

**Hammerstein v Conference on Jewish Material
Claims Against Germany, Inc.**

2008 NY Slip Op 30935(U)

March 24, 2008

Supreme Court, New York County

Docket Number: 0100767/2007

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LOUIS B. YORK
J.S.C.

PART 2

Index Number : 100767/2007

HAMMERSTEIN, GABRIELE

vs
CONFERENCE ON JEWISH MATERIAL

Sequence Number : 002

DISMISS

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

DISCLOSED IN ACCORDANCE WITH ACCOMPANYING INSTRUCTIONS DECISION.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

FILED
APR 02 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 3/24/08

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

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GABRIELLE HAMMERSTEIN, EDITH ALEXANDER,
GEORGINA ALEXANDER and ESTHER BRULL,

Plaintiffs,

Index No. 100767/2007

-against-

CONFERENCE ON JEWISH MATERIAL CLAIMS
AGAINST GERMANY, INC., a/k/a JEWISH
CLAIMS CONFERENCE,

Defendant.

FILED
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NEW YORK

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York, J.S.C.:

Before this Court is a motion to dismiss for, among other things, lack of standing. For the reasons below, the Court grants the motion and dismisses the case.

Defendant is an international organization comprised of various national and international Jewish organizations, first established in 1952 to provide restitution to Holocaust survivors and/or their children and heirs. According to its stated purpose, it negotiates with the German government and other German entities to establish and enhance compensation and restitution to Holocaust victims, survivors and heirs, arising from the Holocaust. In 1980 its role expanded to include other compensation programs, such as a Hardship fund and programs to benefit former slave and forced laborers and the victims of medical experiments. Following the reunification of Germany, defendant's role further expanded to include a program to restore confiscated property or to provide restitution for this property.

Many or all of the above programs had application deadlines. However, in 1994 a Goodwill Fund was established for the benefit of those original owners and their legal heirs who did not file a timely claim for compensation under the compensation program. The funds also

are distributed for charitable purposes that, according to defendant, benefit Holocaust survivors. Allegedly these are administered at the request of international and governmental organizations including the International Commission on Holocaust Era Insurance Claims, the Federal Court of the Eastern District of New York, and the Swiss Banks Settlement. The charitable purposes include geriatric and nursing care facilities; medical, residential and educational programs; and Holocaust Memorial Museums throughout the world.

Defendant approves and denies a great many claims, managing hundreds of millions of dollars per year in funds. In this task, it has been accorded great discretion. The agreements under which defendant was established declare that "the money is to be used for the relief of the victims of Nazi persecution according to the urgency of their needs '*as determined by [defendant].*'" Reyici v. Conference on Jewish Material Claims, 11 Misc. 2d 354, 356, 174 N.Y.S.2d 825, 828 (Sup. Court N.Y. County 1958)(quoting protocol; emphasis in decision).

As plaintiffs point out, defendant's exercise of this broad discretion has been criticized, sometimes harshly, at times, by a number of prominent parties. In particular, in Jerusalem Post and elsewhere, former World Jewish Congress chair Isi Leibler has accused defendant of failure to provide sufficient financial aid to ailing, elderly survivors of the Holocaust and has challenged defendant to implement a more transparent financial process. A May 2006 article in The Jewish Chronicle noted the extremely high salaries paid to its officers and the pressure on the agency to justify these salaries and clarify the organization's spending policies. Some critics also allege that defendant reviews applications for aid at an unduly slow pace – which can have tragic results, as the applicants are often ailing and in critical need of the funds at issue. In addition, as numerous articles have noted and as plaintiffs point out, Israel Singer, who was fired by World Jewish Congress following allegations of financial mismanagement and of improprieties, was

also head of defendant for an overlapping period of time.¹

Against this backdrop, plaintiffs commenced the current action. In the action, plaintiffs, all of whom are Holocaust survivors and/or their children and heirs, allege that defendant has wrongfully obtained its preferential status and that it disburses its assets to people and organizations with little or no regard to defendant's own stated purposes; that is, according to plaintiffs, despite the stated purpose of the Conference, it gives most of its funds and other assets to those with little or no connection to the Holocaust. In addition, plaintiffs allude to the possibility of fiscal improprieties, based on the accusations leveled against Singer in connection with World Jewish Congress. For all these reasons, plaintiffs seek an accounting of defendant's financial affairs.

Defendant makes this pre-answer motion to dismiss the complaint. Primarily, it argues that it owes no fiduciary duty to Holocaust survivors or their heirs, such as plaintiffs, and therefore plaintiffs have no standing to bring this lawsuit. Next, it argues that plaintiffs do not allege a breach of that duty through their allegations that defendant is disbursing its assets improperly. Finally, it argues that plaintiffs' failure to allege that they asked for and were denied an accounting is a fatal pleading defect.

In addition, in support of its motion to dismiss, defendant annexes a copy of its financial statements for 2004 and 2005, conducted by accounting firm Ernst & Young LLP. The financial statement for 2006 is available on the Conference website, and can be accessed at http://www.claimscon.org/forms/audit_06.pdf. Like the annexed financial statements, the 2006 statement was prepared by Ernst & Young LLP and is based on the firm's audit of defendant.

¹ Defendant did not fire Singer; however, his term ended shortly afterward and he did not seek reelection. Plaintiffs have not asserted, and the Court did not find in its own research, that Singer was charged with financial wrongdoing with respect to his post with defendant.

Defendant suggests that, as it has provided sufficient information already, the lawsuit is moot.

In response to the motion, plaintiffs argue that because defendant was established to disburse assets to individuals and organizations that, like plaintiffs, were injured by the Holocaust, plaintiffs by definition are the fiduciaries of defendant. This automatically gives them standing to seek an accounting. Also, plaintiffs state, the financial statements are not detailed enough to provide plaintiffs with the information they seek in this lawsuit. Instead, they seek a detailed accounting, which would include information such as the details of the audit on which the financial statement is based.

Now, the Court turns to the merits of the motion. As indicated, defendant moves to dismiss based on standing. To determine whether a party has standing to sue, the Court must ascertain whether the party's interest in the lawsuit provides a sufficient predicate for deciding the issues involved at that party's request. Wells Fargo Bank Minnesota v. Mastropaolo, 42 A.D.3d 239, 242, 837 N.Y.S.2d 237, 249-50 (2nd Dept. 2007). When the defendant raises the challenge of the plaintiff's standing, the plaintiff must establish its right to sue at the outset of the lawsuit. Id. at 242, 837 N.Y.S.2d at 250.²

Defendant relies on a series of cases that have denied plaintiffs the right to challenge defendant's decisions to deny these individuals compensation. To maintain such a lawsuit, the plaintiffs "must establish that [they] had a legally protected interest that the Claims Conference invaded." Sampson v. Federal Republic of Germany, 250 F.3d 1145, 1156 (7th Cir. 2001)(quotations and internal citation marks omitted). In both Sampson and in Wolf v. Federal

²Contrary to defendant's contention here, it is unclear whether standing raises a question of subject matter jurisdiction. See, e.g., HSBZ Guyerzeller Bank AG v. Chascona N.V., 42 A.D.3d 381, 384, 841 N.Y.S.2d 11, 14 (1st Dept. 2007); Wells Fargo Bank Minnesota, 42 A.D.3d at 242, 837 N.Y.S.2d at 250; Security Pacific National Bank v. Evans, 31 A.D.3d 278, 280, 820 N.Y.S.2d 2, 4 (1st Dept. 2006). However, as defendant has not waived the defense, the Court need not resolve the issue.

Republic of Germany, 95 F.3d 536 (7th Cir. 1996), the Seventh Circuit pointed to the Luxembourg Protocols, under which the Claims Conference was established, and the Hardship Fund Guidelines, under which the plaintiffs raised their respective challenges, to conclude that the plaintiffs had no standing to challenge adverse decisions by the Claims Conference in court.

In addition, defendant points to New York State court decisions, which also find that there is no standing to challenge adverse determinations involving claims for monetary compensation. See Revici, 11 Misc. 2d 354, 174 N.Y.S.2d 825; Jewish Secondary Schools Movement v. Conference of Jewish Material Claims, 11 Misc. 2d 358, 174 N.Y.S.2d 560 (Sup. Ct. N.Y. County 1958).

The Court notes that some New York State Courts have drawn a distinction between claims of property confiscation and concomitant damages, and claims for reparations to be paid from defendant's general funds. See Rottenberg v. Conference of Jewish Material Claims, Index No. 110615/2004, Mo. Seq. 1, at p. 8 (Sup. Court N.Y. County Feb. 16, 2005). However, this is not pertinent here, where an accounting is sought. Weiss v. Claims Conference, Index No. 14839/2003, Mo. Seq. 1 (Sup. Court Nassau County May 7, 2004), cited by defendant, is distinguishable as well.

For the same reasons that plaintiffs have no standing to challenge the denial of claims in the Courts of this State, defendant states, plaintiffs have no standing to seek an accounting of defendant's management of its funds. Defendant has not briefed the issue, but the Court notes that this State also has delineated the rights of parties to sue for an accounting against nonprofit entities such as defendant, analogizing to principles of trust law. In most circumstances, individuals have no standing to sue or seek an accounting of a charitable foundation or trust. See Consumers Union of U.S., Inc. v. State, 5 N.Y.3d 327, 351, 806 N.Y.S.2d 99, 111

(2005)(“Consumers Union”). Indeed, even a potential beneficiary cannot sue for its enforcement. Alco Gravure, Inc. v. The Knapp Foundation, 64 N.Y.2d 458, 465, 490 N.Y.S.2d 116, 119 (1985). This prevents “vexatious litigations and suits by irresponsible parties who do not have a tangible stake in the matter and have not conducted appropriate investigations.” Id. at 466, 490 N.Y.S.2d at 120. This does not mean that nonprofit organizations are beyond review. Instead, it is left to the Attorney General and/or other authorized agencies in a particular State or country to review the operations of the organizations in question – and, if deemed appropriate, to seek an accounting from that organization. See Consumers Union, 5 N.Y.3d at 351, 806 N.Y.S.2d at 111.

However, an exception to the above rule arises if “a particular group of people has a special interest in funds held for a charitable purpose, as when they are entitled to a preference in the distribution of such funds and the class of potential beneficiaries is sharply defined and limited in number.” Id. In Alco Gravure, for example, the Foundation involved in the case was established specifically for the employees of corporations in which Joseph P. Knapp had been involved and the employees of successor corporations. Id. at 466, 490 N.Y.S.2d at 120. By the time the challenge at issue in Alco Gravure arose, the number of people applying for grants and loans under the Foundation had dwindled. Indeed, only one such request had been made between 1978 and 1985, the year the Court of Appeals issued its decision.

By the standard above, Conference on Jewish Material Claims does not benefit a specific or a discrete class of individuals. Tragically, millions of Jews suffered atrocities at the hands of the Nazis, and there are innumerable others potentially involved when their heirs and survivors are considered. According to the October 3, 2007 testimony of Gideon Taylor, the Executive Vice President of defendant, among many other details:

- 1) negotiations in 2006 led to the establish of 6,000 additional monthly pensions;
- 2) in 2006, defendant distributed over \$600 million;
- 3) an estimated 122,000 Nazi victims currently reside in the United States;
- 3) defendant has provided compensation to victims of Nazi persecution in over 40 countries since 1995; and
- 4) 11,539 (of 81,793) claims for real estate and business losses were approved by Germany for compensation through defendant.

Moreover, its annexed financial statement indicates that it paid hundreds of millions of dollars in claims in 2005 as well. This is not the type of discrete group envisioned by Alco Gravure. In addition, as noted, defendant has discretion as to the management of its funds. Indeed, the Revici Court found that no Holocaust victim “is designated as a beneficiary within the doctrine that the agreement under which he claims as such must clearly express an intention to assume a duty directly to him. The protocol imports a contrary intention.” Revici, 11 Misc. 2d at 356, 174 N.Y.S.2d at 828.

In the face of the case law, plaintiffs merely reiterate their contention that they are the intended beneficiaries of defendant and therefore have standing. However, this argument does not confront the issue at hand. The fact that plaintiffs may be entitled to money or other benefits does not give them standing. Therefore, the action must be dismissed.

As Holocaust survivors and/or their heirs, plaintiffs are entitled to empathy, sympathy and respect. They also may be eligible to apply for funds available through one or more of the Compensation Programs administered by the Conference. However, they have not set forth a sufficient basis for their standing to seek an accounting.

This Court does not express an opinion as to the validity of the serious charges of mismanagement and wrongdoing that plaintiffs have leveled against defendant. However, the Court notes that, in the wake of the World Jewish Congress controversy involving Singer, the

Attorney General of this State investigated the organization and, among other things, ordered an accounting. Here, defendant implicitly acknowledges that it is accountable to the Attorney General when it points out that it is required to file its audits and financial statements with that office annually. The Attorney General has the power to determine whether further review is warranted on the facts at hand. In addition, the nations that negotiated on behalf of the Claims Conference and the organizations which comprise it can determine whether defendant should make its decision-making process more transparent, expedite the processing of claims, or take other measures.

As the case is dismissed on this threshold ground, the Court does not reach the parties' other arguments.

For the reasons above, it is

ORDERED that the motion is granted and the case is dismissed.

Dated: 3/24/08

ENTER:



Louis B. York, J.S.C.

**LOUIS B. YORK
J.S.C.**

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