telephone conversation with the Tribunal on 3 May 2002, the Claimant stated that his mother, in 1962, contacted the Swiss banks where her father had accounts in order to retrieve the assets. The Claimant further stated that her mother was told by the banks that the banks were not obliged by law to keep account files longer than a certain number of years and that there were not any records concerning an account belonging to the Claimant’s father.

Information Available in the Bank Records

The bank records consist of a list of safe deposit boxes which were opened at the Bank by German citizens between 1 January and 31 August 1933. According to these records, the sole Account Owner was David Schwab from Freiburg i/Br., Germany. The bank records indicate that the Account Owner held a safe deposit box with the Bank.

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 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 (the "ICEP Investigation") 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 the account after 1945.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's name matches the published name of the Account Owner. In addition, the Claimant's statement that, until 1933, his father lived in Freiburg, Germany, matches information about the Account Owner contained in the bank documents.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, that he was detained in the Dachau concentration camp, that his passport was confiscated, and that he emigrated to the United States in 1940.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, such as his father's will, demonstrating that the Account Owner was his father. 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 Owner.

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 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 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 went to the Swiss bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the account, the Tribunal considers it plausible that neither the Account Owner nor any individual entitled to the assets of the Account Owner received the proceeds. The Tribunal notes that, in another Award to the Claimant (217988/JA), the Tribunal determined that a company owned by the Account Owner held a Swiss bank account that was transferred to a suspense account after becoming dormant, and which was not later accessed by its owners. The fact that another account belonging to the Account Owner was suspended makes it plausible that the same series of events occurred with this account and that the Account Owner did not recover any of his assets deposited in Swiss banks. The Tribunal's conclusion is also required by Article 34(f) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where the Account Owner had other accounts that are suspended, the Tribunal shall presume that neither the account owners nor their heirs received the proceeds of the claimed account.

Further, it is plausible that the Account Owner or his heirs did not close the accounts and receive 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.¹ 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."² Thus, even if the Account Owner or his 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 notes that, in this case, the Claimant stated that in 1962, his mother tried to retrieve the assets of her late husband's accounts, but was told by the Swiss banks she contacted that they were not obliged to keep any records for longer than a certain amount of time. The Tribunal's conclusion that it is plausible that the Account Owner or his 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 Owner or his heirs closed the account and received the proceeds.

¹ 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.

² Final Report of the Independent Commission of Experts Switzerland--Second World War, at 446.

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 his father 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, 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 the contents of a safe deposit box was 1,240.00 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 14,260.00 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 account at issue is based on the Article 35 presumptions, and there is the possibility of other competing claims. 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 4,991.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister, Margo Ross, in these proceedings. According to Article 29 of the Rules, his sister is entitled to receive one half 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 and 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.

07 May 2002
Date

Dov Rubinstein
Dov Rubinstein
Claims Resolution Tribunal