

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Henry Marcel Fairstein
also acting on behalf of Sofia Haller

in re Accounts of Salomon Klein and Lella Margulici

Claim Number: 220493/ES¹

Award Amount: 229,080.00 Swiss Francs

This Certified Award is based upon the claim of Henry Marcel Fairstein (the “Claimant”) to the accounts of Salomon Klein (“Account Owner Klein”) and Lella (Rachelle) Margulici (Account Owner Margulici”) (together the “Account Owners”) at the Geneva branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owners as Salomon Klein, the husband of his mother’s cousin, and Salomon Klein's daughter, Rachelle (Lella) Margulici, née Klein, who was born in Romania, was married to Malka Klein, née Grünstein, and lived in Bucharest, Romania. The Claimant stated that his father, Marcu Fairstein, and his maternal grandfather, Herscu Grünstein, were partners with Salomon Klein in a leather wholesale business, *Skida*, that was located at Calea Mosilor, Bucharest, and a bamboo products factory, *Cerbul*, that was located at Fund Mistretului, Bucharest. The Claimant stated that Salomon Klein resided at Calea Vacaresti, Bucharest. The Claimant stated that the Swiss account was opened in the name of Klein and not in his father’s name, Fairstein, because his father was not a Romanian citizen and was afraid of being persecuted by the Romanian government for holding a foreign bank account. The Claimant also stated that Salomon Klein, Marcu Fairstein and Herscu Grünstein had an agreement that the Swiss bank account should be only in Salomon Klein’s name, with access rights to his daughters, Rachelle Margulici and Franciska Marnic, née Klein, and to his sons-in-law. The Claimant also mentioned that the two families, Klein and Grünstein, intended to settle in France, which never happened. The Claimant stated that in 1940,

¹ The Claimant submitted additional claims to the accounts of Maier Segal and Maurice Grünstein, which are registered under the Claim Numbers 220491, 220492. The CRT will treat the claims to these accounts in a separate decision.

Salomon Klein was taken from his residence by the Romanian Legionary Police, who tortured him and threw him out of the third floor city hall window, claiming it was suicide. The Claimant stated that he lost all documents regarding the Swiss bank account in 1950 when he was forcibly evicted from his house by the Romanian Communist government. The Claimant indicated that Lella Margulici died in 1982 in Paris, France.

The Claimant indicated that he was born on 23 October 1920 in Paris, France and submitted his birth certificate in support of his claim. In 1924, the Claimant's family moved to Romania, and he returned to France in 1962. The Claimant is representing his sister Sofia Haller, née Faienstein Elias, who was born on 18 December 1916 in Tecuci, Romania. The Claimant indicated that his father spelled his surname "Ferstein" or "Faienstein" and that he spells his surname "Fairstein."

Information Available in the Bank Records

The bank records consist of an opening card, power of attorney forms dated 19 August 1937 in Zurich and 27 April 1938 in Geneva, and a printout from the Bank's database. According to these records, Madame Lella (Rachelle) Margulici held an account numbered 21513, over which Monsieur Salomon Klein, the Account Owner's father, held a power of attorney. The records indicate that Account Owner Margulici resided at 19, rue Louis Bonnet, Paris XI. The bank records indicate that the nationality of the Account Owner and Power of Attorney Holder was Romanian. The records indicate that account numbered 21513 comprised at least three sub-accounts: a custody account that contained gold, a demand deposit account in Swiss Francs, and another custody account. A handwritten notation on the account opening card indicates that an account was "closed on 6 September 1938" by an unknown entity and that, at that time, gold with the value of 40,000.00 Swiss Francs was transferred to London. The printout from the Bank's database indicates that the custody account held by Account Owner Margulici was held in an omnibus account in a United States branch (in New York) and that it was frozen on 14 January 1941. The CRT therefore concludes that the closure notation "closed on 6 September 1938" refers to the transfer of the gold and the closing of the custody account containing the gold, and that the demand deposit account and the other custody account were not closed on that day.

According to the power of attorney form dated 19 August 1937 in Zurich, the Account Owner was Salomon Klein from Bucharest, who resided at Rue de Moulin July 29 and the Power of Attorney Holders were Madame Lella Margulici, née Rachelle Klein, and Madame Franciska Marmic, née Klein. This record indicates that Account Owner Klein held an account of unknown type.

The bank records do not show when the three accounts were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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") 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

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The names of his mother's cousin's husband and Salomon Klein's daughters match the published names of the Account Owners, and of the Power of Attorney Holders. The Claimant identified his mother's cousins' Romanian nationality, which matches unpublished information about the Account Owners and the Power of Attorney Holders contained in the bank records. Other claims to this account were disconfirmed because the claimants provided the wrong names, wrong genders, and wrong country of residence of the Account Owners.

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 Account Owner Salomon Klein was killed by the Romanian Legionary Police in 1940.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners. There is no information to indicate that the Account Owners have surviving heirs other than the Claimant and his sister, whom he represents.

The Issue of Who Received the Proceeds

With respect to the transfer of gold to London on 6 September 1938 and closure of the custody account that contained it, the CRT notes that this transfer took place before the Nazi occupation of Romania, and therefore concludes that this transfer was made pursuant to instructions from Account Owner Margulici.

With respect to the other accounts, the CRT notes that it is possible that, if the accounts were still open in 1950, they could have been transferred to the Romanian government pursuant to an agreement between Switzerland and Romania whereby unclaimed assets held by Romanian citizens in Swiss banks were to be transferred to the Romanian government in return for compensation for Swiss property that had been nationalized by Romania's communist regime. Given this possibility, the persecution of Jews in Romania and the confiscation of Jewish assets during the War, the Communist dictatorial regime after the War, and 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 Owners, the Power of Attorney Holders, or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the

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

“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 Account Owner Salomon Klein was married to his mother’s cousin and that Account Owner Lella Margulici was the daughter of Salomon Klein, and these relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts.

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 average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of an account of unknown type was 3,950.00 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 229,080.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister in these proceedings. According to Article 29 of the Rules, his sister is entitled to receive one half of any payment made to the Claimant.

Initial Payment

In this case, the Claimant and represented party are age 75 or older and are therefore entitled to receive 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 his claim to determine whether there are additional Swiss bank accounts to which he 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).