

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Aida Szmuc

in re Accounts of Maxime and Léonie Klotz

Claim Number: 200762/MBC¹

Award Amount: 201,600.00 Swiss Francs

This Certified Award is based upon the claim of Aida Szmuc, née Doctorczyk, (the “Claimant”) to the account of Henri Klotz, Maxime Klotz, and Léonie Klotz.² This Award is to the accounts of Maxime Klotz (“Account Owner Maxime Klotz”) and Léonie Klotz (“Account Owner Léonie Klotz”) (together the “Account Owners”) at the Basel 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 Account Owner Maxime Klotz as her uncle's brother-in-law, and Account Owner Léonie Klotz as Maxime Klotz's spouse. According to the Claimant, Maxime Klotz ran an industrial business with his brother Henri Klotz, the Claimant's uncle, in France, where Maxime Klotz resided. Henri Klotz lived in Germany until sometime after 1933, when he fled to France. In a telephone conversation with the CRT on 3 September 2002, the Claimant explained that she has no further information about the Account Owners because all of her relatives, who were Jewish, perished in the Holocaust. The Claimant further indicated that she was the only surviving member of her family and that she was born in Lodz, Poland, on 12 March 1919.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to an account owned by Henri Klotz. In a previous award, the CRT found that the Claimant plausibly identified Henri Klotz as the Account Owner and identified the name of the bank and the branch where his account was held, thus providing previously unpublished information about Henri Klotz contained in the bank records.

¹ The Claimant submitted an additional claim to the account of Fiszal Doctorczyk, which is registered under the Claim Number 204615. The CRT will treat the claim to this account in a separate decision.

² The CRT previously issued a Certified Award to the claim to the accounts of Henri Klotz.

Information Available in the Bank Record

The bank record consists of an account-opening card. According to this record, the joint Account Owners were *Monsieur* (Mr.) Maxime Klotz and his spouse *Madame* (Mrs.) Léonie Klotz, née Lévy, who resided in Soultz-sous-Forêts, (Bas-Rhin) France, and later in Sandreville par Etéchy (Seine et Oise), France. The bank record indicates that the Account Owners held a demand deposit account in Swiss Francs, a custody account numbered 31504, and two savings/passbook accounts numbered 239933 and 239934.

The accounts were closed on 20 May 1950. The amounts in the accounts on the date of their closure are unknown, and there is no indication as to whom they were paid. There is no evidence in the bank record that the Account Owners 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. Both her relatives' names and country of residence match the published names and country of residence of the Account Owners. The CRT notes that it previously awarded the Claimant the account of Henri Klotz, Maxime Klotz's brother, based on the Claimant's identification of Henri Klotz by unpublished information about him. The Claimant's ability to provide objective evidence of her relationship to Henri Klotz and of Henri Klotz's relationship to Maxime Klotz supports the Claimant's identification of Maxime Klotz as the Account Owner.

The CRT notes that the Claimant submitted an Initial Questionnaire in 1999, asserting her entitlement to a Swiss bank account owned by Henri Klotz, 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 the Claimant has based her present claim not simply on the fact that an individual identified on the published list as owning a Swiss bank account bears the same name as her relatives, but rather on her direct knowledge of a family relationship.

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 they perished in the Holocaust.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents, including a family tree, demonstrating that her uncle is Account Owner Maxime Klotz's brother-in-law. According to Article 23(1)(g) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), if none of the persons entitled to an award pursuant to Article 23(1)(a) - (f) has submitted a claim, the CRT may make an award to any relative of the account owner, whether by blood or marriage, who has submitted a claim, consistent with the principles of fairness and equity.

The Issue of Who Received the Proceeds

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 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.

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 18 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Maxime Klotz was her uncle's brother-in-law, and that relationship justifies 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 one demand deposit account, one custody account and two savings/passport 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs; the average value of a custody account was 13,000.00 Swiss Francs; and the average value of a savings/passbook account was 830.00 Swiss Francs. Therefore, the total 1945 average value of the accounts at issue was 16,800.00 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 a total award amount of 201,600.00 Swiss Francs.

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
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).