

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED], [REDACTED], [REDACTED], and
[REDACTED], represented by [REDACTED]¹

in re Account of Claere Kirstein

Claim Number: 213662/ES²

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Claere Kirstein (the “Account Owner”) at 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 paternal aunt, Claere³ Therese Kirstein, née Stein, who was born on 18 May 1885 in Leipzig, Germany, and was married to [REDACTED] in 1903 in Leipzig. The Claimant stated that her aunt had two daughters: [REDACTED], née [REDACTED], who was born on 15 August 1905 in Leipzig and [REDACTED], née [REDACTED], who was born on 4 May 1907, also in Leipzig. The Claimant indicated that her paternal aunt, who was Jewish, was a publisher in Leipzig. The Claimant stated that her aunt committed suicide on 29 June 1939, after the Gestapo confiscated her passport and told her she was to be deported. The Claimant further stated that [REDACTED] died on 14 February 1934 in Leipzig; that [REDACTED], née [REDACTED] died on 8 October 1981 in Zurich, Switzerland; and that [REDACTED], née [REDACTED] died in 1957 in Fairport, East Rochester, New York.

¹ The CRT notes that the Claimant sought to represent [REDACTED], who is instead being represented by [REDACTED].

² The Claimant submitted two additional claims to the accounts of [REDACTED] and [REDACTED], which are registered under the Claim Numbers 213663 and 213664. The CRT will treat the claims to these accounts in separate decisions.

³ The CRT notes that the Claimant also identified her aunt as Clara or Claire.

In support of her claim, the Claimant submitted numerous documents, including Clara Sara Kirstein, née Stein's, inheritance certificate, which bequeaths her assets to her two daughters in equal shares; a letter, dated 28 June 1939, in which Clara Kirstein appoints [REDACTED] of Berlin, Germany as the executor of her estate; the will of Clara Kirstein's husband, [REDACTED], which bequeaths his assets to his two daughters in equal shares; [REDACTED], née [REDACTED]'s, inheritance certificate, which bequeaths all of her assets to her son, [REDACTED]; an Assignment of Interest in Estate pertaining to the estate of [REDACTED], which indicates that the Claimant and those she represents are the beneficiaries, in equal shares, of [REDACTED]'s estate; [REDACTED], née [REDACTED]'s, inheritance certificate, which bequeaths her assets to her husband, [REDACTED], and to her adopted son, [REDACTED], in equal shares; [REDACTED]'s will, which bequeaths a certain amount of money to [REDACTED] and the rest of his assets to his adopted son [REDACTED]; [REDACTED]'s inheritance certificate, which bequeaths his assets in Germany to [REDACTED]; [REDACTED]'s will, dated 12 July 1980, which bequeaths all of his assets to [REDACTED]; and a decree of probate without citation from the Hall of Justice in the City of Rochester, New York, dated 10 October 1980, confirming the last will and testament of [REDACTED]. The Claimant also submitted a list of Claere Kirstein's securities, which were held in Commerzbank in Leipzig, Germany. In addition, the Claimant indicated there was a letter from [REDACTED], the brother of her uncle, to [REDACTED], an attorney, regarding a Swiss bank account.

The Claimant indicated that she was born on 8 August 1938 in New York. The Claimant is representing [REDACTED], née [REDACTED], her sister, who was born on 6 January 1940 in New York; [REDACTED], her cousin, who was born on 7 February 1918 in Germany; and the estate of [REDACTED], her cousin, who died in February 2003. In her Claim Form and in telephone conversations with the CRT, the Claimant identified [REDACTED] as the heir to the grandson of Claere Kirstein, [REDACTED]. [REDACTED] is represented by her attorney, [REDACTED].

Information Available in the Bank's Records

The Bank's records consist of correspondence between [REDACTED], a Jewish lawyer from Berlin, Germany and the Bank, as well as between [REDACTED] and the Bank. According to the Bank's records, the Account Owner was Cläre Kirstein, née Stein, who resided at Montbéstrasse 8 in Leipzig, Germany. According to a letter from [REDACTED], dated 15 August 1939, he was the executor of the will of *Frau* (Mrs.) Cläre Sara Kirstein, whose last place of residence was Montbéstrasse. 8 in Leipzig. In his letter, [REDACTED] asked the Bank whether any assets were deposited with the Bank under Mrs. Kirstein's name. In its reply, dated 17 August 1939, the Bank confirmed the receipt of [REDACTED]'s letter, and stated that the Account Owner did not hold any assets with the Bank.

In a letter received by the Bank on 10 October 1952, [REDACTED] stated that she and her sister were the daughters and sole heirs of Claere Kirstein, née Stein, who died in

1939. [REDACTED] stated that her mother had held a custody account with the Bank and listed securities which had been held in the account (the list of the securities is not legible). [REDACTED] requested that the Bank provide information about her mother's securities, as she wished either to claim them from the Bank or to claim compensation from Germany. The handwritten notes on the letter, written by a Bank employee, indicate that the Account Owner held a custody account, numbered L 27563. The notes further indicate that the Power of Attorney Holder to the account was T. Latte. Furthermore, the notes show that the account was closed in 1938 and that the assets were transferred to the *Golddiskontbank* in Berlin. In its reply to [REDACTED], the Bank stated that any information about assets held by deceased account owners could only be given to their heirs upon receipt of inheritance documents. The Bank further stated that according to Swiss law, it was only obligated to keep business records for ten years, and thus would not be able to provide the heirs of the Account Owner with the desired information. There is no evidence in the Bank's records that the Account Owner or her heirs closed the account and received its proceeds.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her aunt's name matches the published name of the Account Owner. The Claimant identified her aunt's maiden name, her street address, her date of death, her daughter's name, and the name of the executor of her aunt's will, all of which matches unpublished information about the Account Owner contained in the Bank's records. In support of her claim, the Claimant submitted documents, including a letter identifying [REDACTED] of Berlin as the executor of Clara Sara Kirstein's estate; Clara Sara Kirstein's inheritance certificate, which bequeaths her assets to her two daughters, [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED], in equal shares; a letter identifying [REDACTED] of Berlin as the executor of Clara Sara Kirstein's will; the will of Clara Sara Kirstein's husband, [REDACTED], which bequeaths his assets to his two daughters in equal shares; [REDACTED], née [REDACTED]'s, inheritance certificate, which bequeaths all of her assets to her son, [REDACTED]; an Assignment of Interest in Estate pertaining to the estate of [REDACTED], which indicates that the Claimant and those she represents are the beneficiaries, in equal shares, of [REDACTED]'s estate; [REDACTED]'s inheritance certificate, which bequeaths her assets to her husband, [REDACTED], and to her son, [REDACTED]; and [REDACTED]'s inheritance certificate, which bequeaths all of his assets to [REDACTED]. These documents provide independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same country recorded in the Bank's records as the name and country of residence of the Account Owner. The CRT notes that these documents also provide independent verification that the people who are claimed to be the executor of the Account Owner's estate and the Account Owner's daughter had the same names recorded in the Bank's records as the names of the executor of the Account Owner's estate and the Account Owner's daughter. Taking all of these factors into account, the CRT concludes that the

Claimant has plausibly identified the Account Owner.

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, and that she committed suicide on 29 June 1939 after the Gestapo confiscated her passport and told her she was to be deported.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information and documents, including Clara Sara Kirstein, née Stein's, certificate of inheritance, which bequeaths her assets to her two daughters in equal shares; a letter dated 28 June 1939, in which Clara Kirstein appointed [REDACTED] of Berlin as her executor; the will of Clara Kirstein's husband, [REDACTED], which bequeaths his assets to his two daughters in equal shares; [REDACTED], née [REDACTED]'s, certificate of inheritance, which bequeaths all of her assets to her son [REDACTED]; an Assignment of Interest in Estate pertaining to the estate of [REDACTED], which indicates that the Claimant and those she represents are the beneficiaries, in equal shares, of [REDACTED]'s estate; [REDACTED], née [REDACTED]'s, certificate of inheritance, which bequeaths her assets to her husband, [REDACTED], and to her adopted son, [REDACTED], in equal shares; the will of [REDACTED], which bequeaths a certain amount of money to [REDACTED] and the rest of his assets to his adopted son [REDACTED]; [REDACTED]'s certificate, which bequeaths his assets in Germany to [REDACTED]; the last will and testament of [REDACTED], dated 12 July 1980, which bequeaths all of his assets to [REDACTED]; and a decree of probate without citation from the Hall of Justice in the City of Rochester, New York, dated 10 October 1980, confirming the last will and testament of [REDACTED]. The CRT notes that the foregoing documents and information are of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant and those she represents are related to the Account Owner.

The Issue of Who Received the Proceeds

Given that the Account Owner was Jewish and lived in Nazi-occupied Germany until she committed suicide in 1939; that Nazi confiscatory legislation in Germany existed at that time; that the proceeds of the account were transferred to the *Golddiskontbank* in Berlin in 1938; that in 1939 the executor of the Account Owner's estate requested information from the Bank regarding the account and was told that the Account Owner did not hold any assets with the Bank; that in 1952 the Account Owner's daughter claimed the account and was told by the Bank that as it was only obligated to keep business records for ten years and that it would not be able to provide the Account Owner's heirs with any information; that there is no record of the payment of the Account Owner's account to her; and that the Account Owner's heirs were unable to obtain information about their

relative's account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their response to inquiries by account owners because of the Bank's concern regarding double liability;⁴ the CRT concludes that the account proceeds were not paid to the Account Owner or her heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, her 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 her aunt, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, nor her heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody 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 current value of the account being awarded. Based on the investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a custody account was 13,000.00 Swiss Francs. 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 162,500.00 Swiss Francs.

Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. According to Article 23(1)(d), if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, the chain of wills and inheritance documents pertaining to the Account Owner and one of her two children, [REDACTED], indicate that [REDACTED] is the sole heir of the will of the Account Owner's grandson, [REDACTED], and is therefore entitled to receive

⁴ As the record in cases before the CRT and in the Report of the Bergier Commission (see: In re Accounts of Prof. Dr. Albert Uffenheimer) have identified, the banks feared that if they disclosed the information on forced transfers that was in their files, they would be liable to the Account Owners or their heirs for cooperating with the German authorities in the implementation of these forced transfers. (See also Independent Commission of Experts Switzerland- Second World War, Final Report: Switzerland, National Socialism and the Second World War 446 (2002)). This case is a clear example of both bank cooperation in the confiscation of Jewish deposits and of the failure to acknowledge this practice to the account owners and their heirs.

[REDACTED]'s share of the account proceeds, or one-half of the total award amount. The chain of wills and inheritance documents pertaining to the Account Owner and the second of the Account Owner's two children, [REDACTED], indicate that the Claimant and those she represents are the sole heirs of the estate of the Account Owner's grandson, [REDACTED]. The Claimant and those she represents are also descendants of the Account Owner's parents. Therefore, the Claimant and those she represents are entitled to receive one-half of the total award amount, or one-eighth of the total award amount each.

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 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
June 1, 2004