

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Helmut C. Bates

in re Account of Kurt Bauchwitz

Claim Number: 217627/MD

Award Amount: 149,500.00 Swiss Francs

This Certified Award is based upon the claim of Helmut C. Bates (the "Claimant") to the Account of Kurt Bauchwitz (the "Account Owner") at the Basel branch of the [REDACTED] (the "Bank").

All awards are published, but 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 in which he stated that the Account Owner was his father, who was born in 1890 in Halle, Germany. The Claimant further stated that Kurt Bauchwitz married Else Schwabach in 1916, that she died in 1931, and that he was their sole child. According to the Claimant's submission, his father, Kurt Bauchwitz, was Jewish and worked as a lawyer and notary in Berlin until March 1939, when he left Germany. The Claimant asserted that his father lived in Japan until 1940 or 1941, and that he subsequently settled in the U.S.A. where he died in 1974. In support of his claim, the Claimant provided a birth certificate indicating that his parents were Kurt Bauchwitz, a lawyer, and his wife, Elsa Bauchwitz née Schwabach.

Information Available in the Bank Records

The bank customer card indicates that co-owners of the Account were initially Dr. Kurt Bauchwitz, a lawyer, and Elsa Bauchwitz née Schwabach. The latter name was subsequently crossed out which suggests that Elsa Bauchwitz died and the sole Account Owner remained Kurt Bauchwitz.

According to the bank records, the Account Owner held two accounts: a demand deposit account which was closed on 30 April 1934, and a custody account which was closed on 14 September 1938. The bank documents do not indicate the value of the accounts as of

the date of closure. The information as to who closed the accounts and who received the proceeds is also not available.

Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. He provided information that his father, Kurt Bauchwitz, was a lawyer and that he was married to Else Bauchwitz, née Schwabach. This information matches the unpublished information about the Account Owner contained in the bank documents.

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 stated that his father was Jewish, and provided a list of Jewish lawyers from Berlin that included the name of the Account Owner. The Claimant stated that his father emigrated from Germany in 1939. Thus, the Claimant has shown that the Account Owner belonged to one of the groups targeted for persecution by the Nazi Regime.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly shown that the Account Owner was his father by providing his birth certificate demonstrating that he is a son of Kurt Bauchwitz, and by providing specific biographical information about him. The Claimant stated that the Account Owner's wife died in 1931. He further stated that he is the Account Owner's only child. The credibility of other information provided by the Claimant gives the Tribunal no basis for questioning his assertion that he is the only heir of 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. Moreover, Swiss banks were authorized, under certain conditions, to forcibly open safe deposit

boxes in order to recover unpaid rental fees. Thus, if the funds were not in fact paid to the account owners or their family, as is apparently the case here as described below, there is a substantial likelihood that the funds in this case went to the Nazis.

Although the Tribunal cannot determine with certainty who received the proceeds of the custody account closed on 14 September 1938, the Tribunal concludes that a plausible showing has been made that neither the Account Owner nor his heirs received the proceeds.¹ The application of confiscatory laws by the Nazi Regime during the 1930s, as described in more detail in footnote 1 below, makes it unlikely that the Account Owner received the proceeds himself. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the account and received the proceeds himself.

With respect to the demand deposit account closed on 30 April 1934, the Tribunal has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner received the proceeds of that account.

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 the relationship justifies an Award. Finally, the Tribunal has determined that it is plausible that the Account Owner or his heirs did not receive the proceeds of the custody 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 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 custody accounts was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying the balance 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.

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 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.

According to Article 37(3) of the Rules, in cases when the amount in the account is not known, 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 the present case, 35% of the total award amount is 52,325.00 Swiss Francs.

Scope of the Award

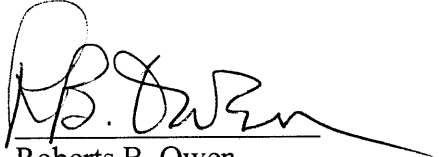
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he and his brother might be entitled, including research of the Total Accounts Database (consisting 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 accounts 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 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.

24 Jan. 2002
Date


Roberts B. Owen
Senior Claims Judge