

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Prof. Friedrich Klein-Chevalier

Claim Numbers: 224058/ME, 224544/ME

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED1] (“Claimant [REDACTED1]”) and [REDACTED2], née [REDACTED2], (“Claimant [REDACTED2]”) (together the “Claimants”) to the account of Professor Friedrich Klein-Chevalier (the “Account Owner”) 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 Claimants

The Claimants submitted Claim Forms identifying the Account Owner as their grandfather, Professor Friedrich Klein-Chevalier, who was born on 18 June 1861 in Düsseldorf, Germany, and the Power of Attorney Holder as their grandmother, Elsa Klein-Chevalier, née Levinstein, who was born on 14 July 1879. Claimant [REDACTED1] stated that his grandparents were married on 7 May 1901 in Berlin, Germany, and that they had three children: [REDACTED], [REDACTED] and [REDACTED], the Claimants’ mother. Furthermore, Claimant [REDACTED1] stated that his grandfather was a painter and a professor. According to the information provided by Claimant [REDACTED1], his grandparents lived at Kurfürstendamm 4 in Berlin until 1922, at Via del Salviatino-Settignano, Florence, Italy from 1922 until 1925, and at Via Bolognese, Florence, Italy from 1925 to 1935. Claimant [REDACTED1] stated that his grandparents were forced to leave Italy in 1935 because of Nazi laws and moved back to Germany, where they resided at Nerotal 23 in Wiesbaden. According to the information provided by Claimant [REDACTED1], his grandparents were persecuted by the Nazis because the Claimants’ grandmother was Jewish. Claimant [REDACTED1] further stated that his grandfather died in Wiesbaden on 14 March 1938, and that his grandmother died of a stroke on 7 April 1939 several hours before the Nazis attempted to arrest and deport her from her home in Wiesbaden. Claimant [REDACTED1] submitted his birth and marriage certificates. Finally, Claimant [REDACTED1] indicated that he was born on 23 November 1924 in Fiesole-Florence, Italy.

The information provided by Claimant [REDACTED2] is consistent with the information provided by Claimant [REDACTED1]. Claimant [REDACTED2] also submitted a letter dated 1 July 1939 from a court in Wiesbaden to the Claimants' mother, [REDACTED], [REDACTED], indicating that the appointed executor of the estate of Elsa Klein-Chevalier had declined to assume the executor responsibilities, and that the value of the estate had not yet been determined. Furthermore, Claimant [REDACTED2] submitted her parents' marriage certificate, her grandfather's certificate of inheritance, and a document certifying her mother's Italian citizenship, which identifies the Claimants' grandparents by name. Finally, Claimant [REDACTED2] indicated that she was born on 2 July 1928 in Serravalle, Italy.

Information Available in the Bank Records

The bank records consist of a power of attorney form dated 11 July 1925 in Florence and printouts from the Bank's database. According to these records, the Account Owner was Prof. F. Klein-Chevalier, who resided at Via dei Serragli 115, Firenze (Florence), and the Power of Attorney Holder was Frau Elsa Klein-Chevalier, née Levinstein, the Account Owner's wife. The bank records indicate that the Account Owner held a custody account.¹ The bank records do not show if or when the Account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account.

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 find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (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 two claims of the Claimants in one proceeding.

¹ The bank records contain a power of attorney form that references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. The CRT concludes that it is plausible that the Account Owner held such an account.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their grandfather's name matches the published name of the Account Owner, and their grandmother's name matches the published name of the Power of Attorney Holder. The Claimants identified their grandparents' place of residence as Florence, Italy, which matches published information about the Account Owner and Power of Attorney Holder. The Claimants identified their grandfather's professional title and their grandparents' marital relationship, which matches unpublished information about the Account Owner and the Power of Attorney Holder contained in the bank records. In support of her claim, Claimant [REDACTED2] submitted documents, including her grandfather's certificate of inheritance, which identifies her grandfather by name and professional title.

Status of the Account Owner and the Power of Attorney Holder as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner and the Power of Attorney Holder were Victims of Nazi Persecution. The Claimants stated that the Power of Attorney Holder was Jewish, that the Account Owner and the Power of Attorney Holder were targeted by Nazi laws which required them to leave Florence in 1935, and that they lived in Nazi Germany until 1938 and 1939 respectively, when they died. Furthermore, the Claimants indicated that their grandmother died several hours before the Nazis attempted to arrest and deport her from her home.

The Claimants' Relationship to the Account Owner and Power of Attorney Holder

The Claimants have plausibly demonstrated that they are related to the Account Owner and the Power of Attorney Holder by submitting documents, including their grandfather's certificate of inheritance and the Claimants' mother's marriage certificate, demonstrating that the Account Owner and Power of Attorney Holder were the Claimants' grandparents.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their grandfather, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

Pursuant to Article 35 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 ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Division of the Award

According to Article 29(1)(c) 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 Claimants, who are the grandchildren of the Account Owner, are the only descendants to have submitted claims to the account. Since the Claimants are siblings, any Award amount shall be divided equally between the Claimants.

Initial Payment

Article 37(3) (a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, however, because Claimant [REDACTED 1] is age 75 or older, he is entitled to receive payment of 100% of his portion of the total award amount. Accordingly, the initial payment amount is 128,700.00 Swiss Francs, which is comprised of 100% of Claimant [REDACTED 1]'s portion of the award (78,000.00 Swiss Francs) and 65% of Claimant [REDACTED 2]'s portion of the award (50,700.00 Swiss Francs).

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 their claims to determine whether there are additional Swiss bank accounts to which they 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

December 27, 2002

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).