

CLAIMS RESOLUTION TRIBUNAL

Claims Resolution Tribunal

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

Certified Award

to Claimant Isabel Maria Elon

in re Account of Eugen Wachenheimer

Claim Number: 218246/HM

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of Isabel Maria Elon (the “Claimant”) to the account of Eugen Wachenheimer (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 indicating that Eugen Wachenheimer was her father, who was born on 30 January 1886 in Straszburg, Germany, who married Else Babette Wachenheimer, born Moos, in Stuttgart 10 October 1922 and had one daughter. The Claimant submitted her parents’ marriage certificate showing that her father resided in Barcelona, Spain in 1922. The Claimant, who was born in Hamburg, Germany on 7 June 1928, indicates that she is the sole living heir.

The Claimant stated that her parents were Jewish, lived in Germany until they immigrated to the Netherlands in 1938, were transported in 1943 from Amsterdam to Theresienstadt, and were murdered in Auschwitz in 1944.

Information Available in the Bank Records

According to the bank records, the Account Owner was Eugen Wachenheimer, who resided in Germany and Barcelona, Spain. The bank records consist of a registration card and printouts from the Bank’s database. The bank records show that the Account Owner held a custody account, numbered L 18789, which was closed on 18 May 1938. The bank records do not indicate the value of the account held or to whom the account was paid.

Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner as her father. The Claimant's father's name matches the name of the Account Owner in the bank documents. In support of her claim, the Claimant submitted copies of her parent's marriage certificate, which showed that her father's place of residence was Barcelona, Spain, which matches the unpublished information contained in the bank records.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, her father, was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and murdered in Auschwitz in 1944.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that the Account Owner is her father through the documents and information provided in her Claim Form, and that she is the sole living heir. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning her 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 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, if the funds were not in fact paid to the account owner or his family, as is apparently the case here as described below, there is a substantial likelihood that the funds went to the Nazis.

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.¹ As previously noted,

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. Although

the bank records do not indicate to whom the proceeds of the account were paid. The Account Owner and his wife fled Germany in 1938, and were murdered in Auschwitz in 1944. 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 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, 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 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 with Article 37(1) of the Rules, to produce a total award amount of 149,500.00 Swiss Francs.

According to Article 37(3) (a) and (b) of the Rules, in cases where the amount in the account is not known and where an account may be subject to later competing 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 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 account to which she might be entitled, including research of the Total Account Database (consisting of records of 4.1 million Swiss bank account which existed between 1933 and 1945).

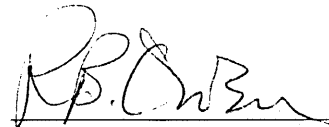
some of these laws were promulgated before the Nazis came into power, and although many of the laws were facially non-discriminatory, the Nazi Regime increasingly enforced these laws on a discriminatory basis against Jewish asset holders. These laws included, for example, increasingly stringent registration 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.

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. 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 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 strong claim to the account at issue, 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 by the Court of the present Award for payment by the Special Masters in accordance with Article 37(3) of the Rules.

24 Jan. 2002
Date


Roberts B. Owen
Senior Claims Judge