

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Marilena Carmela Dagan and Lisianne Magda Kalinsko¹

in re Accounts of A. Kleinhändler and Magda Kleinhändler

Claim Numbers: 005068/AY, 005081/AY

Award Amount: 102,720.00 Swiss Francs

This Certified Award is based upon the claims of Marilena Carmela Dagan, née Kain, (“Claimant Dagan”) and Lisianne Magda Kalinsko, née Kain, (“Claimant Kalinsko”) (together the “Claimants”) to the accounts of Magda Kleinhändler. This Award is to the accounts of A. Kleinhändler and Magda Kleinhändler (the “Account Owners”) at the Zurich 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 Claimants

Claimant Dagan and Claimant Kalinsko, who are sisters, submitted Claim Forms identifying Account Owner Magda Kleinhändler, née Weil, as their mother’s cousin, who was born around 1913 in Austria-Hungary and was married to Abris Kleinhändler. The Claimants indicated that Magda Kleinhändler and her husband were wealthy businesspeople who owned properties in Arad, Romania as well as in France, Britain, Italy and Switzerland. The Claimants stated that a textile factory located in Arad was jointly owned by the Claimants’ maternal grandfather, Josef Abraham, and by Magda and Abris Kleinhändler. The Claimants stated that Magda Kleinhändler was also a violinist who traveled throughout Europe to participate in music concerts. The Claimants indicated that while traveling throughout Europe, Magda Kleinhändler frequently took her family’s jewelry, gold coins and foreign currency (including United States Dollars) to deposit them in Swiss bank accounts and safe deposit boxes. The Claimants stated that Abris and Magda Kleinhändler were Jewish, and they disappeared during the Holocaust. The Claimants stated that the entire family was wealthy and owned several properties in

¹ The Claimants provided their names and some of their relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

Romania. The Claimants stated that Josef Abraham owned factories and banks located in Transylvania, Romania, and that he was also the manager of *Credetui Comercial Bank*, one of the banks owned by his family. The Claimants submitted documentation, including articles published in different newspapers regarding their relatives and their assets deposited in Swiss banks. Claimant Dagan indicated that she was born on 17 January 1947 in Romania. Claimant Kalinsko indicated that she was born on 29 August 1950 in Romania.

Claimant Kalinsko submitted an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1998 asserting her entitlement to a Swiss bank account owned by Abris and Magda Kleinhändler. Claimant Dagan submitted an ATAG Ernst & Young claim form in 1998 asserting her entitlement to a Swiss bank account owned by Abris and Magda Kleinhändler.

Information Available in the Bank Records

The bank records consist of a customer card, an account-opening contract, an account-closing card, ledger cards and printouts from the Bank's database. According to these records, the Account Owners were *Herr* (Mr.) A. Kleinhändler and *Frau* (Mrs.) Magda Kleinhändler-Weil who resided in Arad, Romania. According to the bank records, A. Kleinhändler had the title *Director* of a textile factory. The bank records indicate that the Account Owners jointly held four demand deposit accounts. One demand deposit account was opened on 23 October 1931. The Account Owners did not contact the Bank after 1939, and therefore the account was considered by the Bank to be dormant. The account balance in 1939 was 300.50 Swiss Francs. This account remained open and dormant at least until 1963, when it was included on a list of dormant accounts prepared by the Zurich branch pursuant to an internal bank survey. The date of closure of this account is unknown, but 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.

One demand deposit account held in Swiss Francs, numbered 268038, was opened on 24 August 1931 and closed by the Bank on 8 December 1978. The account balance on the closure date is unknown.

The Account Owners also held a demand deposit account in United States Dollars and a demand deposit account in Swiss Francs, both numbered 33496, which were opened on or before 25 September 1931. The account balances are unknown. The bank records do not show if, or by whom, these accounts were closed. The auditors who carried out the ICEP Investigation did not find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. There is no evidence in the bank records that the Account Owners or their heirs closed any of the accounts 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 claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The Claimants' relative's name matches the published name of Account Owner Magda Kleinhändler née Weil. The Claimants stated that Magda Kleinhändler was married to Abris Kleinhändler, which is consistent with the published name of Account Owner A. Kleinhändler. The Claimants indicated that Abris Kleinhändler owned a textile factory, which matches unpublished information about Account Owner A. Kleinhändler contained in the bank records. The names of the joint Account Owners were published separately on the list of bank accounts published by the ICEP Investigation on 5 February 2001. Nevertheless, the Claimants identified that the Account Owners were related, which matches unpublished information about the Account Owners contained in the bank records. In support of their claims, the Claimants submitted documentation, including articles published in different newspapers regarding their relatives, and their assets deposited in Swiss banks.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish and that they disappeared during the Holocaust.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners. In support of their claims, the Claimants submitted significant documentation about their family, including articles published in different newspapers regarding their relatives and their assets deposited in Swiss banks. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

The CRT notes that the Account Owners disappeared during the Holocaust and all of their accounts at the Bank were closed after World War II. The CRT also notes, with regard to the two demand deposit in Swiss Francs and United States Dollars accounts numbered 33496, and given the application of Presumptions (f), (h), (i) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the proceeds of these accounts, were not paid to the Account Owners 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.

With regard to the account that was dormant until at least 1963, given the application of Presumptions (b), (f), (h), (i) and (j) as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the proceeds of this account, were not paid to the Account Owners 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.

With regard to the account numbered 268038, it was closed by the Bank in December 1978.

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, the Claimants have plausibly demonstrated that Account Owner Magda Kleinhändler was their mother's cousin and that she was married to Account Owner A. Kleinhändler, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held four demand deposit accounts. 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 present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs. Consequently, the total value of the three demand deposit accounts of unknown value was 6,420.00 Swiss Francs in 1945. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 77,040.00 Swiss Francs for these accounts.

The bank records indicate that the value of the Swiss Francs account as of 1939 was 300.50 Swiss Francs. According to Article 29 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12, in accordance with Article 31(1) of the Rules to produce an award amount for this account of 25,680.00 Swiss Francs.

Consequently, the total award amount is 102,720.00 Swiss Francs.

Division of the Award

According to Article 23 of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner's parents have submitted a claim, the award shall be in favor of any

descendents of the Account Owner's grandparents who have submitted a claim, in equal shares by representation. Accordingly, Claimant Dagan and Claimant Kalinsko are each entitled to one-half of the entire 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
April 1, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).