

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]
and [REDACTED 3]
represented by Stephen Harnik

in re Accounts of Karl Kautsky, Luise Kautsky, Benedikt Kautsky and Charlotte Kautsky

Claim Numbers: 222476/AX; 222477/AX; 222478/AX

Award Amount: 405,250.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED] (the “Claimant”) to the published accounts of Karl Kautsky, Luise Kautsky, and Benedikt Kautsky. This Award is to the published accounts of Karl Kautsky (“Account Owner Karl Kautsky”), Luise Kautsky (“Account Owner Luise Kautsky”), and Benedikt Kautsky (“Account Owner Benedikt Kautsky”), and the unpublished account of Charlotte Kautsky (“Account Owner Charlotte Kautsky”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).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.

Information Provided by the Claimant

The Claimant submitted three Claim Forms identifying the Account Owners as her paternal grandparents, her father, and her paternal aunt. The Claimant stated that her grandfather, Karl Kautsky, was born on 16 October 1854, in Prague, Czechoslovakia, and that her grandmother, Luise Kautsky, née Ronsperger, was born on 11 August 1864 in Vienna, Austria. According to the Claimant, the couple had three sons: [REDACTED], who was born on 14 February 1891, in Stuttgart, Germany; [REDACTED], who was born on 13 January 1892 in Stuttgart, and who was married to Charlotte Kautsky; and the Claimant’s father, Benedikt Kautsky, who was born on 1 November 1894 in Stuttgart. The Claimant indicated that her grandfather was a politician, and that her grandmother was a translator. The Claimant further indicated that her grandparents, who were Jewish, resided at Haizingergasse 9 in Vienna, until they fled to Amsterdam, the Netherlands, in 1938. According to the Claimant, her grandfather died in Amsterdam on 17 October 1938, and her grandmother was deported to Auschwitz, where she perished in December 1944. The Claimant further stated that her father, who was Jewish, was the secretary of an

employees' chamber and used the title of doctor. The Claimant further indicated that her father resided at Grinzingerstrasse 99 in Vienna, and subsequently at Haizingergasse 47, until he was deported to Dachau in 1938. The Claimant indicated that her father was later deported to Buchenwald and Auschwitz, where he was interned until his liberation in 1945. The Claimant stated that her father died on 1 April 1960 in Vienna. In a telephone conversation with the CRT on 21 May 2004, the Claimant stated that her aunt, Charlotte Kautsky, who was Jewish, lived in Vienna prior to the Nazi occupation of Austria (the "*Anschluss*") in March 1938. The Claimant indicated that her aunt fled Austria to the United States shortly after Austria's annexation by the Nazis, and that her aunt died in California on a date unknown to the Claimant. The Claimant indicated that Felix Kautsky died on 3 February 1953 in Glendale, California, United States, and that Karl Kautsky, Jr., died on 15 June 1978 in the United States. In support of her claim, the Claimant submitted the Austrian State Archive records for Karl Kautsky and Benedikt Kautsky. The Claimant indicated that she was born on 22 February 1925 in Vienna. The Claimant is representing her cousins, Ilse Calabi, née Kautsky, the daughter of Karl Kautsky Jr. and Charlotte Kautsky, who was born on 17 February 1922 in Vienna, and [REDACTED 3], the son of [REDACTED], who was born on 5 March 1922 in Vienna.

Information Available in the Bank's Records

Account Owners Karl Kautsky, Luise Kautsky and Benedikt Kautsky

The Bank's records consist of printouts from the Bank's database, an account opening card, and correspondence between the Bank and the Account Owners. According to these records, Account Owners Karl Kautsky, *Frau* (Mrs.) Luise Kautsky (a Czechoslovak national), and Dr. Benedikt Kautsky resided at Haizingergasse 47 in Vienna, Austria and jointly held four accounts: one custody account and three demand deposit accounts.¹ The Bank's records indicate that the accounts were opened on 16 May 1924. According to the Bank's records, the custody account contained *Swiss Confederation* gold bonds, expiring in 1940 and worth 4,517.18 United States Dollars (US\$) as of 28 May 1924. These records indicate that on 19 March 1938, Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky requested the Bank not to send correspondence to Vienna.

The Bank's records further indicate that the custody account and one demand deposit account was closed on 25 March 1938 and that a second demand deposit account was closed on 28 March 1938. The value of these accounts on the dates of their closure is unknown. There is no evidence in the Bank's records that Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky or their heirs closed the accounts and received the proceeds themselves.

As for the remaining demand deposit account, the Bank's records do not show when this account was closed, or to whom it was paid, nor do these records indicate the value of this account. The

¹ The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") determined that there were two accounts, one custody account and one account of unknown type. However, after reviewing the Bank's records, the CRT has determined that the Account Owners Karl Kautsky, Luise Kautsky and Benedikt Kautsky held one custody account and three demand deposit accounts.

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 the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) did not report this account to the CRT. Thus, there is no information before the CRT as to the disposition of this account.

Account Owner Charlotte Kautsky

The Bank’s records consist of a customer card, a consent form signed by the Account Owner’s husband, and an account opening card. According to these records, Account Owner Charlotte Kautsky was *Frau* (Mrs.) Charlotte Kautsky, née Kobelt, who resided at Fredrich Schmidtplatz 5 in Vienna. The Bank’s records indicate that her husband was Karl Kautsky, and that she had her correspondence forwarded to *Frau* (Mrs.) Luise Kautsky, who resided at Apollolaan 28 in Amsterdam, and who previously resided at Haizingergasse 47 in Vienna. The Bank’s records indicate that Account Owner Charlotte Kautsky wrote several letters to the Bank, dated 19 March 1938, 2 April 1938, and 30 January 1939, requesting it not to send correspondence to Vienna. The Bank’s records indicate that Charlotte Kautsky held a custody account, numbered 38105, which was opened on 2 October 1934 and closed on 26 April 1939. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank’s records that Account Owner Charlotte Kautsky or her heirs closed the account and received the proceeds herself.

Information Available from the Austrian State Archive

Karl Kautsky

By decree on 26 April 1938, the Nazi regime required Jews residing in or nationals of the Reich, including Austria, who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Karl Kautsky. According to these records, which are dated 25 July 1938, Karl Kautsky was born on 16 October 1854, and was married to Luise Kautsky, née Ronsperger. According to these records, Karl Kautsky’s sole assets were various foreign bonds, which could not be traded at that time, and had no market value. These records indicate that Karl Kautsky resided in Amsterdam prior to 15 July 1938. The records make no mention of assets held in a Swiss bank account.

Benedikt Kautsky

In the records of the Austrian State Archive (Archive of the Republic, Finance), there are also documents concerning the assets of Benedikt Kautsky. According to these records, which are dated 4 July 1938, Dr. Benedikt Kautsky was born on 1 November 1894, and was married to [REDACTED], née [REDACTED]. According to these records, Benedikt Kautsky owned an insurance policy and a bank account at the *Länderbank* in Vienna. These records indicate that Benedikt Kautsky was arrested by the Nazis in May 1938 and held at Dachau concentration camp. The records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Joinder

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the three claims of the Claimant in one proceeding.

Identification of the Account Owners

Account Owners Karl Kautsky, Luise Kautsky and Benedikt Kautsky

The Claimant has plausibly identified Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky. The Claimant's grandparents' names and city of residence match the published names and city of residence of Account Owner Karl Kautsky and Account Owner Luise Kautsky. The Claimant's father's name matches the published name of Account Owner Benedikt Kautsky. The Claimant identified her father's city of residence as Vienna, which matches unpublished information contained in the Bank's records.² The Claimant indicated that her relatives lived at Haizingergasse 47 in Vienna, and that her father bore the title of doctor, which match unpublished information about the Account Owners contained in the Bank's records. Moreover, the Claimant identified Karl Kautsky, Luise Kautsky, and Benedikt Kautsky as being related, despite the fact that Account Holders Karl Kautsky, Luise Kautsky, and Benedikt Kautsky were published separately on the list of accounts determined by Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). The CRT notes that there are no other claims to these accounts.

Account Owner Charlotte Kautsky

The Claimant has plausibly identified Account Owner Charlotte Kautsky. The Claimant's aunt's name and city of residence match the unpublished name and city of residence of Account Owner Charlotte Kautsky. The Claimant identified [REDACTED] as Charlotte Kautsky's husband, which matches unpublished information about Account Owner Charlotte Kautsky contained in the Bank's records. Furthermore, the Claimant identified that Luise Kautsky, who fled to the Netherlands, and who previously resided at Haizingergasse 47, was her aunt's mother-in-law. This information is consistent with the unpublished name and residences of the person to whom the Bank forwarded Account Owner Charlotte Kautsky's correspondence. The CRT notes that there are no other claims to this account.

² The CRT notes that the city of residence of Account Owner Benedikt Kautsky was incorrectly published on the list of accounts determined by Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). The Bank's records indicate that Account Owner Benedikt Kautsky's city of residence was Vienna.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they resided in Nazi-controlled Austria. The Claimant further indicated that her grandmother perished in Auschwitz in 1944, that her father was deported to Dachau, Buchenwald, and Auschwitz, and that her aunt fled Austria after the Nazi occupation. The CRT notes that Account Owner Karl Kautsky died in Amsterdam, the Netherlands in 1938 after fleeing Nazi-controlled Austria.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting specific information, demonstrating that the Account Owners were the Claimant's grandparents, father, and aunt. The CRT notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records. The CRT further notes that the Claimant submitted the Austrian State Archive Records of Karl Kautsky and Benedikt Kautsky, documents which most likely only a family member would possess, which supports the plausibility that the Claimant is related to the Account Owners as she has asserted in her Claim Form.

The Issue of Who Received the Proceeds

With respect to the custody account and two demand deposit accounts held by Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky, given that they were closed after the *Anschluss* on 25 March 1938 and 28 March 1938; that the Nazi-dominated regime had, at the time of the *Anschluss*, immediately begun a major effort to confiscate the assets of the Jewish population, including Swiss bank accounts; that Account Owner Karl Kautsky fled Nazi-controlled Austria and Account Owner Karl Kautsky died in 1938; that Account Owner Luise Kautsky perished in Auschwitz; that Account Owner Benedikt Kautsky was interned in several concentration camps; that there is no record of the payment of Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky's accounts to them, nor any record of a date of closure of one of Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky's demand deposit accounts; that Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky and their heirs would not have been able to obtain information about their accounts 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 Presumptions (a)(ii), (h), and (j), 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 Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky, or their heirs.

With respect to Account Owner Charlotte Kautsky's account, the CRT notes that the Bank's records indicate that the account was closed on 26 April 1939, at which time, according to information provided by the Claimant, Account Owner Charlotte Kautsky was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the account was closed, that Account Owner Charlotte Kautsky fled her country of origin due to

Nazi persecution, that Account Owner Charlotte Kautsky had relatives remaining in her country of origin and that she may therefore have yielded to Nazi pressure to turn over her account to ensure their safety, that Account Owner Charlotte Kautsky and her heirs would not have been able to obtain information about the account after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 Presumptions (h) and (j), 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 Account Owner Charlotte Kautsky or her 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 Owners were her grandparents, her father, and her aunt, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky held one custody account and three demand deposit accounts, and Account Owner Charlotte Kautsky held one custody account. The CRT notes that the custody account held by Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky contained *Swiss Confederation* gold bonds, expiring in 1940 and worth US\$ 4,517.18 as of 28 May 1924, but finds that this figure cannot be relied upon to determine the value of the account because the account was closed in 1938, almost 14 years after the deposit of the gold bonds, during which period the value of the account may have fluctuated. The CRT further notes that Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky could have accessed the account freely during this period. Consequently, the CRT is treating this account as an account of unknown value. 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 ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs (SF), and the average value of a demand deposit account was SF 2,140.00. Thus, the total 1945 average of two custody accounts and three demand deposit accounts is SF 32,420.00. The current value of this amount is calculated by multiplying it by a factor of 12.5 in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 405,250.00.

Division of the Award

According to Article 25(1) of the Rules, if an account is a Joint Account and Claimants related to

each of the Account Owners have submitted claims to the Accounts, as is the case here, it shall be presumed that each Account Owner was the owner of an equal share of the Account. In the present case, it shall be presumed that Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky each owned one-third of each account.

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the Award shall be in favour of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. The Claimant is representing his two cousins, [REDACTED 2] and [REDACTED 3].

With respect to Account Owner Karl Kautsky and Account Owner Luise Kautsky's shares of the joint account, the Claimant, and her two cousins, as descendants of Account Owner Karl Kautsky and Account Owner Luise Katsky, are equally entitled to Account Owner Karl Kautsky and Account Owner Luise Katsky's shares of the account. With respect to Account Owner Benedikt Kautsky's share of the joint account, the Claimant, as the only child of Account Owner Benedikt Kautsky, has a better entitlement to Account Owner Benedikt Kautsky's share in the joint account than do the Claimant's cousins. With respect to Account Owner Charlotte Kautsky's account, [REDACTED 2], as the daughter of Account Owner Charlotte Kautsky, has a better entitlement to Account Owner Charlotte Kautsky's account than do the Claimant and [REDACTED 3].

Accordingly, the Claimant is entitled to five-ninths of the accounts held by Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky, or SF 134,861.11; and [REDACTED 2] and [REDACTED 3] are each entitled to two-ninths of the accounts held by Account Owners Karl Kautsky, Luise Kautsky, and Benedikt Kautsky, or SF 53,944.44 each. In addition, [REDACTED 2] is solely entitled to the account of Account Owner Charlotte Kautsky, or SF 162,500.00. Thus, [REDACTED 2] is entitled to a total amount of SF 216,444.44.

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 her claims to determine whether there are additional Swiss bank accounts to which she 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