

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]
also acting on behalf of [REDACTED 3], [REDACTED 4],
[REDACTED 5], and [REDACTED 6]

in re Accounts of Boris Kamenka and *Aktiengesellschaft Sofico*¹

Claim Numbers: 203291/MBC; 850043/MBC

This Certified Denial is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) and the claim of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Boris Kamenka. This Denial is to the unpublished accounts of *Aktiengesellschaft Sofico* (“Account Owner Sofico”) and Boris Kamenka (“Account Owner Kamenka”) (together the “Account Owners”) at the Hegibach and Seefeld branches of the [REDACTED] (the “Bank”).

All denials 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.

Procedural History

On 28 January 2003, the Court approved an Award to Claimant [REDACTED 1] for one demand deposit account held by Account Owner Kamenka at the Bank (the “January 2003 Award”). At that time, the CRT reserved decision regarding one additional account belonging to Account Owner Kamenka and two accounts belonging to Account Owner *Sofico*.

Subsequently, Claimant [REDACTED 2] appealed the January 2003 Award, asserting entitlement to a share in the accounts awarded in that decision.

¹ In a separate decision, the CRT awarded the accounts of Boris Kamenka to Claimant [REDACTED 1] (“Claimant [REDACTED 1]”). See *In re Accounts of Boris Kamenka and Sofico Aktiengesellschaft* (approved 28 January 2003) (the “January 2003 Award”). The CRT, following receipt of additional documents regarding these accounts from the Bank (“Voluntary Assistance”), has confirmed that the name of the company was actually *Aktiengesellschaft Sofico*.

This certified Denial addresses the three remaining accounts not included in the January 2003 Award. As the accounts in this Denial were not previously addressed in the January 2003 Award, the CRT is treating the information contained in Claimant [REDACTED 2]'s appeal as a claim to these untreated accounts for the purposes of this decision. This decision does not address Claimant [REDACTED 2]'s appeal to the accounts previously awarded in the January 2003 Award.

The January 2003 Award

In the January 2003 Award, the CRT determined that Claimant [REDACTED 1] plausibly identified Account Owner Kamenka, that he plausibly demonstrated that Account Owner Kamenka was his great-grandfather, and that he made a plausible showing that Account Owner Kamenka was a Victim of Nazi Persecution.

Additionally, the CRT determined that Account Owner Kamenka held a custody account that was closed in 1938 and a demand deposit account that was closed in 1950; and that Account Owner *Sofico* held a custody account and a demand deposit account. The CRT further determined that it was plausible that Account Owner Kamenka did not receive the proceeds of his demand deposit account that was closed in 1950, and awarded him that account. The CRT did not render a decision regarding the custody account held by Account Owner Kamenka and the two accounts held by Account Owner *Sofico*, pending further consideration.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying Account Owner Kamenka as his paternal great-grandfather, Boris Kamenka, who was born in Russia in 1870. Claimant [REDACTED 1] stated that Boris Kamenka and his wife had five children: [REDACTED] (Claimant [REDACTED 1]'s paternal grandfather, who was born on 18 May 1888 in Odessa, Russia), [REDACTED], [REDACTED], [REDACTED], and [REDACTED], all of whom were born in Russia. Claimant [REDACTED 1] explained that his great-grandfather originally resided in St. Petersburg, Russia, where he was the owner of a Russian bank named *Azov-Don*. Claimant [REDACTED 1] stated that his great-grandfather escaped the Russian Revolution with his family in 1917 via Helsinki, Finland, and that they emigrated to Paris, France. In a telephone conversation with the CRT, Claimant [REDACTED 1] stated that his great-grandparents resided at several addresses in Paris, but he could not remember the exact addresses or the period during which his great-grandparents resided there.

Claimant [REDACTED 1] stated that before the Second World War, his great-grandfather deposited assets in numbered accounts in Switzerland. Claimant [REDACTED 1] explained that his great-grandfather, who was Jewish, died of natural causes in Nazi-occupied France in 1941 or 1942.

In support of his claim, Claimant [REDACTED 1] submitted copies of documents, including: (1) a combat identification card for former combatants and victims of the war (*Carte du Combattant - des anciens combattants et victimes de la Guerre*), indicating that [REDACTED] was born on 18 May 1888 in Odessa, Russia, and that he resided at 6 Rue de la Néva in Paris, France; (2) a chapter of an article about [REDACTED], describing his father's wealth and profession as a bank owner; (3) a document regarding *Azov-Don Bank* dated 27 March 1914, indicating that Boris Kamenka was the chairman and a shareholder of the *Azov-Don Bank*; (4) a list of executives of the *Azov-Don Bank* in Saint Petersburg, indicating that Boris Kamenka was the chairman of the *Azov-Don Bank*; (5) several photographs of the *Azov-Don Bank* in Saint Petersburg; (6) a financial statement of the *Azov-Don Bank* from 1 January 1916, indicating that Boris Kamenka was the head of administration of the bank; (7) a memorandum from the administration of the *Azov-Don Bank*, dated 14 April 1916; and (8) an extract of an article by René Girault, entitled "*Russian bonds and French investments in Russia from 1887 to 1914*," published in 1973, indicating that Boris Kamenka was the director of the *Azov-Don Bank*.

Claimant [REDACTED 1] indicated that he was born on 22 August 1943, in Aix en Provence, France.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire ("IQ") to the Court in 1999 and an ATAG Ernst & Young claim form ("ATAG form") in 1998, asserting his entitlement to Swiss bank accounts owned by his great-grandfather Boris Kamenka.

Information provided by Claimant [REDACTED 2]

In October 2003, Claimant [REDACTED 2] submitted an Appeal to the January 2003 Award. In her Appeal, Claimant [REDACTED 2] identified Account Owner Kamenka as her maternal grandfather, Boris Kamenka, who was born on 9 January 1855 in Barditcheff, Russia. Claimant [REDACTED 2] stated that her grandfather was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 2] indicated that her grandfather had five children, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (Claimant [REDACTED 2]'s mother).

Claimant [REDACTED] stated that Boris Kamenka died of natural causes on 26 March 1942 in Neuilly-sur-Seine, France, and that his wife [REDACTED] died of natural causes on 22 May 1941 in Neuilly-sur-Seine.

Claimant [REDACTED 2] stated that Boris Kamenka's son [REDACTED], who was born in 1890 in Saint Petersburg and died in Paris in 1969, had two children: [REDACTED] ([REDACTED]), who was born in 1910 and died in 1970, and [REDACTED] (Claimant [REDACTED 1]'s father).

Claimant [REDACTED 2] explained that Boris Kamenka's sons, [REDACTED], who was born in 1892 and died in 1969, and [REDACTED], who was born in 1897 and died in 1990, did not have any direct descendants. Claimant [REDACTED 2] stated that Boris Kamenka's daughter, [REDACTED], née [REDACTED], who was born in 1908 in Saint Petersburg and died in 1998 in Paris, had four children: [REDACTED 3], [REDACTED 4], [REDACTED 5] and

[REDACTED 6]. Claimant [REDACTED 2] stated that her mother, [REDACTED] (Boris Kamenka's daughter), was born in 1894 and died in 1973 in Paris.

In support of her appeal, Claimant [REDACTED] submitted copies of documents, including: (1) Boris Kamenka's death certificate, indicating that he was born on 9 January 1855 in Barditcheff, and that he died on 26 March 1942 in Neuilly-sur-Seine, France; (2) her grandmother's death certificate, indicating that [REDACTED] was born on 16 March 1865 in Odessa, Russia, that she was married to Boris Kamenka, and that she died on 22 May 1941; and (3) several letters between the Swiss Justice Department in Bern, Switzerland, and [REDACTED], dated December 1965, indicating that [REDACTED] contacted the Swiss Justice Department to gather information about the fate of Swiss bank accounts belonging to his father, Boris Kamenka. These documents do not indicate whether [REDACTED] was ultimately successful in obtaining information about those accounts.

Claimant [REDACTED 2] indicated that she was born in 1916. Claimant [REDACTED 2] is representing [REDACTED 3], [REDACTED 4], [REDACTED 5] and [REDACTED 6] (the children of Boris Kamenka's daughter [REDACTED], née [REDACTED]).

Information Available in the Bank's Records

The Bank's records consist of two customer cards, articles of association of the company *Sofico Aktiengesellschaft*, dated 10 March 1928, and minutes of a general meeting of the shareholders of that company, dated 10 April 1929.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about the Account Owners' accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents include custody account identification cards (*Leitkarten*), related valuation cards (*Depotvalorenkarten*), a customer card, and correspondence between the Bank and members or representatives of members of the Kamenka family.

Account Owner Kamenka

The Bank's records indicate that Account Owner Kamenka was Boris Kamenka, a former Russian citizen, who resided at Avenue du Parc Monceau 5, Paris, France, and at 23 Boulevard Victor Hugo in Neuilly-sur-Seine, and who passed away on 26 March 1942.

The Bank's records indicate that Account Owner Kamenka held a demand deposit account that was opened on 11 December 1930 and was marked in January 1950 as having already been, according to information received by the Bank via telephone, closed for years.² The CRT notes that this account was awarded to Claimant [REDACTED 1] in the January 2003 Award.

² This account was awarded in the January 2003 Award. The customer card contains a notation, dated in January 1950, indicating that the account was "closed years ago" (*seit Jahren geschlossen*).

The Bank's records also indicate that Account Owner Kamenka held a custody account numbered 57809³ at the Bank's Seefeld branch in Zurich that was opened on an unknown date and closed on 10 April 1938. The records further indicate that this account held a number of Swiss securities that were sold between March 1937 and March 1938.

Account Owner *Sofico*

The Bank's records indicate that Account Owner *Sofico* was *Aktiengesellschaft Sofico*. The records further indicate that Boris Kamenka, together with Arthur Ruegger of Avenue de Champel 29, Geneva, Switzerland, were the founding directors of Account Owner *Sofico*, which was officially registered as a company in Vaduz, Liechtenstein on 10 March 1928. According to the Bank's records, Account Owner *Sofico* was a business dedicated to the purchase and sale of shares, securities, goods, and real estate. The Bank's records further indicate that both Boris Kamenka and [REDACTED] were signing officers of Account Owner *Sofico*, and that the company had capital stock of 200,000.00 Swiss Francs ("SF") divided into 400 shares, worth SF 500.00 each.

The Bank's records contain a letter, dated 17 March 1959, from American lawyers representing [REDACTED], who is described as the son and one heir of Boris and [REDACTED]. In that letter, in which the lawyers inquire about accounts held in the names of Boris and [REDACTED] and of Account Owner *Sofico* at the Bank, the lawyers state that Account Owner *Sofico* was owned by the late Mr. Kamenka.

The Bank's records indicate that Account Owner *Sofico* held a custody account numbered 51643 that was opened on 31 May 1933 and closed on 30 April 1939. The records indicate that on 31 May 1935, Account Owner *Sofico* transferred custody account 51643 from the Bank's Hegibach branch in Zurich to the Seefeld branch of the Bank in Zurich. The Bank records also indicate that custody account 51643 held a number of securities that were sold on different dates between 1934 and April 1939. The Bank's records also indicate that on 1 and 2 April 1938, some of these securities were sent to the *Banque de Bruxelles* in Brussels, and some to *Lazard Frères* bank in London.

The Bank's records also indicate that Account Owner *Sofico* held a demand deposit account that was opened on an unknown date and was closed on 20 October 1938. The Bank's records do not show the value of this account.

Additional documents obtained through Voluntary Assistance

The Bank's records obtained through Voluntary Assistance also include an inheritance statement which indicates that Boris Kamenka bequeathed his entire estate to [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. According to this document, Account Owner Kamenka made an oral will on 14 September 1940 which was recorded by a notary and announced by the Civil Court Seine in Neuilly-sur-Seine, France.

³ The CRT notes that the January 2003 Award stated that the custody account number was 67809. However, through the receipt of more legible documents through Voluntary Assistance, the CRT was able to determine that the account was in fact numbered 57809.

Furthermore, this document indicates that Boris and [REDACTED] fled Russia to France and that they resided at Boulevard Victor Hugo 23 in Neuilly-sur-Seine. Finally, the inheritance statement indicates that [REDACTED] died on 22 May 1941 and that Boris Kamenka died on 26 March 1942.

Furthermore, the Bank's records obtained through Voluntary Assistance contain a large number of letters from the heirs and legal representatives of the heirs of Account Owner Kamenka to the Bank, seeking accounts at the Bank belonging to Boris Kamenka, [REDACTED], and Account Owner *Sofico*. According to the Bank's records, Mr. and Mrs. [REDACTED] and other members of his family attempted to gain information about the accounts of Boris and [REDACTED] and Account Owner *Sofico* from the Bank for a period from 1954 through 1966. The records indicate, for example, that [REDACTED] visited the Bank in Zurich on 12 July 1966 in the company of his Swiss lawyer; the following day, the Bank sent a letter to his lawyer indicating that that visit had been approximately the tenth time that the Bank had been asked to undertake, and had in fact undertaken, a search for accounts belonging to Boris Kamenka and [REDACTED] and the company *Sofico*, and it emphasized that no assets under those names remained at the Bank. The Bank's records indicate that the Bank informed the Kamenka heirs that its records indicated that an account belonging to Boris Kamenka had existed at the Seefeld branch of the Bank, but that that account had been closed in 1938.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of 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 two claims of the Claimants in one proceeding.

Identification of the Account Owners

Claimant [REDACTED 1] has plausibly identified Account Owner Kamenka. His great-grandfather's name and country of residence match the published name and country of residence of Account Owner Kamenka. Claimant [REDACTED 1] identified his great-grandfather's city of residence, which matches unpublished information about Account Owner Kamenka contained in the Bank's records. Claimant [REDACTED 1] also provided the names of Account Owner Kamenka's children, which matches unpublished information contained in the Bank's records.

In support of his claim, Claimant [REDACTED 1] submitted documents, including several documents from the *Azov-Don Bank*, providing independent verification that the person who is claimed to be Account Owner Kamenka had the same name recorded in the Bank's records as the name of Account Owner Kamenka.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Boris Kamenka, and indicates that he resided in Paris, France, which matches the information about Account Owner Kamenka provided by Claimant [REDACTED

1]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Moreover, Claimant [REDACTED 1] filed an IQ with the Court in 1999 and an ATAG form in 1998, asserting his entitlement to a Swiss bank account owned by Boris Kamenka, 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 possible those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 1] based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Claimant [REDACTED 1] had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 1].

The CRT further notes that Claimant [REDACTED 1] did not identify Account Owner *Sofico*. The CRT notes, however, that Claimant [REDACTED 1] was born in 1943, after the death of his great-grandfather Account Owner Kamenka, and therefore determines that it is plausible that Claimant [REDACTED 1] would not know the names of companies owned by his great-grandfather, and that Claimant [REDACTED 1]'s failure to identify Account Owner *Sofico* does not adversely affect the plausibility of his identification of Account Owner [REDACTED 1].

Claimant [REDACTED 2] has plausibly identified Account Owner Kamenka. Her grandfather's name matches the published name of Account Owner Kamenka. The CRT notes that by the time Claimant [REDACTED 2] submitted her appeal, the January 2003 Award had been published, containing information such as Account Owner Kamenka's city of residence and the names of his wife and children.

In support of her claim, Claimant [REDACTED 2] submitted documents, including her grandfather's death certificate, providing independent verification that the person who is claimed to be Account Owner Kamenka had the same name recorded in the Bank's records as the name of Account Owner Kamenka.

The CRT notes that the information provided by the Claimants differs in certain details. However, considering the amount of identical information provided by the Claimants and Claimant [REDACTED 2]'s identification of Claimant [REDACTED 1] as her relative, the CRT concludes that both Claimants have plausibly identified Account Owner Kamenka.

The CRT notes that Claimant [REDACTED 1] also did not identify Account Owner *Sofico*. The CRT notes, however, that it is plausible that Claimant [REDACTED 1] would not know the names of companies owned by her grandfather, and therefore determines that Claimant [REDACTED 2]'s failure to identify Account Owner *Sofico* does not adversely affect the plausibility of her identification of Account Owner Kamenka. The other claims to these accounts were disconfirmed because those claimants provided a different country of residence than the country of residence of Account Owner Kamenka.

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 Account Owner Kamenka was Jewish, and that he resided in Nazi-occupied France. The Bank's records indicate that one of the directors of Account Owner *Sofico* was Account Owner Kamenka and contain a letter, dated 17 March 1959, from American lawyers representing one of Account Owner Kamenka's son, in which they state that that Account Owner *Sofico* was owned by the late Mr. Kamenka. As noted above, a person named Boris Kamenka was included in the CRT's database of victims.

The Claimants' Relationships to Account Owner Kamenka

Claimant [REDACTED 1] has plausibly demonstrated that he is related to Account Owner Kamenka by submitting specific biographical information, demonstrating that Account Owner Kamenka was Claimant [REDACTED 1]'s great-grandfather.

The CRT further notes that Claimant [REDACTED 1] identified unpublished information about Account Owner Kamenka as contained in the Bank's records; that Claimant [REDACTED 1] filed an IQ with the Court in 1999 and an ATAG Form in 1998, identifying the relationship between Account Owner Kamenka and Claimant [REDACTED 1], prior to the publication in February 2001 of the ICEP List; and that Claimant [REDACTED 1] also identified information which matches information contained in the Yad Vashem records.

Claimant [REDACTED 2] has plausibly demonstrated that she is related to Account Owner [REDACTED 1] by submitting specific information, demonstrating that Account Owner Kamenka was Claimant [REDACTED 2]'s grandfather. The CRT further notes that Claimant [REDACTED 2] submitted the death certificates of Boris and [REDACTED]. The CRT notes that it is plausible that these documents are documents which most likely only a family member would possess. Claimant [REDACTED 2] also identified information which matches information contained in the Yad Vashem records. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner Kamenka was well known to Claimant [REDACTED 2] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 2] is related to Account Owner Kamenka, as she has asserted in her Appeal.

The Issue of Who Received the Proceeds

In this case, Account Owner Kamenka held one demand deposit account, which was awarded to Claimant [REDACTED 1] in the January 2003 Award.⁴

With respect to custody account 57809 held by Account Owner Kamenka, the Claimants indicated that Account Owner Kamenka, who was originally from Russia, resided in France when the account was closed on 10 April 1938. Given that the account was closed prior to the Nazi occupation of France on 10 May 1940, the CRT determines that Account Owner Kamenka

⁴ As noted above, this decision makes no determination regarding Claimant [REDACTED 2]'s appeal to the account awarded in the January 2003 Award.

was able to access this account, and concludes that Account Owner Kamenka closed the account and received the proceeds himself.

With respect to custody account 51643 held by Account Owner *Sofico*, which was closed on 30 April 1939, and the demand deposit account held by Account Owner *Sofico* which was closed on 20 October 1938, the CRT notes that securities in the custody account were transferred to banks in Belgium and England in April 1939, following the closure of the demand deposit account, and shortly prior to the closure of the custody account. The CRT notes that Account Owner Kamenka, who was one of the owners and directors of Account Owner *Sofico*, was originally from Russia and resided in France at the time these accounts were closed and that the other director of the company, [REDACTED], resided in Switzerland, and, as a signing officer of the company, had unfettered access to the account. The CRT also notes that there is no indication that these transfers, made to countries which were not at that time occupied by Nazi forces, were made by anyone other than the directors or signing authorities of Account Owner *Sofico*. The CRT also notes that Account Owner *Sofico* was legally based in Liechtenstein, which was not occupied by or officially aligned with Nazi forces, and that Nazi forces did not occupy France until 10 May 1940. Accordingly, the CRT concludes that the two accounts held by Account Owner *Sofico* were closed by the entitled officers of that company, and that Account Owner *Sofico* or its owners received the proceeds of those accounts.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimants may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimants should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimants should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
3 June 2009