

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Hedwig Nussbaum
represented by her son, Rolf L. Nussbaum

in re Account of Hedwig Wetzlar

Claim Number: 205408

Award Amount: 159,045.00 Swiss Francs

This Certified Award is based upon the claim of Hedwig Nussbaum (the "Claimant") to the published accounts of Hedwig Wetzlar (the "Account Owner") at the Basel 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 to the Tribunal asserting that she was the Account Owner. The Claimant indicated that she was born on 4 September 1906 in Frankfurt am Main, Germany, where she married Leo Nussbaum on 17 March 1931. The Claimant further indicated that she was Jewish, and that she resided at Bleichstrasse 4 in Frankfurt am Main until April 1939, when she emigrated to Paris, France. The Claimant stated that she stayed in France until October 1941, when she and her late husband emigrated to Uruguay via Spain. The Claimant stated that she and her late husband were the sole beneficiaries of the claimed account.

In a telephone conversation with the Tribunal on 18 December 2001, the Claimant's representative, her son, stated that his mother never closed the account nor received any of the assets deposited in the account. The Claimant's representative explained that although his mother survived the Holocaust, she never had any contact with the Bank after the Second World War.

Information Available in the Bank Records

The bank records consist of a signed power of attorney authorization in favor of Leo Nussbaum (the "Power of Attorney Holder") dated 23 March 1931 and a letter from the Power of Attorney Holder to the Bank dated 15 August 1934 requesting the Bank to hold all correspondence. According to the bank records, the Account Owner was Mrs. Hedwig Nussbaum, née Wetzlar, who lived in Frankfurt am Main. The records indicate that the Account Owner held a custody account¹ and a savings account. The bank records do not

¹ The power of attorney form references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the Tribunal concludes that it is plausible that she held such an account.

show if or when these accounts were closed, or to whom they were paid, nor do these records indicate the value of the accounts. 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 (“ICEP”) did not find the above accounts in the Bank’s system of open accounts, and they therefore presumed that they were 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 demonstrated that she is the Account Owner. Her first, last and maiden names match exactly those of the published Account Owner. The Claimant has indicated that she was living in Frankfurt am Main, Germany, before the Second World War, which matches the Account Owner’s place of residence as recorded in the bank documents. Further, the Claimant provided evidence that she was married to Leo Nussbaum, whose name matches that of the Power of Attorney Holder. Finally, the Claimant’s signature as it appears on her Claim Form and other documents she submitted matches exactly the Account Owner’s signature contained in the bank documents.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has plausibly shown that she was a Victim of Nazi Persecution. Specifically, the Claimant stated that she is Jewish and that she was living in Nazi Germany until April 1939 and further in Nazi-controlled France until October 1941, when she emigrated to Uruguay.

The Claimant’s Relationship to the Account Owner

As noted above, the Claimant has plausibly shown that she is the Account Owner. As such, she would therefore be solely entitled to the claimed account.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the accounts at issue were paid to the Account Owner or her heirs, the Tribunal must consider the question of what happened to the funds in this case.

The historical evidence developed by the ICEP 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.

Although the Tribunal cannot determine with certainty who received the proceeds of the accounts, the Tribunal concludes that it is plausible that the Account Owner and the Power of Attorney Holder did not receive the proceeds. The application of confiscatory laws by the Nazi Regime during the 1930s, as described in more detail in footnote 2 below, makes it unlikely that the Account Owner and the Power of Attorney Holder received the proceeds between the years of 1934, when the last recorded communication between the Power of Attorney Holder and the Bank took place, and 1945, when the Second World War ended.²

Nor is it plausible that the Claimant received the proceeds after the Second World War, as 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.³ 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."⁴ Thus, even if the Account Owner or her heirs had contacted the Bank in an effort to close the accounts 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 accounts. The Tribunal's conclusion that it is plausible that the Account Owner or her heirs did not receive the proceeds of the accounts is also supported in this case by the fact that there is no evidence in the bank records suggesting that the Account Owner or the Power of Attorney Holder closed the account and received the proceeds. Additionally, the Claimant's representative has stated that his mother never closed these accounts and had no contact with the Bank after the War.

Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimant. First, the claimed accounts belonged to a Victim of Nazi Persecution. Second, the Claimant plausibly demonstrated that she is the Account Owner. Finally, the Tribunal has determined that the Account Owner did not receive the proceeds.

² 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 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.

³ 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.

⁴ Final Report of the Independent Commission of Experts Switzerland--Second World War, at 446.

Amount of the Award

Pursuant to Article 35 of the Rules Governing the Claims Resolution Process (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, and the average value of a savings account was 830.00 Swiss Francs, which gives a 1945 total account value of 13,830.00 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 159,045.00 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

The Tribunal certifies this Award for approval by the Court and for payment by the Special Masters.

3 May 2002

Date



Veijo Heiskanen
Senior Claims Judge