

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED]

in re Account of Armin Kinsker

Claim Number: 212049/AH

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Armin Kinsker (the “Account Owner”) at the Geneva 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 a Claim Form identifying the Account Owner as her father, Armin Kinsker, who was born on 28 October 1888 in Budapest, Hungary, was married to [REDACTED], née [REDACTED], in 1919, and had two children: the Claimant and the Claimant’s half-brother, [REDACTED], born on 27 July 1912, in Hungary, to Armin Kinsker and his first wife, [REDACTED]. The Claimant stated her father was a senior engineer who worked in service of the King of Hungary, and resided at Baross G. ut. 5 in Esztergom, Hungary from 1927 to 1938, at Rákosi J. utca 7 in Debrecen, Hungary, from 1938 to 1939, and again at Baross G. ut. 5 in Esztergom from 1939 to 1944. In a telephone conversation with the CRT on 2 December 2002, the Claimant’s representative stated that Armin Kinsker, as a senior engineer, frequently traveled on business to France, Germany, and Switzerland. In a letter sent to the CRT on 11 May 2001, the Claimant’s representative indicated that the Claimant’s father had connections in Switzerland, and that the Claimant believed that her father owned a Swiss bank account, although her claim to the Swiss Banking Ombudsman for accounts held by her father was denied. The Claimant stated that in 1939, her father, who was Jewish, lost his job due to his religion. The Claimant further stated that on 4 June 1944, her parents were deported to Auschwitz, where they perished that same year. The Claimant further indicated that her brother was deported to a labor camp, where he was killed in on 8 October 1944. The Claimant submitted various documents including her birth certificate; a translation of her birth registration records issued by the Hungarian National Office for Translations stating her father’s name, profession, and Jewish religion; her and her parents’ marriage certificates, indicating her father’s

name; and her brother's death records, indicating he perished in October 1944. The Claimant indicated that she was born on 30 September 1927 in Esztergom.

The Claimant previously submitted a claim to the Swiss Banking Ombudsman, numbered 5347, asserting her entitlement to a Swiss bank account owned by Armin Kinsker.

Information Available in the Bank Records

The bank records consist of several balance sheets listing suspended accounts and printouts from the Bank's database. According to these records, the Account Owner was Armin Kinsker. On one of the bank records the letter "F" appears as an indication of the Account Owner's domicile. 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") concluded that this abbreviation signifies that the Account Owner's country of residence was France, but also concluded that the Account Owner was of unknown nationality. The bank records indicate that the Account Owner held an account of an unknown account type, which was opened at an unknown date and was dormant for at least ten years as of 1939. The account was transferred to a suspense account on 12 April 1949. The bank records indicate that the amount on the date of transfer was 287.00 Swiss Francs and that the last known existence of the account was in 1950. The bank records do not show if or when the account at issue was closed, or to whom it was paid. The ICEP auditors did not find this in the Bank's system of open accounts, and they therefore presumed that it was closed. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her father's name matches the published name of the Account Owner. The CRT notes that the Claimant's father resided in Hungary, whereas the Account Owner is indicated to have resided in France. However, the CRT concludes that the Claimant has identified her father's business connections and travels to France, and it is therefore plausible that he used an additional business address in France as a device to conceal his identity. In support of her claim, the Claimant submitted various documents, including her birth certificate and a translation of her birth registration records issued by the Hungarian National Office for Translations evidencing her father's name, profession, and Jewish religion. She also submitted her parents' marriage certificate, indicating her father's name, and her brother's death records, indicating he perished in October 1944. Finally, the CRT notes that there were no other claims submitted to this account.

The CRT notes that the Claimant filed a claim to the Swiss Banking Ombudsman, asserting her entitlement to a Swiss bank account owned by Armin Kinsker, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of

Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

Moreover, the CRT notes that a database containing the names of Victims of Nazi Persecution includes person named Armin Kinsker, and indicates that he was born on 28 October 1888 in Esztergom, Hungary, was married, and died on 31 December 1944, all of which match the information provided by the Claimant. This database was compiled from various sources, including the Yad Vashem Memorial of Israel.

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 and his wife perished in Auschwitz in 1944, and that their son was killed in a slave labor camp the same year. The information provided by the Claimant is supported by the CRT database of victims of Nazi persecution, as described above.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents, including her birth certificate, demonstrating that the Account Owner was her father. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the death of the Account Owner, his wife and his son during the Holocaust, the indication in the Bank records that the accounts were still open after the War, and the application of Presumptions (h), and (j) contained in Appendix A,¹ 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 Governing the Claims Resolution Process (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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her father, 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 account.

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Amount of the Award

The Bank records indicate that the value of the account of the unknown account type, as of 12 April 1949, was 287.00 Swiss Francs. According to Article 35 of the Rules, if the amount in an unknown account type in 1945 was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive payment of 100% of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on her claim 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

January 28, 2003

APPENDIX A

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).