

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED]

in re Account of Z. Dwelaitzky

Claim Number: 210909/MC

This Certified Denial is based upon the claim of [REDACTED], formerly [REDACTED] (the “Claimant”) to the published account of Z. Dwelaitzky (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his paternal grandfather, Zalel Dwelaitzky, who was born in December 1870 in Latvia, and was married twice, first to [REDACTED], née [REDACTED] (the Claimant’s grandmother), who was born in 1872 and died in 1943, and then to [REDACTED], née [REDACTED], who was born in 1895 and died in 1985. The Claimant stated that his grandfather, who was Jewish, had nine children with his two wives, and that the youngest of his children from his first wife was [REDACTED] (the Claimant’s father). The Claimant further explained that his grandfather was a chemist and a company director, and that he resided in Riga, Latvia until 1934, when he and his family emigrated to Palestine (now Israel). The Claimant stated that when his grandfather left Riga for Palestine, his son [REDACTED] remained behind with his wife [REDACTED] and their two children [REDACTED] and [REDACTED], and that they were all perished in 1940 or 1941. The Claimant stated that his grandfather resided at 70 Hayarkon Street in Tel Aviv, and that he managed two companies in Ramat Gan, Israel. The Claimant stated that his grandfather died in Tel Aviv on February 1963.

In support of his claim, the Claimant submitted documents, including:

- (1) three postcards written to his grandfather from his grandfather’s children, one dated 17 November 1941 and another dated 22 January 1942, indicating that Z. Dwelaitzky resided at 70 Hayarkon St., Tel Aviv;
- (2) his father’s Israeli passport, indicating that [REDACTED] resided in Tel Aviv;

- (3) his own birth certificate, indicating that [REDACTED] was the son of [REDACTED], and that his parents resided at 70 Hayarkon Street, Tel Aviv; and
- (4) his own change of name certificate, dated 15 November 1971 and issued by the Israeli Office of Internal Affairs, indicating that [REDACTED] changed his name to [REDACTED].

The Claimant indicated that he was born on 23 January 1947 in Tel Aviv.

Information Available in the Bank's Records

The Bank's record consists of a bank statement. According to this record, the Account Owner was Z. Dwelaitzky, an Israeli national, whose mailing address was Post Office Box 451 in Tel Aviv. The Bank's record indicates that the Account Owner held an account of unknown type. According to this record, on 30 December 1940 the account was transferred to a suspense account for dormant assets, where it remained until at least 1959. The amount in the account on the date of its transfer was 77.90 Swiss Francs ("SF"). The record shows that in 1959, fees for the period from 1940 through 1959 totaling SF 56.90 were deducted from the account, leaving SF 21.00 in the account. The record further shows that on 29 March 1960, fees in the amount of SF 21.00 were charged to the account, thereby closing the account.

The CRT's Analysis

Identification of the Account Owner

The Claimant's grandfather's name matches the published name of the Account Owner. The Claimant identified the Account Owner's city and country of residence, which matches unpublished information about the Account Owner contained in the Bank's record.

In support of his claim, the Claimant submitted copies of documents, including three postcards written to his grandfather from his grandfather's children, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the Bank's record as the name and city of residence of the Account Owner.

The CRT notes that the name Z. Dwelaitzky appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List"). The CRT further notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

The Basis for the Denial

In this case, the Claimant stated that his paternal grandfather left Riga, Latvia, for Palestine (today Israel) in 1934. The CRT notes that this is prior to the Nazi occupation of Riga in July 1941. The CRT notes that the Claimant's uncle [REDACTED] and his family remained behind

in Latvia and ultimately perished. However, his grandfather, who was the owner of the claimed account, left Europe seven years before the Nazis occupied his country of origin. Thus, even though the Claimant's grandfather lost family members in the Holocaust, he himself was not a Victim of Nazi Persecution, as defined by the Settlement Agreement.

This conclusion is supported by the information contained in the Bank's record. As detailed above, the Bank's record indicates that the Account Owner was an Israeli national and that his mailing address was a post office box in Tel Aviv. The Bank's record does not mention Latvia. It is thus clear that the account was opened after the Account Owner left Europe and arrived in Palestine (today Israel). Moreover, the Bank's record indicates that the Account Owner was an Israeli national, thus clearly indicating that the Bank's record was updated after 1948, the year that the State of Israel was recognized as a nation.

The CRT notes that the Bank's record indicates that the account was suspended and ultimately closed to fees. Thus, it is clear that the proceeds of the account were not paid to the Nazis in an attempt by the Account Owner to "purchase" the freedom of his family members. Nor did the Account Owner withdraw the proceeds and close the account himself. Rather, the Account Owner failed to access the account and remove the relatively small amount remaining in it. It is not clear why the Account Owner failed to do so. However, it is clear that his failure to access the account had nothing to do with the fact that he originally resided in Latvia, and that many years after he left, his country of origin was occupied by the Nazis. In summary, the Account Owner was not a Victim of Nazi Persecution as defined by the Settlement Agreement, and the fact that the account went dormant and was ultimately closed to fees had nothing to do with the circumstances that gave rise to the *In re Holocaust Victim Assets Litigation* or the Settlement Agreement that proceeded from it. Rather, this account was one of any number of accounts held by non-Victims whose small balance was written off to fees during the normal course of banking business.

Thus, even though the records indicate that the Account Owner did not receive the proceeds of the account, given the above considerations, the CRT concludes that no award is appropriate.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the Claimant may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for

Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

In the absence of a timely appeal of this decision, the CRT will forward a copy of this Claim Form to the Contact Office of the Swiss Bankers Association, which has a separate program for considering claims made to accounts of persons who were not Victims or Targets of Nazi Persecution as defined in the Settlement Agreement, in order for that office to consider the claim to the account belonging to the Claimed Account Owner. If the Claimant does not wish to have the Claim Form so forwarded, he may request in writing, within thirty (30) days of the date of this decision, that the CRT not do so. Such requests should be sent to the CRT at the following address:

**Claims Resolution Tribunal
Attention: Oren Wiener
P.O. Box 9564
8036 Zurich
Switzerland**

The Claimant can also obtain additional information about the Swiss banks' claims program by contacting the Swiss banks' Contact Office at the following address:

**Contact Office of Swiss Bank Accounts Dormant Since World War II
P.O. Box 2761
4002 Basel
Switzerland**

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
17 September 2010