

NEW JERSEY ROCKLAND Jewish Standard

Fighting for the rights of survivors — and their heirs Cresskill couple gets SSA to clarify statute on exemptions

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Published: 30 January 2015

Barbara and Michael Lissner have a mission.

"It's who we are — what we do," said Mr. Lissner, who has spent practically his entire life witnessing — and furthering — efforts to help Holocaust survivors get the benefits to which they are entitled.

The couple, partners in the New York law firm Lissner & Lissner LLP, are both children of survivors.

Michael Lissner's father, Jerry, started the firm, which soon came to win the trust of the "tightknit community of German Jews living in Manhattan and Queens," the son said. "He was an incredible man, able to help people in a very knowledgeable and calming way. He became a tall pillar in the community."

Mr. Lissner, who formally started working with the firm in 1983 but "had been around the firm my whole life," was able to maintain the trust of that community.



Barbara and Michael Lissner

Ms. Lissner was no stranger to survivors' unique needs. Her parents were from Poland — her father was on Schindler's list, while her mother survived in Eastern Russia. Both lost many relatives.

After Jerry Lissner's death in 1987, Ms. Lissner came to the law office "to help Michael get through this period, but we really were able to work well together and had common spirits," she said. That spirit is manifest in the couple's advocacy work for the rights of survivors and their heirs. Indeed, that has been their primary focus since 1992

"We had a shared history and commitment to those people who lost so much and were confronted with so many new things — a new language, filing requirements, what claims could be filed," Ms. Lissner said. "Naturally we made this our focus. It's part of who we are."

Apparently, the Lissners' commitment has reached the next generation. Their daughter, Eliese Lissner, actively volunteers not only with Blue Card, Inc., an organization that helps needy Holocaust survivors, but with Zahal Disabled Veterans Fund-Beit Halochem, which helps disabled veterans in Israel. Their son, Sam Lissner, who graduated from Harvard with a concentration in near eastern studies, is a Lipper Fellow at the Museum of Jewish Heritage and has spoken at several venues about his experiences as a grandchild of survivors.

According to Mr. Lissner, 1992 was a pivotal year for the couple, setting the direction for what they would do over the next few years. That year, "Elie Wiesel gave a moving speech in Washington, D.C., and had a display with a map of [train] depots and concentration camps," he said. In an imagined conversation with President Franklin D. Roosevelt, Mr. Wiesel relayed the American leader's negative response to the plea that the military bomb those depots. Mr. Roosevelt considered this "diverting military equipment to an unnecessary non-military intervention." In other words, Mr. Wiesel said, summarizing the president's position, "Let the Jews take care of themselves."

"That speech moved a lot of people," Mr. Lissner said. "Everyone said, 'What now?'"

One tangible reaction was the passage of the Nazi Persecution Victims Eligibility Act in 1994. Through that act, any payments made to people because of their status as victims of Nazi persecution were disregarded (that is, were considered exempt) by the Social Security Administration. In other words, those payments were excluded from income and resources for the purpose of establishing eligibility for federally funded programs.

Following that act's passage, the Lissners "spent the next three years trying to understand the history and intent of the legislation,"

Mr. Lissner said, accepting invitations to share that knowledge throughout the country.”

“We realized this meant not just current monies coming in from Germany and Austria but that it also protected accumulated resources received as a result of Nazi persecution,” he added. “There was a real value to this legislation, and it could really help survivors.”

The couple worked until “we had comfortably understood the act and how to apply it,” he said. At the time, “we had a lot of survivors going into nursing homes, requiring long-term health care and spending down their money. Many were alone. It was a miserable way for them to age. The act was on the books, but not being paid attention to.”

The first step was to figure out what kinds of payments could be protected.

“We read the statute as much broader than actual payments they received today, but also to include all payments spouses may have received and that they inherited,” he said. “We read the act to include any and all of the payments received because they were victims of Nazi persecution.”

This would include payments made by Germany and Austria since the early 1950s — as well as by any other countries making restitution to victims — including restored property, artwork, looted assets, “anything related.”

In the mid-1990s, the Lissners developed an asset protection plan and created the Victim of Nazi Persecution Restitution Trust, through which eligible people are able to identify, separate, and preserve a significant portion of their assets if they require long-term health care as well as other federal benefits.

In an email, Ms. Lissner said that “the trust was utilized to properly identify and protect the totality of funds received by survivors as a result of their persecution so that these funds would be properly treated as exempt assets for the purposes of receiving federally financed programs such as Medicaid.”

The couple noted that survivors and their families throughout the United States have benefitted from this trust, and that its importance was recognized by the Library of Congress, which requested information about establishing such an instrument, as well as by Jewish Family Services, attorneys, and advocacy groups throughout the country.

While the Lissners “mapped it out and showed how to calculate restitution so it would be a slam dunk” in dealing with federal officials, they encountered some difficulty in making their findings known to survivors.

“Most survivors are not on the internet, and no one can fully understand the small type,” Ms. Lissner said.

Now, she said, it is more important than ever to spread this information — not just on behalf of the survivors themselves but for their heirs. As a result of ongoing advocacy efforts, the Lissners have secured recognition from the Social Security Administration that heirs of survivors who have received funds as a result of their status as victims of Nazi persecution also are entitled to protection.

“They did reference heirs in the statute,” she said, even though they were not necessarily receiving money. “We had to figure out how to make sense of who is an heir and what the statute was [saying]. In addition to the legislative history of the 1994 act making a reference to heirs, we were also assisted in our efforts by a 1947 German law that recognized children of survivors as, themselves, being victims of Nazi persecution.”

“Children of survivors do suffer and have needs that are not met,” she continued. “Sadly, some social service agencies that help survivors don’t help their children.”

Nearly two years ago, there was a case that threw the issue into sharp focus.

“Approximately a year and a half ago, the Social Security Administration stopped payments that had been properly paid to one of our clients, a child of survivors, because, according to the SSA, inherited funds that had been received as a result of Nazi persecution were, they said, available resources to him. The SSA took the position that since he had not directly received these funds and since these funds were only inherited by him, he could not receive SSI benefits until he spent down these alleged available resources.”

The Lissners filed a lawsuit, and won — but the government appealed, and the decision was reversed.

Then “our daughter was helping to run a young leadership event for Blue Card, and the guest speaker was Aviva Sufian, the government’s ombudsperson for Holocaust survivors,” Ms. Lissner said.

“We swarmed her,” Mr. Lissner continued. “She didn’t know what hit her. She listened and said she would try to help.

“She subsequently connected us with the acting commissioner of the Social Security Administration, who later sent us a letter thanking us for raising the issue. On December 16, the SSA issued an emergency declaration.”

That declaration excluded inherited funds from income and resources if “the funds were inherited from or can be traced back to an individual who received the funds as payments because of his or her status as a victim of Nazi persecution; the funds were or would have been excludable under the Victims of Nazi Persecution Act for the original recipient; the funds are identifiable as reparation payments; and the funds are unspent.”

Many children of survivors will never need assistance, said Barbara, “but I know from our practice that there are certain damages that children suffer. It may render them unable to complete their education or take care of themselves. They may be caretakers, not free to focus on their own lives.”

While some survivors are more able “to leave horrors behind and focus on new families, not everyone can do that.”

The Lissners are hoping to spread the word about the SSA exemptions to survivors, their children, and their lawyers.

“We’re hoping the benefit will be understood and utilized,” they said. If people wait too long, “it will be more difficult to recreate what their parents and grandparents received.” Even grandchildren are affected, she said. The legislation “didn’t put a limitation on who was defined as an heir. They broadened the definition to say it’s not the heir that is the issue but the money. Once you have

identified the money and shown that it was exempt, that exemption is retained.”

“Our message for survivors and their families is that our government is encouraging people to take advantage of this law. It’s not something to mistrust,” Mr. Lissner said. “The government is making an amazing effort, a gesture.” It is, he said, an apology for what was not done to save Jewish lives during the war, a “way to say we’re sorry and have you age with more dignity.”