

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]
and [REDACTED 3]

in re Accounts of Willy Klein

Claim Number: 401615/TC

Award Amount: 172,612.50 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published accounts of Willy Klein (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).¹

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 grandfather, Dr. Marcus Wilhelm Klein, known as Willy, who was born on 25 June 1899 in Mainz, Germany and was married to [REDACTED], née [REDACTED], on 5 July 1952 in Bogota, Colombia. According to information provided by the Claimant, her grandfather held a doctorate in politics, and he was a businessman and accountant at the family business, the textile factory *Kaiser & Company*. The Claimant indicated that her grandfather, who was Jewish, lived at Niederhonerstrasse 20 in Eschwege, Germany until 1937, when he moved to Grunewaldstrasse in Berlin-Schöneberg, Germany for a few months before he fled to Colombia, and his mother, stepfather, and brother fled to Palestine (today Israel).

In support of her claim, the Claimant submitted copies of documents, including: (1) her grandfather’s German passport, issued in Berlin in 1937, indicating that Dr. Willy Klein was

¹ The CRT notes that the name Willy Klein appears on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”) and on the List of Account Owners Published in 2005 (the “2005 List”). Upon careful review, the CRT has determined that the Willy Klein on the 2005 List is not the same person addressed in the current decision and, consequently, the Claimant did not identify this other account owner as her relative.

born in Mainz on 25 June 1899, and that he was Jewish; (2) her grandfather's birth certificate, indicating that Marcus Wilhelm Klein was born on 25 June 1899 in Mainz, that his parents were [REDACTED] and [REDACTED], née [REDACTED], and that they were Jewish; (3) her grandfather's marriage certificate, indicating that Willy Klein and [REDACTED] were married on 5 July 1952 in Bogota, and that Willy Klein was a German citizen; (4) her grandfather's death certificate, indicating that Willy Klein Bacharach died on 25 April 1961 in Bogota, and that he was a German citizen; (5) her father's baptismal certificate, indicating that [REDACTED 2] was born to parents Willy Klein and [REDACTED]; and (6) her own birth certificate, indicating that [REDACTED 1]'s father is [REDACTED 2].

The Claimant indicated that she was born on 20 October 1972 in Bogota. The Claimant is representing her father, [REDACTED 2], who was born on 24 June 1945 in Cali, Columbia, and her brother, [REDACTED 3], who was born on 30 September 1974 in Bogota.

Information Available in the Bank's Records

The Bank's records consist of printouts generated by 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"). According to these records, the Account Owner was *Herr* (Mr.) Willy Klein, who resided at Friedrich-Ebertstrasse 23 in Sollinger Wald, Germany.² These records indicate that the Account Owner held one savings/passbook account and one account, the type of which is not indicated.

The auditor's report indicates that the savings/passbook account was closed on 2 August 1951. The amount in the account on the date of its closure is unknown. There is no evidence in the auditor's report that the Account Owner or his heirs closed the account and received the proceeds themselves.

The auditor's report indicates that the account of unknown type had a balance of 12,979.00 Swiss Francs ("SF") on an unknown date. The auditors who conducted 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 auditor's report that the Account Owner or his heirs closed the account and received the proceeds themselves.

² The CRT notes that *Sollinger Wald* ("Sollinger Forest"), Germany, is not a town or city but rather a region of central Germany. The park, which today encloses the *Sollinger Wald*, stretches approximately fifty kilometers from Bodenwerder in the north to Wahlsburg in the south.

The CRT's Analysis

Identification of the Account Owner

The Claimant's grandfather's name and country of residence match the published name and country of residence of the Account Owner. The Claimant indicated that her grandfather lived in Eschwege until 1937; the CRT notes that Eschwege is located less than seventy kilometers from the published area of residence of the Account Owner. In support of her claim, the Claimant submitted documents, including copies of her grandfather's German passport, birth certificate, marriage certificate, and death certificate, and her father's baptismal certificate, providing 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 auditor's report as the name and country of residence of the Account Owner.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different country of residence than the country of residence of the Account Owner. 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 resided in Nazi Germany until 1937, when he fled to Colombia.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's grandfather. These documents include a copy of her father's baptismal certificate, indicating that [REDACTED 2] was born to parents Willy Klein and [REDACTED], and a copy of the Claimant's birth certificate, indicating that her father was [REDACTED 2]. The CRT notes that the Account Owner may have other surviving relatives, but that because they are not represented in the Claimant's claim, the CRT will not treat their potential entitlement to the Account Owner's accounts in this decision.

The Issue of Who Received the Proceeds

Given that the Account Owner was living in Nazi Germany; that there is no record of the payment of the Account Owner's accounts to him nor any record of a date of closure of the account of unknown type; that the Account Owner and his heirs would not have been able to obtain information about his accounts 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 Governing the Claims Resolution Process, as amended (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 represented party [REDACTED 2]. First, the 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 represented party [REDACTED 2]'s father, and that relationship justifies 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 accounts.

Further, the CRT notes that represented party [REDACTED 2], as the Account Owner's son, has a better entitlement to the accounts than the Claimant and represented party [REDACTED 3], who are the Account Owner's grandchildren.

Amount of the Award

In this case, the Account Owner held one savings/passbook account and one account of unknown type. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case with the savings/passbook account, 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 ICEP Investigation, in 1945 the average value of a savings/passbook account was SF 830.00. 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 an award amount of SF 10,375.00 for the savings/passbook account.

The Account Owner also held one account of unknown type. The auditor's report indicates that the value of the account was SF 12,979.00 as of an unknown date. In the absence of additional information regarding the valuation date of the account, and given that the ICEP auditors found no evidence of activity on this account after 1945, the CRT, for the purposes of this decision, conclude that this amount reflects the account's balance as of 1 January 1945. The current value of the amount of the award is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 162,237.50 for the account of unknown type.

Consequently, the total award amount is SF 172,612.50.

Division of the Award

According to Article 23(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 Claimant is representing her father, [REDACTED 2], and her brother, [REDACTED 3]. The CRT notes that represented party [REDACTED 2], as the Account Owner's son, is more closely related to the Account Owner

than the Claimant and represented party [REDACTED 3], who are the Account Owner's grandchildren. Accordingly, represented party [REDACTED 2] is entitled to the entire award amount. As noted above, the Claimant and represented party [REDACTED 3] are not entitled to share in the award.

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
29 May 2007