

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]
represented by [REDACTED]

in re Accounts of Emil Kohn

Claim Numbers: 213204/PY; 213205/PY;¹ 214353/PY

Award Amount: 172,875.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (formerly [REDACTED]) (“Claimant [REDACTED 1]”) to the accounts of [REDACTED] and [REDACTED], and the claim of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Emil Kohn. This award is to the accounts of Emil Kohn (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as both Claimants have 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

Claimant [REDACTED 1] submitted two Claim Forms identifying the Account Owner as his paternal grandfather, Dr. Emil Kohn, who was married to [REDACTED], née [REDACTED], and was the father of [REDACTED], the Claimant’s father. Claimant [REDACTED 1] stated that his grandfather, who was Jewish, resided in Kostel in Podivin, Czechoslovakia, where he was a medical doctor.

Claimant [REDACTED 1] previously submitted an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by [REDACTED] and [REDACTED] from Podivin, Czechoslovakia. Claimant [REDACTED 1] also previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by the Account Owner’s son, [REDACTED]. In this Initial Questionnaire, Claimant [REDACTED 1] stated that his father was [REDACTED], formerly named [REDACTED], from

¹ Claimant [REDACTED 1] submitted additional claims to the accounts of [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], which are registered under the Claim Numbers 213201, 213202, 213203, 213206 and 213207, respectively. The CRT will treat the claims to these accounts in separate decisions.

Podivin, Czechoslovakia. The Claimant submitted an official document stating the name change from [REDACTED] to [REDACTED]. Also, in support of his claim, Claimant [REDACTED 1] submitted the birth certificates of his paternal uncle and aunt, [REDACTED] and [REDACTED], which indicate that Emil was their father and that he resided in Podivin, Czechoslovakia. Claimant [REDACTED 1] stated that he was born on 28 February 1936 in Brno, Czechoslovakia to [REDACTED].

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her father-in-law, Dr. Emil Kohn, who was born on 26 October 1869 in Podivin and was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 2] stated that her father-in-law, who was Jewish, lived in Podivin, where he was a medical doctor. Claimant [REDACTED 2] further stated that her father-in-law may have also resided in the following places in Czechoslovakia: Aussig an der Elbe, Dux, Osijk, Podgajci, Rosshaupt and Teplitz Schonau. According to Claimant [REDACTED 2], Emil and [REDACTED] had seven children: [REDACTED], [REDACTED] (also known as [REDACTED]), [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Claimant [REDACTED 2] stated that Emil Kohn had a brother who resided in the United States, but she could not remember the brother's name. Claimant [REDACTED 2] stated that her father-in-law was killed by the Gestapo on 8 June 1941, and that his wife [REDACTED] was deported to Theresienstadt, where she was killed in 1944. Claimant [REDACTED 2] added that all of Emil Kohn's seven children are now deceased. In support of her claim, Claimant [REDACTED 2] submitted the birth certificate of her husband, [REDACTED], indicating that his father was Emil Kohn, and that Emil Kohn resided in Podivin, Czechoslovakia. Claimant [REDACTED 2] also submitted her marriage certificate, indicating that her husband was [REDACTED]. Claimant [REDACTED 2] stated that she was born on 16 February 1909 in Paris, France. Claimant [REDACTED 2] is being represented by her daughter [REDACTED].

Information Available in the Bank's Records

The Bank's records consist of a list of accounts belonging to German clients, a custody account statement, dated 30 November 1937, and hold mail notices from the Bank, dated between 1952 and 1954, indicating that custody account fees had been deducted. The Bank's records also include a letter, dated 17 January 1939, from the Account Owner to the Bank requesting that all of the securities deposited in his custody account, numbered 28030, be sold, and that the proceeds be sent to a person named [REDACTED], who resided in Chicago, Illinois. In addition, the Bank's records contain a register of securities held by the Account Owner, dated 25 September 1964, and an undated letter from the Account Owner, instructing the Bank to retain all of its correspondence to him, along with a notice dated 7 March 1947, circulated to all the departments of the Bank informing them of the special instructions pertaining to the retention of correspondence to Emil Kohn. The Bank's records also consist of a letter from the Bank, dated 2 June 1955, addressed to the Account Owner, requesting him to renew his signature card and sign a power of attorney form. Finally, the Bank's records consist of a customer card and a savings/passbook account ledger, as well as printouts from the Bank's database.

According to these records, the Account Owner was Emil Kohn, who resided at Kroitzschstrasse 12, Aussig an der Elbe, Czechoslovakia. The Bank's records indicate that the Account Owner held a custody account numbered 4839, a second custody account numbered 28030, and a savings/passbook account, numbered 42416.

The savings/passbook account, numbered 42416, was transferred to a suspense account on 27 March 1980, and remains open and dormant. This account had a balance of 371.75 Swiss Francs as of 18 January 1999. The Bank's records show that no interest was paid to the savings/passbook account, and that fees for the custody account, numbered 4839, were deducted from it as early as 30 November 1954. The Bank's records show that the Bank was instructed to hold all correspondence to the Account Owner, and fees for this service were deducted from the savings/passbook account at least as of 20 October 1955. The Bank's records show that this correspondence, which was kept at the Bank from 1944 to 1955, was deposited by the Bank in a safe deposit box on 14 September 1961. The Bank's records show that the value of the savings/passbook account on 22 November 1949 was 423.75 Swiss Francs.

With respect to the custody accounts, numbered 4839 and 28030, the Bank's records do not show when the accounts at issue 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" or the "ICEP Investigation") 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's records that the Account Owner or his heirs closed the custody 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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 1] has plausibly identified the Account Owner. His grandfather's name matches the published name of the Account Owner. Claimant [REDACTED 1] identified his grandfather's country of residence, which matches unpublished information about the Account Owner contained in the Bank's records. The CRT notes that the Claimant [REDACTED 1] filed an Initial Questionnaire with the Court in 1999 and ATAG Ernst & Young claim forms in 1998, asserting his entitlement to Swiss bank accounts owned by the Account Owner's children, 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"). In the Initial Questionnaire,

Claimant [REDACTED 1] stated that his father was [REDACTED], formerly named [REDACTED], from Czechoslovakia. In support of his claim, Claimant [REDACTED 1] submitted the birth certificates of his paternal uncle and aunt, [REDACTED] and [REDACTED], which indicate that Emil Kohn was their father and that he resided in Czechoslovakia.

Claimant [REDACTED 2]'s father-in-law's name matches the published name of the Account Owner. Claimant [REDACTED 2] identified her father-in-law's country of residence and stated that he may have lived in Aussig an der Elbe, which matches unpublished information about the Account Owner contained in the Bank's records. Finally, Claimant [REDACTED 2] stated that her father-in-law had a brother living in the United States, whose name she could not recall, which is consistent with unpublished information contained in the Bank's records that the Account Owner requested that the proceeds of the sale of securities in his custody account, numbered 28030, be sent to an individual in the United States bearing the same last name as the Account Owner.

The CRT notes that the other claims to this account were disconfirmed because the claimed account owners lived in different cities and countries from the Account Owner in this case. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner.

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. Claimant [REDACTED 2] stated that the Account Owner was Jewish, and that he was killed by the Gestapo.

The Claimants' Relationship to the Account Owner

Claimant [REDACTED 2] has plausibly demonstrated that she is related to the Account Owner by submitting documents, including her marriage certificate and her husband's birth certificate, demonstrating that she is the daughter-in-law of the Account Owner. Claimant [REDACTED 1] has also plausibly demonstrated that he is related to the Account Owner by submitting detailed biographical information demonstrating that he is the grandson of the Account Owner. As stated above, Claimant [REDACTED 1] identified unpublished information about his grandfather and submitted Initial Questionnaires to the Court and ATAG Ernst & Young claim forms for his [REDACTED] family members from Czechoslovakia, including the children of the Account Owner, before the publication of the ICEP list.

The Issue of Who Received the Proceeds

With regard to the savings/passbook account, numbered 42146, the Bank's records indicate that the account was transferred to a suspense account on 27 March 1980, and remains open and dormant.

With regard to the custody account, numbered 4839, given that the Account Owner was killed by the Gestapo in 1941 and thus would have been unable to repatriate his account without its

confiscation; that fees for this account continued to be deducted after the Account Owner's death as evidenced by the Bank's records dated from 1954; that there is no record of the payment of the Account Owner's accounts to him or to his heirs; 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 inquires by account owners because of the Banks' concern regarding double liability; and the application of Presumptions (f), (h), (i) and (j), as contained 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 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.

With regard to the custody account, numbered 28030, the Bank's records include a letter, dated 17 January 1939, from the Account Owner to the Bank requesting that all of the securities deposited in his custody account, numbered 28030, be sold, and that the proceeds be sent to a person named [REDACTED], who resided in Chicago, Illinois. Given this letter requesting the sale of securities deposited in this custody account, the CRT concludes that further consideration is necessary to determine whether [REDACTED] received the proceeds of this account.

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 Claimant [REDACTED 1]'s grandfather and Claimant [REDACTED 2]'s father-in-law, and those relationships justify an Award. Finally, the CRT has determined that regarding the custody account, numbered 4839, and the savings/passbook account, it is plausible that neither the Account Owner nor his heirs received the proceeds of the accounts.

Amount of the Award

In this case, the Account Owner held one custody account and one savings/passbook account.

With regard to the custody account numbered 4839, 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 custody account was 13,000.00 Swiss Francs. 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 a total award amount of 162,500.00 Swiss Francs.

With regard to the savings/passbook account, the Bank's records indicate that the value of this account as of 22 November 1949 was 423.75 Swiss Francs. According to Article 29 of the Rules, if the amount in a savings/passbook account was less than 830.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 830.00 Swiss Francs. The current value of the account is determined by multiplying the

balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a sum of 10,375.00 Swiss Francs.

Therefore, the total award amount in this case is 172,875.00 Swiss Francs.

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, Claimant [REDACTED 1] is a grandchild of the Account Owner and Claimant [REDACTED 2] is the Account Owner's daughter-in-law. Article 23(1)(e) further provides that if a child of the Account Owner is deceased, and that child's spouse but none of that child's descendants have submitted a claim, that child's spouse shall be considered a child of the Account Owner for the purposes of Article 23. Accordingly, Claimant [REDACTED 2] (whose late husband [REDACTED], was a son of the Account Owner) is considered a descendant of the Account Owner. Therefore, Claimant [REDACTED 1] and Claimant [REDACTED 2] are each 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 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
19 November 2003