

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED]

in re Accounts of Richard Kantor

Claim Numbers: 206019/AH¹

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Richard Kantor (the “Account Owner”) at the [REDACTED].

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.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his father’s first cousin, Richard Kantor, who had a brother named [REDACTED], and was the son of [REDACTED], the Claimant’s paternal grandfather’s brother. The Claimant stated that [REDACTED] and [REDACTED] [REDACTED]’s parents were [REDACTED] and [REDACTED], née [REDACTED]. The Claimant further stated that his father’s uncle and cousins, who were Jewish, owned a family banking company by the name of *Bankhaus Richard Kantor* or *Bankhaus [REDACTED] und Soehne*. The Claimant further stated that his father and mother used to deposit money in Swiss banks either directly or through his father’s cousins, who opened the account in their names and/or in his father’s name, or in their bank’s name. The Claimant also stated that in 1938 his mother withdrew all proceeds of the family’s account in Austria, and gave them to her husband’s uncle and cousins, to be deposited by them in a foreign country. The Claimant provided a copy of a power of attorney form, signed by his father on 31 July 1938, giving his mother full power of attorney regarding the family’s assets. The Claimant also submitted a copy of a Prague police registration form, dated 17 May 1945, indicating his family’s return to Czechoslovakia from Theresienstadt, which also stated that the Account Owner’s brother had perished in Dachau. The Claimant further submitted a copy of a registration with Czech National Bank which demonstrates that upon the family’s arrival to

¹ The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the claim number 206018. The CRT will treat the claim to this account in a separate decision. The CRT will also treat the claim to the account of [REDACTED] in a separate decision.

Czechoslovakia, on 1 October 1946, his mother declared that she had deposited funds in the name of Firma Richard Kantor. The Claimant stated that although his mother and father were living in Czechoslovakia after the Second World War, they were unable to locate their family members, they were not able to locate or retrieve their assets, and it was not until 1951 that they discovered [REDACTED] had perished in Dachau. The Claimant provided a letter written by his mother, dated 16 February 1965, to the Swiss Agency in Bern for the tracing of disappeared foreigners' assets in Switzerland. In the letter the mother requested the agency to trace any assets belonging to the either the *Bankhaus* [REDACTED] *und Soehne*, at Wipplingerstrasse 23, Vienna; Dr. [REDACTED]; or Richard Kantor and [REDACTED] from Schimanistrasse, XIX Dabling, Vienna. The Claimant indicated that he was born on 27 February 1925 in Vienna and is representing his sister, [REDACTED], née [REDACTED], who was born on 5 January 1924 in Vienna.

Information Available in the Bank Record

The bank record consists of an account opening card. According to this record, the Account Owner was Richard Kantor from Vienna, Austria. The bank record indicates that the Account Owner held a custody account and a demand deposit account that were closed unknown by whom on 21 June 1938. The amounts in these accounts on the date of their closures are unknown.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Richard Kantor, numbered 34376, dated 14 July 1938. The records indicate that Richard Kantor was a banker who was born on 5 January 1891, resided at Sternwartestrasse 52 in Vienna XVIII, and owned, together with [REDACTED], banking firms named *Bankgeschäft* [REDACTED] at Wipplingerstrasse 21, Vienna I and *Bankhaus* [REDACTED] at Wipplingerstrasse 23, Vienna I. The records further indicate that the owners' rights in the bank were abolished and it was liquidated by the Nazi authorities, and the proceeds were confiscated. The records further indicate that in addition, Richard Kantor owned real estate and other assets valued at 214,159.00 Reichsmarks (1938 value) and was requested to pay a "flight tax" (*Reichsfluchtsteuer*) in the value of 53,539.00 Reichsmarks (1938 value). These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His name matches the published names of the Account Owner. The Claimant also provided a family tree identifying Richard Kantor as his father's cousin, and provided Richard Kantor's city of residence, which matches unpublished information about the Account Owner contained in the Bank record. The Claimant

also submitted a letter written by his mother on 16 February 1965, to the Swiss Agency in Bern for the tracing of disappeared foreigners' assets in Switzerland, in which the Claimant's mother identified the names of [REDACTED], Richard Kantor and [REDACTED], as her husband's uncle and cousins, provided their business addresses which matches information in the Austrian census records, and identified her husband's uncle and cousins as possible owners of accounts in Swiss banks. The identification of Richard Kantor as a depositor in a Swiss bank is supported by the Austrian State Archives records, which provides information regarding Richard and [REDACTED] Kantor, their bank and the address thereof. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Richard Kantor, born in 16 August 1887 in Vienna, Austria, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. The CRT also notes that there are no other claimants to the account.

Status of the Account Owner as Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant indicated that the Account Owner was Jewish, and that during the Second World War, he and all of the Claimant's relatives were sent to concentration camps. All were killed by the Nazis, except for the Claimant's parents. The Claimant submitted a copy of a Prague police registration form, dated 17 May 1945, indicating his family's return to Czechoslovakia from Theresienstadt, which also indicated that the Account Owner's brother had perished in Dachau. As noted above, a person name Richard Kantor was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that his father was the first cousin of the Account Owner, by submitting detailed information and documents including two family trees; his birth certificates; his and his parents' marriage certificates; the death certificate, and will of his father; a copy of the Czech National Bank registration, dated 1 October 1946, regarding the Account Owner's deposited funds; and the Claimant's mother's application to the Swiss Agency in Bern for the tracing of disappeared foreigners' assets, dated 16 February 1965, where the Account Owner is identified as her husband's cousin.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and the application of Presumptions (a), (e), (h), (i) and (j) as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules")(see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs. 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's cousin, and that relationship justifies an Award. Finally, the CRT 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

In this case, the Account Owner held one custody account and one demand deposit account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the present value of the account being awarded. Based on the investigation carried out pursuant to the instructions of the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs. The present value of these amounts is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 181,680.00 Swiss Francs.

Division of the Award

According to Article 23(1) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. In this case, the Claimant is representing his sister, [REDACTED]. Therefore, both the Claimant and his sister are entitled to one-half of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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 the Award

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

Claims Resolution Tribunal
April 4, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); see also Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; see also ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, see Albers v. Credit Suisse, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, see Bergier Final Report at 450 -51, and possibly Romania as well, see Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. See Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." Id. at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . .", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. See In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).