

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and Claimant [REDACTED 2]

in re Account of Kurt Klein

Claim Numbers: 600096/WT,¹ 784906/WT, 784962/WT²

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the account of Ignatz Klein,³ and the claim of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the account of Samuel Herz.⁴ This award is to the published account of Kurt Klein (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).⁵

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimant other than the account owner, and the bank have been redacted.

¹ Claimant [REDACTED 1] submitted a claim, numbered B-00449, on 10 December 1997, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600096.

² Claimant [REDACTED 2] did not submit a Claim Form to the CRT. However, in 1999 she submitted two Initial Questionnaires (“IQs”), numbered ENG-0583-082 and ENG-0585-048, to the Court in the United States. Although these IQs were not Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those IQs which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQs were forwarded to the CRT and have been assigned claim numbers 784906 and 784962, respectively.

³ The CRT did not locate an account belonging to Ignatz Klein in the Account History Database prepared pursuant to the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

⁴ The CRT will treat Claimant [REDACTED 2]’s claim to the account of Samuel Herz in a separate determination.

⁵ The CRT notes that in a previous determination, the CRT determined that it had not located an account belonging to Claimant [REDACTED 1]’s relative, Kurt Klein, in the Account History Database. The CRT amends that determination with this decision.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owner as her husband, Kurt Klein, who was born on 18 August 1921 in Vienna, Austria, and was married to Claimant [REDACTED 1] on 17 July 1983 in Buffalo, New York, the United States. Claimant [REDACTED 1] indicated that her husband, who was Jewish, lived with his parents, [REDACTED] and [REDACTED], and with his brother, [REDACTED], at Alserstrasse 40 in Vienna. Claimant [REDACTED 1] further indicated that her husband had fled Austria with his brother to the United States around the time of the Second World War, though his parents were unable to escape and were deported to Sobibor, where they perished on 17 June 1942. Claimant stated that her husband died on 7 April 1997 in Buffalo, New York. In support of her claim, Claimant [REDACTED 1] submitted a copy of a certificate of marriage issued by the City Clerk of Amherst, New York, indicating that Kurt Klein was born on 18 August 1921 in Vienna, Austria, and was married to [REDACTED 1] on 17 July 1983. Claimant [REDACTED 1] indicated that she was born on 4 September 1936 in Perth Amboy, New Jersey, the United States.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted two Initial Questionnaires, identifying the Account Owner as her father, Kurt Klein, who was married to [REDACTED], née [REDACTED], and who lived at 24 Luegallee, Oberkassel, Duesseldorf, Germany. Claimant [REDACTED 2] indicated that in 1934, her parents, who were Jewish, fled Germany with her and her sister, [REDACTED], to France, and that her family lived near Paris, France, until fleeing in 1941 to Limoges, France. Claimant [REDACTED 2] indicated that in 1943 her family attempted to enter Switzerland as refugees, but that after four days they were expelled and forcibly returned to France. Claimant [REDACTED 2] indicated that she was born on 30 July 1931 in Germany.

Information Available in the Bank’s Record

The Bank’s record consists of a suspense account ledger. According to this record, the Account Owner was Kurt Klein. The Bank’s record does not indicate the Account Owner’s domicile. The Bank’s record indicates that the Account Owner held one account, the type of which is not indicated, that was inactive and was transferred to a suspense account on 4 September 1950. The amount in the account on the date of its transfer was 61.20 Swiss Francs (“SF”). The Bank’s record further indicates that on 29 April 1960, the account was transferred to a collective account, and had a balance on that date of SF 26.00.

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 this account in the Bank’s system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was

no evidence of activity on this account after 1945. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

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 Claimants in one proceeding.

Identification of the Account Owner

The names of Claimant [REDACTED 1]'s husband and Claimant [REDACTED 2]'s father both match the published name of the Account Owner. The CRT notes that the Bank's record does not contain any specific information about the Account Owner other than his name.

Claimant [REDACTED 1]

In support of her claim, Claimant [REDACTED 1] submitted documents, including a copy of a certificate of marriage issued by the City Clerk of Amherst, New York, identifying Kurt Klein, providing independent verification that the person who is claimed to be the Account Owner by Claimant [REDACTED 1] had the same name recorded in the Bank's record as the name of the Account Owner. The CRT notes that Claimant [REDACTED 1] filed an HCPO claim form in 1997, asserting her entitlement to a Swiss bank account owned by Kurt Klein, 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 Claimant [REDACTED 1] 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 Claimant [REDACTED 1] had reason to believe that her relatives owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

Claimant [REDACTED 2]

The CRT notes that Claimant [REDACTED 2] filed two Initial Questionnaires with the Court in 1999, identifying Kurt Klein, prior to the publication in February 2001 of the ICEP List. This indicates that Claimant [REDACTED 2] 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 Claimant [REDACTED 2] had reason to believe that her relatives owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 2].

The CRT further notes that Claimant [REDACTED 1]'s relative and Claimant [REDACTED 2]'s relative are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Bank's record; that there is no additional information in the Bank's record which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that there are no other claims to this account, the CRT finds that Claimant [REDACTED 1] and Claimant [REDACTED 2] have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1]

Claimant [REDACTED 1] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish, and that he and his brother fled Austria to the United States around the time of the Second World War, and that his parents were unable to escape and perished in Sobibor.

Claimant [REDACTED 2]

Claimant [REDACTED 2] has also made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish, that he and his family fled Germany to France, and that after attempting to enter Switzerland as refugees, he and his family were expelled and forcibly returned to France.

The Claimants' Relationships to the Account Owner

Claimant [REDACTED 1]

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information and a document, demonstrating that the Account Owner was Claimant [REDACTED 1]'s husband. This document is a copy of a certificate of marriage issued by the City Clerk of Amherst, New York, indicating that Kurt Klein was married to Claimant [REDACTED 1] on 17 July 1983. There is no information to indicate that the Account Owner has other surviving heirs.

Claimant [REDACTED 2]

Claimant [REDACTED 2] has also plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was her father. The CRT notes that Claimant [REDACTED 2] filed two Initial Questionnaires with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 2], prior to the publication in February 2001 of the ICEP List. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner identified by Claimant [REDACTED 2] was well known to Claimant [REDACTED 2] as a family member, and all this information supports the plausibility that Claimant [REDACTED 2] is related to the Account Owner, as she has asserted in her Initial

Questionnaires. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The Bank's record indicates that the account was transferred to a suspense account for dormant accounts on 4 September 1950 and to a collective account on 29 April 1960. Given that there is no record of the payment of the Account Owner's account to him, nor any record of a date of closure of the account; that the Account Owner and his heirs would not have been able to obtain information about his account 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 (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 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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was her husband, and Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was her father, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one account, the type of which is not indicated. The Bank's record indicates that the value of the account as of 4 September 1950 was SF 61.20. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 90.00, which reflects standardized bank fees charged to the account between 1945 and 1950. Consequently, the adjusted balance of the account at issue is SF 151.20. According to Article 29 of the Rules, if the amount in an account, the type of which is not indicated, was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 49,375.00.

Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same

name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each Claimant has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] is entitled to one-half of the Award amount, and Claimant [REDACTED 2] is entitled to one-half of the Award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 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
29 May 2007