

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Mrs. Edith Frankel

in re Account of Nandor Schwarz

Claim Number: 223429/KB

Award Amount: 14,260.00 Swiss Francs

This Certified Award is based upon the claim of Edith Frankel (the “Claimant”) to the account of Nandor Schwarz (the “Account Owner”) 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 a Claim Form and Initial Questionnaire identifying the Account Owner as her brother, Nandor (also known as Ferdinand) Schwarz, who was born in 1912, in Kosice, Czechoslovakia. The Claimant stated that she was born in Kosice on 17 November 1923. According to the Claimant, her brother, who was Jewish, was a singer who studied at La Scala in Milan, Italy, and also spent years as an understudy at a famous singer’s house in Ersekujvar, Kapuvar, Hungary. The Claimant detailed that her brother traveled frequently to Switzerland where he deposited money on behalf of the family. The Claimant stated that the family lived in Kassa, Czechoslovakia, from 1923 until 1944, when they escaped (leaving their personal possessions behind) to Budapest, Hungary. In Budapest, they were arrested and confined in the ghetto where the Claimant remained until the end of the Second World War. The Claimant does not state when or where her brother died.

Information Available in the Bank Records

The bank records consist of printouts from the Bank’s electronic database, as well as a registry card. According to these records, the sole Account Owner was Nandor Schwarz from Kapsvar, Hungary. The bank records indicate that the Account Owner held a safe deposit box and the safe rental agreement was signed on 10 June 1939.

According to the bank documents, the safe was forced open on 28 November 1945 to enable it to be transferred. The records do not indicate where the account was transferred, however, it was closed by the Bank on 18 October 1949. The bank documents do not disclose what the contents of the safe were.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her brother's name matches the published name of the Account Owner, and the Claimant stated that her brother resided for a period in Kapuvar, which matches published information about the Account Owner contained in the bank documents.

The Tribunal notes that the bank records do not contain any specific information about the Account Owner other than his name and city of residence. Thus, the additional information provided by the Claimant cannot be compared with the bank information.

Moreover, the Tribunal notes that the Claimant filed an Initial Questionnaire with the Court in 1999, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of Victims of Nazi Persecution ("the ICEP list"), asserting her entitlement to a Swiss bank account owned by Ferdinand Schwarz. This indicates that the Claimant has based her claim not simply on the fact that a person identified on the ICEP list as owning a Swiss bank account bears the same name as her relative's, but rather on a direct family relationship that was known to her before the publication of the ICEP list. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP list. This strongly supports the credibility of the information provided by the Claimant and the validity of her claim.

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 and that their family was imprisoned by the Nazis in the ghetto in Bucharest.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by providing a narrative and a family tree showing that the Account Owner was her brother. There is no information to indicate that the Account Owner has other surviving heirs.

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 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. Moreover, Swiss banks were authorized, under certain conditions, to forcibly open safe deposit boxes in order to recover unpaid rental fees.

In this case, the safe deposit box was opened on 28 November 1945 and later terminated on 18 October 1949 by the Bank's legal department. Therefore, it is clear that the Account Owner or his heirs did not receive the proceeds of the 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 Owner was her brother, and that relationship justifies an Award. Finally, the Tribunal has determined 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 a safe deposit box account 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. 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, the value of the account at issue is based on the Article 35 presumptions, and there is the possibility of other competing claims. In this instance, 35% of the total award amount is 4,991.00 Swiss Francs.

Scope of the Award

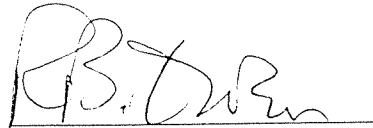
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1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

29 Apr. 2002
Date


Roberts B. Owen