

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Elise Herrman

in re Account of Josef Dénes

Claim Number: 209811/YL

Award Amount: 724,500.00 Swiss Francs

This certified Award is based upon the claim of Elise Herrman (the “Claimant”) to the Account of Josef Dénes (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 and an Initial Questionnaire in which she stated that the Account Owner, Josef Dénes, was her brother. In a telephone conversation with the Tribunal, the Claimant further stated that her brother was a Jew who fled Vienna, Austria, during October 1938 to Zagreb, Yugoslavia, from where he moved to Paris, France, where he was interned. According to the Claimant, her brother managed to board a ship destined to Australia but the ship was diverted to Shanghai, China, where he was interned with his future wife. The Claimant further stated that after the Second World War, her brother returned to Vienna where he died in 1999.

The Claimant also has asserted that she fled Vienna in July 1938 to Prague and then to Australia, that her parents and elder sister, Mizzi, tried to enter Switzerland from Prague, and that her brother, Josef, tried to secure their entry, but her parents and sister never reached Switzerland. Her father died in Prague, and both her mother and sister were sent to concentration camps and murdered. The Claimant noted that prior to the Second World War, her father, Franz Dénes, had a reputable tie business with branches in Vienna, Prague and Zurich, and that the Zurich branch was run by a Mr. Kirschner. A postcard dated 27 January 1943 sent to the Claimant by Mr. S. Kirschner shows that his business address was at Morgartenstrasse 6.

Information Available in the Bank Records

The bank records consist of printouts from the bank's database, correspondence, opening contracts, a power of attorney form, and a pledge order ("*Pfand-Bestellung*"). These records show that the Account Owner was Josef Dénes, who appears to have held two custody accounts (numbered 40.909 and 50642) and a demand deposit account. The bank records show that these accounts were opened on 26 February 1937 and closed by 29 February 1940. A power of attorney form dated 26 February 1937 shows that Elise Dénes, the Claimant, was the Power of Attorney holder. The bank records also show that the Account Owner had a contact address with Herr Louis Kalmar who used an address in Rue de Metz 3 – 5 Paris V, and also with Herr Kraus, who used an address in 16 rue Soufflot, Paris 5e, France. There is no information as to whom these accounts were paid.

The bank records show that the value of one custody account (number 50642) on 27 January 1939 was 35,000.00 Swiss Francs, and that the value of the other custody account (number 40.909) was at least 10,000.00 Swiss Francs, as the *Pfand-Bestellung* (Pledge order) dated June 1938 shows that the Account Owner pledged assets in that account valued at 10,000.00 Swiss Francs to the Bank in order to secure credit given by the Bank to Herr S. Kirschner, who used an address in Morgartenstrasse 6, Zurich, Switzerland. The value of the demand deposit account is unknown, but on 7 February 1939 the Account Owner withdrew 15,000.00 Swiss Francs from this account and deposited the money with the Swiss Authorities to secure the entry of the Account Owner's parents and elder sister to Switzerland for a period of up to 3 months, and as a guarantee that they would leave Switzerland at the end of that period. All correspondence after January 1939 sent by the Bank to the contact names in Paris was returned as undeliverable.

According to the bank records, the Claimant asked the Bank in September 1945 about the fate of her parents and brother. The Bank's reply, if any, is not on file, but in a memorandum dated 21 September 1945, sent from the Zurich branch to the Geneva branch of the Bank, the Bank noted that the Claimant's father, Franz Dénes, and Josef Dénes held an account with the bank, but had not contacted the Bank since 1939 or 1940. In addition, the memorandum indicates that the Bank contacted Mr. Kirschner on 18 September 1945 in an attempt to find out more information about the fate of the Claimant's parents and brother. Mr. Kirschner informed the Bank that Franz Dénes (Claimant's father) died in Prague, that the Claimant and her husband were living in Sydney, Australia, and that Rosa Dénes (Claimant's mother) was deported. He informed the Bank that he was unaware of the Claimant's mother's fate, as all the bank correspondence which he forwarded to her was returned marked undeliverable. Finally, Mr. Kirschner also informed the Bank that Josef Dénes, the Account Owner, was with his wife in Shanghai, China, and that he had last heard from him by telegram transferred through the Red Cross, to which he responded but never received a reply.

Tribunal's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The name of the Claimant's brother matches the name of the Account Owner that appears in the bank records. In addition, the Claimant has provided her brother's route of flight from the Nazis, as well as the name and address of a contact person in Zurich, which exactly matches the information in the unpublished bank records. In addition, the first name of the Claimant's signature on the Claim Form matches the signature on the power of attorney form in the bank records, which was signed when the Claimant was unmarried.

Status of Account Owners as a Victim of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owner was a Victim of Nazi Persecution. The Claimant has shown that the Account Owner, her brother, was Jewish, that he resided in Vienna, Austria, until October 1938 when he fled and was consequently interned in Paris and Shanghai during the period between 1938 and 1945.

The Claimant's Relationship to the Account Owner

The Tribunal has determined that the Claimant has plausibly shown that the Account Owner was her brother by submitting unpublished information. It also appears that the Claimant is the closest living heir of her brother. 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 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 accounts at issue, the Tribunal concludes that it is plausible that neither the Account Owner nor his heirs received the proceeds.¹ The Nazis occupied Austria, the country of residence of the Account Owner, in March 1938, and the bank records indicate activity on all three accounts subsequent to March 1938. According to the bank records, the three accounts at issue in this claim were closed by 29 February 1940, well before 1945. Each of these accounts therefore was closed at some point after the Nazi occupation of Austria in March 1938 but before 1945. The Tribunal's conclusion thus also is required by Article 34(a) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that where an account was closed after the date of Nazi occupation of the country of residence of the Account Owner, and before 1945, the Tribunal shall presume that neither the account owners nor their heirs received the proceeds of the claimed account. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the accounts at issue 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 brother 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 accounts.

Amount of the Award

The bank records indicate the value of one custody account (Number 50642) was 35,000.00 Swiss Francs on 27 January 1939. At an unknown date, the value of the other custody account (Number 40.909) was at least 10,000.00 Swiss Francs. At an unknown date, the balance of the demand deposit account was at least 15,000.00 Swiss Francs. Although the balances of one custody account (Number 40.909) and the demand deposit are inconclusive as to the total value of these accounts during the period between 1933 and 1945, the Tribunal determines that they are an indication of the minimum values of

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. After the annexation of Austria, German laws were extended to apply there as well, and these laws applied to foreign assets of Austrian citizens as a result of a law promulgated on 23 March 1938. Although many of the laws were facially non-discriminatory, the Nazi Regime 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 the Reich and special confiscatory taxes for emigrants who wished to flee. After the occupation of Austria, wholesale and systematic Nazi expropriations of Jewish assets held in Swiss banks and elsewhere were 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.

those accounts. In the case of the custody account, because this minimum value is less than the average value of such an account in 1945, as determined by the ICEP Investigation, the Tribunal will apply this average value, 13,000.00 Swiss Francs, in accordance with Article 35 of the Rules. The total value of all three accounts is thus 63,000 Swiss Francs. The present value of the amount of the award is calculated by multiplying this amount by a factor of 11.5, in accordance with Article 37(1) of the Rules. Consequently, the amount of the award is 724,500.00 Swiss Francs.

According to Article 37(3) of the Rules, in cases 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. 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 is 253,575.00 Swiss Francs.

Scope of the Award

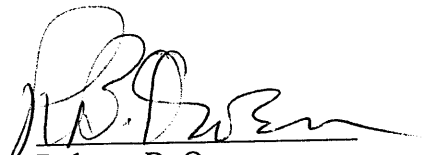
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of 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, 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