

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Andrei Varnai

in re Account of Iosif Varnay

Claim Number : 208922/MD

Award Amount: 702,190.00 Swiss Francs

This Certified Award is based upon the claim of Andrei Varnai (the "Claimant") to the account of Iosif Varnay (the "Account Owner") at the Zurich branch of 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 identifying the Account Owner as his father who was born in 1897 in Püspökladány, Hungary. The Claimant stated that his father, who was born as Iosif (Josef) Weisz, changed his name to Varnai (Varnay) in 1912. According to the information provided by the Claimant, Iosif Varnay married Clara Robitsek in 1928, and they had one child: the Claimant. In support of his claim, the Claimant attached his birth certificate. The Claimant stated that his father, who was a salesman, lived in Timisoara, Romania, from 1931 to 1964. The Claimant asserted that his father, who was Jewish, was persecuted on the basis of racial laws issued in Romania, that he performed forced labor, and that his relatives were deported to the concentration camp in Auschwitz, where they perished. According to the information in the Claim Form, the Claimant's father emigrated to Germany in 1964 and lived there until his death in 1972. The Claimant asserted that his mother died in 1992.

Information Available in the Bank Records

The bank records consist of a list of accounts belonging to Romanian nationals that were frozen on 20 August 1948 in the Freeze of Romanian Assets. According to these records, the sole Account Owner was Iosif Varnay. The bank records indicate that the assets in the account amounted to 61,000.00 Swiss Francs, but do not indicate the type of the account. The bank records do not show if or when the account at issue was closed, or to whom it was paid. 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.

The Tribunal's Analysis

Identification of the Account Owner

The Tribunal notes that the bank records do not contain any specific information about the Account Owner other than his name and country of residence. Thus, the additional information provided by the Claimant cannot be compared with the bank information. However, the Claimant provided documents certifying that he is the son of Iosif Varnai from Romania, and asserted that his father's surname was also spelled as Varnay. This name matches the name of the Account Owner. Therefore, the Tribunal determines that the Claimant has plausibly identified the Account Owner.

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 persecuted on the grounds of Nazi-inspired racial laws, and that he performed forced labor.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting his birth certificate indicating that the Account Owner was his father. The Claimant asserted that the Account Owner's wife died in 1992 and that he is the only child of the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs. 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 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, the funds in this case apparently were not paid to the Account Owner or his family

as described below. Instead it appears that the funds were transferred to the Romanian Government.

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. The account belonged to a Romanian citizen and was frozen in the Freeze of Romanian Assets in August 1948, which was imposed by a Decree of the Swiss Federal Council, and was lifted in October 1950. The agreement concluded between Switzerland and Romania in August 1951 provided for transfer of unclaimed assets deposited in Swiss banks to Romania in return for compensation for Swiss property that was nationalized in Romania by the communist regime. The Tribunal notes that since the Account Owner lived in communist Romania until 1964, and that it was virtually impossible for him to access the account and receive the proceeds, it is plausible that the assets in the account were transferred to Romania and seized by the communist regime. Moreover, there is no evidence in the bank records suggesting that the Account Owner or his heirs closed the account and received the proceeds himself.

For the purposes of this proceeding, the important point is that neither the Account Owner of an account in a Swiss bank, who was a Victim of Nazi Persecution, nor the Account Owner's heirs, received the proceeds of the account. Since the purpose of the Settlement in the Holocaust Victim Assets Litigation (the "Settlement"), and the Claims Resolution Process established under the Settlement, is to return to Victims of Nazi Persecution, or their heirs, that had accounts in Swiss banks, the value of those accounts, it is fully consistent with the Settlement to pay the Claimant in this case the proceeds of the account. The Swiss Government, a Releasee under the Settlement, used the fund as part of a settlement of claims with Romania. Accordingly, the Account Owner did not receive the proceeds of the account, and the Claimant is eligible for an award.

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 Governing the Claims Resolution Process (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

The Bank records indicate that the value of the account as of 20 August 1948 was 61,000.00 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 60.00 Swiss Francs, which reflects standardized bank fees charged to the account between 1945 and August 1948. There was no interest paid to the account at issue. Consequently, the adjusted balance of the account at issue is 61,060.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted balance by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 702,190.00 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, 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 245,766.50 Swiss Francs.

Scope of the Award

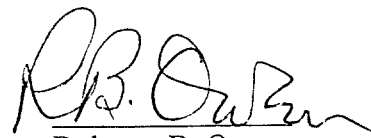
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 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. 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 plausible claim and that the risk of future competing claims is low, the Tribunal shall 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 at issue, thus reducing the likelihood of competing claims. On this basis, and taking into account the instructions of the Special Masters, the Tribunal recommends approval by the Court of the present Award for payment by the Special Masters in accordance with Article 37(3) of the Rules.

27 Feb. 2002
Date


Roberts. B. Owen
Senior Claims Judge.