

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 Ignaz Klinger

Claim Number: 600014/AA¹

Award Amount: 326,880.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) and [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the account of Ignaz Klinger (the “Account Owner”) at the [REDACTED] (the “Bank”).

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

Information Provided by the Claimants

The Claimants submitted a claim to the Holocaust Claims Processing Office (“HCPO”) in April 1998 identifying the Account Owner as their father, Ignaz Klinger, who was born on 22 July 1885 in Vienna, Austria, and was married to [REDACTED], née [REDACTED], in 1916. According to the Claimants, their father, who was Jewish, was a self-employed businessman and lived at Geiselbergstrasse 62 and subsequently at Schwindtgasse 3 in Vienna. The Claimants stated that their father traveled to Zurich in February 1938, just before the Nazi annexation of Austria (the “*Anschluss*”), to deposit assets into a safe deposit box, including Austrian government bonds, 50,000.00 Swiss Francs, and jewelry. Claimant [REDACTED 1] stated that, at the time, she was a medical student in Vienna and kept the books for her parents’ business. She specifically remembers helping her father conceal the bonds and cash before his trip to Switzerland because the Austrian government prohibited Jewish citizens from depositing their assets in foreign banks.

Claimant [REDACTED 1] further stated that she stayed with her family in Austria until approximately March 1938, when the family escaped Austria to Shanghai, China. Claimant

¹ The Claimants submitted a claim, numbered B-00820, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department on 2 April 1998. The claim was referred by the HCPO to the CRT and has been assigned claim number 600014/AA.

[REDACTED 2] fled to London, England in 1938 and remained there throughout the Second World War. In 1940, the Claimants' father immigrated to San Francisco, California, the United States and lived there until 1946, when he moved to New York, New York, where he remained until his death in 1973.

According to the Claimants, their family tried to locate their father's account during and after the Second World War. Claimant [REDACTED 2] contacted the Bank in Zurich during the War, but the Bank refused to give her any information regarding the existence of her father's account and told her that even if an account existed, she could not access it because of the United Kingdom's Enemy Property legislation. Additionally, Claimant [REDACTED 1] visited the Swiss consulate in Auckland, New Zealand in the early 1940s when she was waiting for her visa from the United States. Claimant [REDACTED 1] stated that the representatives at the Swiss consulate would not give her any information about an account owned by her father. Finally, after the Second World War, Claimant [REDACTED 1] and her father contacted the Swiss consulate in New York about the account, but, once again, they were unsuccessful in their attempts to locate the account.

Claimant [REDACTED 1] indicated that she was born in Vienna, on 28 September 1917. Claimant [REDACTED 2] indicated she was born on 21 April 1919 in Vienna.

Information Available in the Bank Records

The bank records consist of an account opening card and correspondence between the Bank and the Claimants regarding accounts owned by their father. According to the records, the Account Owner was Ignaz Klinger of Vienna, Austria. The bank records indicate that the Account Owner held two custody accounts, a safe deposit box, and a demand deposit account.

According to the bank records, the custody accounts were closed on 6 March 1938 and 10 March 1938, and the safe deposit box was closed on 4 February 1939. The bank records do not show to whom the custody accounts and the contents of the safe deposit box were paid, nor do these records indicate the value of these two accounts or the contents of the safe. The bank records indicate that the demand deposit account was closed on 12 December 1926. The bank records do not show to whom the account at issue was paid, nor do these records indicate the value of this account. There is no evidence in the bank records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Ignaz Klinger, whose wife was [REDACTED], née [REDACTED]. According to the records, Ignaz Klinger was a businessman, who lived on Geiselbergstrasse and subsequently

on Schwindtgasse in Vienna, Austria. The records indicate that, as of 1 January 1938, Ignaz Klinger's assets totaled 122,547.00 Reichsmarks.

The CRT's Analysis

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their father's name and city of residence match the published name and city of residence of the Account Owner. The Claimant also provided his father's profession, street address and spouse's name, all of which matches information provided in the Austrian State Archives. Moreover, the CRT notes that the Claimants filed an ATAG Ernst & Young claim form in 1998, asserting their entitlement to a Swiss bank account owned by Ignaz Klinger, prior to the publication in February 2001 of the 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"). This indicates that the Claimants have based their present claim not simply on the fact that a person identified on the ICEP List as owning a Swiss bank account bears the same name as their relative's, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that their relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants. The CRT further notes that there are no other claimants to the account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and fled Austria in March 1938.

The Claimants Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents which demonstrate that the Account Owner was the Claimants' father.

The Issue of Who Received the Proceeds

With regard to the two custody accounts that were closed on 6 March 1938 and 10 March 1938, the CRT notes that the dates of closure for these accounts are shortly after the date on which the Claimants state that the Account Owner opened the safe deposit box, and that the accounts were closed prior to the *Anschluss*. The CRT considers it plausible that the Account Owner, anticipating the *Anschluss* and increasingly strict restrictions about foreign-held securities, sold the securities in his custody accounts, deposited the funds in his safe deposit box, and instructed the bank to close the custody accounts. The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, subsequently, their accounts are closed unknown to whom or are

transferred to Nazi-controlled banks. Given the application of Presumptions (a), (e), 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 proceeds of the two custody accounts and the safe deposit box were not paid to the Account Owner or his heirs. Based on its precedent and the Rules, the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts.

With regard to the demand deposit account that was closed on 12 December 1926, since the account was closed before the Second World War, this account is not within the jurisdiction of the CRT pursuant to Article 14 of the Rules.

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 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the CRT finds it plausible that the Account Owner held two custody accounts and a safe deposit box. 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 investigation carried out pursuant to the instructions of the ICEP, in 1945 the average value of a custody account was 13,000.00 Swiss Francs and the average value of a safe deposit box was 1,240.00 Swiss Francs. 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 an award amount for these accounts of 326,880.00 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 have submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares of representation. In this case, both Claimants are the daughters of the Account Owner. Therefore, both Claimants are entitled to one-half of the total 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 claim 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 4, 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).