

The business secrets of the Jewish Claims Conference

Prof. Fritz Enderlein, Attorney at Law, Potsdam

Jüdische Zeitung (Jewish newspaper) December 2010, issue 58, p. 5

and ZOV (Zeitschrift für offenen Vermögensfragen) 1/2011, p. 11

The Conference on Jewish Material Claims Against Germany, Inc. (JCC) has been in the headlines again recently. Along with other publications, Germany's "Spiegel Online" ran an article on 10 November 2010 about a "Million-dollar swindle with Holocaust compensation funds." In a report in "Israel Hayom" (Israel today) on 8 November 2010, Isi Leibler once again criticized the way the JCC is managed and expressed his outrage about the fact that a bunch of old men are responsible for managing billions of dollars without external controls. At the annual meeting of the JCC Board of Directors, fears were expressed that Germany could demand accountability for millions of dollars that have somehow disappeared.

Regarding the assets from the sale of returned Jewish properties and the compensation money for Jewish companies, Leibler reports growing unease about the fact that the JCC has failed to protect the interests of the heirs of these assets. Leibler compares the practice of (re)distributing these funds with the tale of Robin Hood. The money is taken away, or withheld, from the rightful heirs and used to finance other programs. As a result, these assets benefit people and organizations who had nothing, or very little, to do with the Holocaust.

The purpose and tasks are defined as follows in the JCC articles of incorporation: "The purpose of the association shall be solely to voluntarily assist, advise, support and act for and on behalf of Jewish persons that were victims of Nazi persecution and discrimination."

How this works in practice can be illustrated by the example of Ms. Judi H. Her mother and grandmother owned property on Berlin's Greifenhagener Straße, which they were forced to sell in 1938. Unfortunately, Ms. H. failed to submit a claim for return of title with the responsible property office before 31 December 1992 as required by the Property Act (Vermögensgesetz). The JCC, however, submitted a claim.

The property was placed under state administration by the GDR in 1963 due to over-indebtedness. In 1990, the Aryanized family applied for restitution of the property, which was granted in 1993. The property had been sold by the heirs a year earlier for DM 2.2 million.

The JCC filed an appeal to reverse the retransfer in favor of the Aryanized family heirs. The appeals commission decided in favor of the JCC. The heirs then filed a suit in the Administrative Court.

This case was dismissed by the court and the plaintiffs were ordered to hand over the sales

proceeds. According to a list published by the JCC in 2008, the property was sold at a profit of €12,000.

The case presented here focuses on the disposition of the profit from the sale of the property. Judi H. contacted the JCC, requested a copy of the official decision in favor of the JCC, and asked to be given a share of the restitution as an act of goodwill. The JCC rejected both requests citing the fact that it had set deadlines that had since expired. Ms. H. was unwilling to accept this decision and wrote the following to the JCC on 27 May 2009: “In my opinion, the JCC has a moral obligation to the surviving children (heirs) to allow them to participate in the Goodwill Fund and to recognize and respect their claims. As long as there are surviving children, they are the rightful heirs to any restitution owed to their families. As a direct descendant of Holocaust survivors, there is no statute of limitation on my claim. I found the property that belonged to my grandmother and mother listed on the JCC website. The JCC has no right to keep the money [it obtained for the property]. My mother and grandmother were victims of the Holocaust. Now I feel like I am a victim! It is my understanding that the Claims Conference was set up to represent the victims. It appears that the organization is now fighting against the victims it is supposed to represent! Justice should be the primary concern of the restitution process. In cases where entire families were murdered and there are no surviving heirs, the JCC should have the right to retain the compensation funds received and use them to benefit aging Holocaust survivors throughout the world who need financial and medical assistance. I appeal to the Claims Conference to review my claim, act responsibly, and do what is morally right.” But nothing happened. The JCC upheld their rejection of the claim.

At the end of December 2009, Ms. H. contacted the German Federal Parliament Petitions Committee. She explained that neither her brother nor she was ever aware of an application deadline. She demanded that the JCC be obligated to give the surviving heirs a share of the proceeds. Except for an acknowledgment that her letter was received and a registration number, Ms. H. heard nothing more from the Petitions Committee for nearly a year.

After her claim was rejected by the JCC, Ms. H. wrote to the Federal Office for Central Services and Unresolved Property Issues (BADV) and asked them for a copy of the decision in compliance with the Freedom of Information Act.

The BADV thought that the JCC should be involved in the case. However, without further comment on the case, the JCC repeatedly asked for more time to respond. Finally, the BADV decided to grant Ms. H.’s request, since there was no apparent reason not to surrender a copy of the decision. The JCC appealed against the BADV decision on 25 June 2010 and reasoned that the Freedom of Information Act was not intended to allow persons who missed the application deadline to be retroactively involved in the property law proceedings (a reopening of the property law proceedings was not mentioned in the request submitted by Judi H. or in the BADV decision). Furthermore,

according to the JCC, allowing the documents to be seen by a third party not involved in the proceedings was not permissible due to the extent of the many personal details of the case. Indeed, the personal details in question related the mother and grandmother of Ms H.! According to the JCC, the details of the decision, in particular the total amount of compensation paid, are a business and company secret of the JCC.

The BADV was not convinced by this far-fetched argument and the appeal submitted by the JCC was rejected. It remains to be seen whether the JCC will accept this decision or choose to take legal action. After all, as one of the reasons for the appeal, the JCC cast doubt on the constitutionality of the Freedom of Information Act!

Is this case a good example of the way the JCC protects the interests of the Holocaust victims it supposedly represents?