

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Christl Frisch,
acting on her own behalf and on behalf of Marion Duran

in re Account of Elly Spiegel

Claim Number: 207750/MD

Award Amount: 39,100.00 Swiss Francs

This Certified Award is based upon the claim of Christl Frisch (the "Claimant"), acting on behalf of herself and of her sister, Marion Duran, to the Account of Elly Spiegel (the "Account Owner").

Information Provided by the Claimant

The Claimant submitted a Claim Form in which she stated that the Account Owner was her maternal grandmother who was born in 1877 in Vienna, Austria. The Claimant stated further that her grandmother was married to Moritz Spiegel with whom she had two children: Kurt, who was killed in Warsaw during the Second World War, and Loly, who was the Claimant's mother. The Claimant stated that Moritz Spiegel died in 1926 and explained that he had left his assets with the [REDACTED] in Zurich for her grandmother's use.

The Claimant stated that Elly Spiegel lived with her daughter Loly prior to the Second World War. Further, the Claimant stated that her grandmother lived in Vienna until 1942, when she was deported to the concentration camp in Theresienstadt. She was later transported to Auschwitz where she perished in 1944.

In an Initial Questionnaire, the Claimant stated that her mother, Elly Spiegel's daughter, attempted to claim the Account after 1945.

Information Available in the Bank Records

According to the bank records, the sole Account Owner was Ms. Elly Spiegel who lived in Vienna. There are no bank records showing the Account's opening date, but the earliest bank documents are dated 1928. The bank file contains a statement by the Account Owner dated 1930 indicating that her husband died in 1926. Further bank documents evidence that the Account was open after annexation of Austria by Nazi Germany in March 1938 and that the Account was a custody account which contained German bonds.

A list of closed securities accounts owned by Austrian customers in the bank records indicates that the assets in the custody account, which at the date of closure were valued at 3,400.00 Swiss Francs, were transferred to the *Oesterreichische Creditanstalt* on 6 October 1938.

The bank records indicate that the Account Owner's daughter (the Claimant's mother) or lawyers acting on her behalf contacted the bank on several occasions after the Second World War and inquired whether any assets belonging to the Account Owner were still in the bank's possession. On each occasion the bank was aware that the identified Account Owner had owned an account before the Second World War and that it had been closed in 1938, but on none of these occasions did the bank advise the Account Owner's daughter of that closure. It simply informed her that at the time of the inquiry it did not have possession of any assets of the Account Owner.

The Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. She provided information regarding the date of death of the Account Owner's husband, the Account Owner's exact address in Vienna, and the fact that the Account Owner's daughter attempted to claim the Account after 1945 which matches the unpublished information about the Account Owner contained in the bank records.

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 submitted documents, including the Account Owner's passport and *Heimatschein* issued in Vienna in January 1939, demonstrating that the Account Owner was an Austrian Jew and that she lived in Vienna after the annexation of Austria by Nazi Germany. Further, the Claimant stated that the Account Owner was deported to the concentration camp in Theresienstadt in 1942 and killed in Auschwitz in 1944.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that the Account Owner was her grandmother and the grandmother of Marion Duran, by providing specific information about her and by submitting documentation certifying their relationship to the Account Owner. According to the information provided by the Claimant, the Account Owner's husband died in 1926. Further, the Claimant stated that the Account Owner's son and that son's only daughter died during the Second World War, and the daughter of the Account Owner, who was Claimant's mother, died in 1980. The credibility of other information provided by the Claimant gives the Tribunal no basis for questioning the information that she and her sister are the only surviving heirs of the Account Owner.

The Issue of Who Received the Proceeds

Since the Claimant and her sister would not be entitled to an award of the account proceeds if they were in fact paid to the Account Owner or her family, the Tribunal must consider the question of what happened to the funds in this case.

The Tribunal notes that there is evidence in the bank records that the Account was closed in 1938, and that the assets were transferred on 6 October 1938 to a bank in Austria. The Tribunal notes that following the annexation of Austria in March 1938, the Nazi Regime systematically required Jews to register their assets held abroad, and subsequently repatriated and expropriated these assets. Consequently, under the circumstances of this case, the Tribunal considers it reasonable to assume that the proceeds were paid to Nazi authorities.¹

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimants for the following reasons: the Claim is admissible, as the claimed Account belonged to a Victim of Nazi Persecution and the Claimant has plausibly demonstrated that the Account Owner was her and her sister's maternal grandmother (a relationship that justifies making an Award).

Amount of the Award

The present value of the Account is calculated by multiplying the value of the Account as of 1945, or the earliest ascertainable value recorded in the bank records, by factor 11.5, in accordance with Article 37(1) of the Rules Governing the Claims Resolution Process (the "Rules"). In the present case, the bank records indicate that the assets in the custody account as of 6 October 1938 were valued at 3,400.00 Swiss Francs. Consequently, the earliest ascertainable value of the custody account is 3,400.00 Swiss Francs and the Award to the Account is 39,100.00 Swiss Francs.

The Claimant should note that, according to Article 37(3) of the Rules, in cases where the Tribunal determines that an account may be subject to later competing claims, the initial payment to claimants shall be 35% of the total award amount. Such claimants may receive a second payment of up to 65% of the certified award when so determined by the Court, but not later than when all claims have been processed. In this case, 35% of the total award amount is 13,685.00 Swiss Francs. The Claimant is

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, generally through the Economics Ministry, 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.

representing her sister in these proceedings. According to Article 29 of the Rules, her sister is entitled to receive one-half of any payment 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 their claim to determine whether there are additional Swiss bank accounts to which they 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).

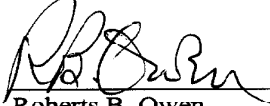
Certification of the Award

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 account will be forthcoming. Moreover, the new process of analyzing the Initial Questionnaires to determine those that can be treated as claim forms adds another element of uncertainty about the possibility of future complementary or competing claims.

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.

Nov. 5, 2001
Date


Roberts B. Owen
Senior Claims Judge