

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award upon Request for Reconsideration

to the Claimant [REDACTED]

in re Account of Mordeka Gomolinsky

Claim Number: 707582/HS; 707989/HS¹
Appeal Number: 1024

Award Amount: 162,500.00 Swiss Francs

This Certified Award upon Request for Reconsideration is based upon the claim of [REDACTED] (the “Claimant”) to the unpublished account of Mordeka Gomolinsky (the “Account Owner”) at the Bern branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Procedural History

In 1999 the Claimant submitted two Initial Questionnaires (“IQs”), asserting his entitlement to an account held by Marcel Gomolin (Mordeka Gomolinsky).

In two separate decisions approved by the Court on 4 December 2006 and 31 January 2007, the CRT treated the Claimant’s claims to the accounts of Marcel Gomolin, Robert Gomolin, and Kajla Gomolin. In those decisions, the Claimant was informed that the CRT was unable to locate any accounts belonging to the above-named individuals in the Account History Database (“AHD”) prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

¹ [REDACTED] (the “Claimant”) did not submit a Claim Form to the CRT. However, in 1999 he submitted two Initial Questionnaires (“IQs”), numbered FRE-0014069 and FRE-0025140, to the Court in the United States. Although these IQs were not Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQs were forwarded to the CRT and have been assigned claim numbers 707582 and 707989, respectively.

In a letter dated 27 February 2007, the Claimant requested reconsideration of the 31 January 2007 decision. The Claimant asked the CRT to consider the fact that Marcel Gomolin was previously known as Mordeka Gomolinsky. In support of the Request for Reconsideration, the Claimant submitted records pertaining to a Swiss bank account held by Mordeka Gomolinsky, which are further described below.

Information Provided by the Claimant

The Claimant submitted two IQs identifying the Account Owner as his father, Marcel (Mordeka) Gomolin (Gomolinski, Gomolinsky), who was born on 10 July 1908 in Piotrków, Poland, and was married to [REDACTED], who was born in 1909 in Książ Wielki, Poland. The Claimant stated that his parents were married on 11 January 1934 in Paris, France. The Claimant explained that his father, who was Jewish, was a tailor and that in 1934 he moved from Poland to Paris, where he and his wife resided at Rue Richard Lenoir 83 and at Boulevard Bonne Nouvelle 25. The Claimant stated that his family fled from Nazi-occupied Paris in 1942 to Evian, France, where they joined the partisans (*maquis*). Further, according to the information provided by the Claimant, the family fled to Switzerland in 1943, where they were then interned in Lausanne, Switzerland.

The Claimant explained that upon their entry into Switzerland, his parents were arrested and all of his father's valuables and money were confiscated and later deposited in the Bank.² The Claimant stated that he was sent by the Red Cross to live with a family in Nyon, Switzerland, and that his mother and her other child were sent to a refugee camp in Moudon, Switzerland. The Claimant stated that his father was sent to a labor camp in Sierre, Switzerland, where he worked splitting stones and moving earth with a production quota of two cubic meters per day, and that he remained at the camp until the end of the Second World War.

The Claimant explained that his family returned to France after the Second World War, and that his father's belongings that were deposited in the Bank were never returned. The Claimant stated that in 1956 his father changed his name from Mordeka Gomolinski (Gomolinsky) to Marcel Gomolin. According to the Claimant, his father died on 20 February 1995 in Paris.

In support of his claim, the Claimant submitted his own birth certificate, issued by the deputy mayor of the 12th *arrondissement* in Paris, indicating that [REDACTED] was born on 13 May 1935 in Paris, that Mordeka Gomolinski was his father, and containing a notation indicating that the family's name was changed to Gomolin.

² The CRT notes that pursuant to the Swiss Federal Council's Decree of 12 March 1943, the assets of all refugees who had entered Switzerland after 1 August 1942 were confiscated by the Swiss Federal authorities and held for them in accounts at the Bank, which accounts were managed by the Swiss police authorities. See Independent Commission of Experts, *Switzerland - Second World War, Switzerland, National Socialism, and the Second World War: Final Report* (2002), pp. 158-59 (hereinafter the "Bergier Final Report"). See also *In re Accounts of Emma Kuckel-Pipersberg*, *In re Account of Franco di Alberto Levi* (approved by the Court on 23 June 2006), and *In re Accounts of Gerson Goldschmidt and Cecile Goldschmidt* (approved by the Court on 23 June 2006) (hereinafter referred to collectively as the "Kuckel-Pipersberg, Levi, and Goldschmidt Awards").

In support of the Request for Reconsideration, the Claimant submitted the following additional documents: (1) his parents' marriage certificate, indicating that Mordeka Gomolinski and [REDACTED] were married on 11 January 1934 in Paris; (2) a certificate issued by the deputy mayor of the 11th *arrondissement* in Paris, indicating that on 23 October 1956 Mordeka Gomolinski changed his name to Marcel Gomolin; (4) a transfer certificate (*Procès verbal de remise et accusé de réception*) issued on 21 March 1944, indicating that Mordeka Gomolinsky surrendered itemized foreign currency, gold coins, and jewelry to the Swiss police, which were deposited with the Bank, acting as public trustee of refugee assets; and (5) a deposit receipt for itemized foreign currency, gold coins, and jewelry deposited into an account in Mordeka Gomolinsky's name, issued by the Bank on 23 March 1944. The documents pertaining to an account at the Bank are further described below.

The Claimant indicated that he was born on 23 May 1935 in Paris.

Information Available in the Bank's Records

The CRT notes that the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of ICEP did not report an account belonging to Mordeka Gomolinsky.

The documents evidencing an account belonging to the Account Owner were submitted to the CRT by the Claimant and consist of a transfer certificate issued by the Swiss police on 21 March 1944 and a deposit receipt issued by the Bank on 23 March 1944. According to these documents, the Account Owner was Mordeka Gomolinsky, a Polish national born on 10 July 1908. These documents further indicate that on 21 March 1944, after the Account Owner entered Switzerland as a refugee, the following jewelry, foreign currency, and gold coins were taken from the Account Owner by the Swiss Police Office for the 10th Territorial District and deposited into a trustee custody account (*Dépôt fiduciaire*),³ numbered Fl. 2008, in the Account Owner's name at the Bank: a watch apparently made of platinum, a ring, and a brooch, all set with "brilliant"; 40,000.00 French Francs ("FF"); 400.00 United States Dollars ("US \$"); two US \$20.00 gold coins; and 50.00 British Pound Sterling ("£"). With respect to the jewelry listed above, the documents submitted by the Claimant indicate that the Swiss police valued them at approximately 2,500.00 Swiss Francs ("SF"), but that the Bank expressly refrained from estimating their value.⁴

³ The CRT notes that "Dépôt" may refer specifically to a custody account or generally to any deposit. The CRT further notes that under the management scheme for refugee accounts, cash was deposited in current accounts and deposit facilities were created for valuables. See Bergier Final Report, at 159. See *also* the Kuckel-Pipersberg, Levi, and Goldschmidt Awards. Therefore, the CRT concludes that the Account Owner's account, "Dépôt No. Fl. 2008," was a custody account. With respect to the foreign currency and gold coins confiscated from the Account Owner, the records submitted by the Claimant indicate that it was deposited into "Dépôt No. Fl. 2008" along with the listed jewelry. Accordingly, in this case, the CRT concludes that the Account Owner held one custody account.

⁴ The list of assets deposited into the Account Owner's account, issued by the Bank on 23 March 1944, contains the following notation: "*Sans aucune garantie en ce qui concerne la qualité indiquée des objets de valeur*" ("Without any guarantee concerning the quality of the listed valuables").

There is no information in the records the Claimant submitted that the Account Owner or his heirs closed the account and received the proceeds.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name matches the name of the Account Owner specified on the document evidencing the account. The CRT notes that the documents evidencing the existence of the account were submitted by the Claimant himself.

In support of his claim and Request for Reconsideration, the Claimant submitted copies of documents, including his parents' marriage certificate, his own birth certificate, and a certificate issued by the deputy mayor of the 11th *arrondissement* in Paris regarding his father's name change, providing independent verification that the person who is claimed to be the Account Owner had the same name, citizenship and the date of birth specified on the documents evidencing the account as the name, citizenship and the date of birth of the Account Owner.

The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, that he fled with his family from Nazi-occupied Paris to Evian, and from there to Switzerland, where his family was held at various locations, and that he was sent to a labor camp.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and his own birth certificate, indicating that the Account Owner was the Claimant's father. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the owners of refugee accounts generally could not freely dispose of their accounts;⁵ that a significant number of refugee accounts could not be retrieved by account owners after the Second World War;⁶ that complaints of refugees in Switzerland mostly concerned the fact that

⁵ *Unabhängige Expertenkommission Schweiz - Zweiter Weltkrieg: Die Schweiz und die Flüchtlinge zur Zeit des Nationalsozialismus*, UEK Band 17, Chronos, Zürich, 2001, pp. 295, 315 (hereinafter the "Bergier Refugee Report"). See also the Kuckel-Pipersberg, Levi, and Goldschmidt Awards.

⁶ Bergier Refugee Report, pp. 309, 312 ff. See also the Kuckel-Pipersberg, Levi, and Goldschmidt Awards.

their deposited assets were not returned;⁷ that there is no contemporaneous record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; that the Account Owner would not have been able to obtain information about his account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumption (h), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his father, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account. The documents evidencing the account indicate that, as of 21 March 1944, it contained: jewelry valued by the Swiss police at approximately SF 2,500.00; FF 40,000.00, which was equivalent to SF 2,760.00;⁸ US \$400.00, which was equivalent to SF 1,716.00; two US \$20.00 gold coins, which were worth SF 316.00;⁹ and £50.00, which was equivalent to SF 865.50. Thus, according to the documents the Claimant submitted, the total value of the account, including the estimated value of the jewelry, was approximately SF 8,157.50.

According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00.¹⁰ The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 162,500.00.

⁷ Jung, Joseph (ed.), *Zwischen Bundeshaus und Paradeplatz - Die Banken der Credit Suisse Group im Zweiten Weltkrieg* (Between Parliament and Paradeplatz: The Banks of the Credit Suisse Group in the Second World War), NZZ Verlag, Zürich, 2001, p. 704. See also the Kuckel-Pipersberg, Levi, and Goldschmidt Awards.

⁸ The CRT uses official exchange rates when making currency conversions.

⁹ The CRT endeavors to obtain the market quotes as near to the disposition date of the currency in gold as possible. The market quote for this currency is derived from the 1944 edition of the *Kursliste für die Steuereinschätzung überreicht von der Schweizerischen Bankgesellschaft*.

¹⁰ The CRT notes that, in an Order dated 16 June 2010, the Court amended Article 29 of the Rules Governing the Claims Resolution Process (the "Rules"), which establishes value presumptions for accounts with unknown or low values. Full information regarding the methodology and procedure used to determine the revised Article 29 presumptive values is available at www.swissbankclaims.com. The CRT notes that any adjustment for accounts awarded at the previous presumptive value amounts, such as the custody account described herein, will be addressed to the Claimant separately.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
17 December 2010