

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED]

in re Account of Walter Kary

Claim Number: 600826/BW¹

This Certified Denial is based on the claim of [REDACTED] (the “Claimant”) to the account of Walter Kary (the “Account Owner”), potentially held at the [REDACTED] (the “Bank”).²

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

Information Provided by the Claimant

The Claimant submitted a claim to the Holocaust Claims Processing Office (“HCPO”) asserting that his father, Walter Kary, who was born on 3 October 1889 in Breslau, Germany (now Wrocław, Poland), and married to [REDACTED], in 1920, owned a Swiss bank account. The Claimant indicated that his father, who was Jewish, was a businessman in the grain and fodder business, and partner in the firm of *Kary & Gerson*, which owned a malt factory, and that he resided in Breslau before the Second World War. The Claimant also indicated that his father’s business partner, Richard Gerson, who emigrated to England by 1939, settled the financial affairs of his father after he (his father) emigrated to Sydney, Australia in 1939. The Claimant indicated that he was born on 22 July 1921 in Breslau.

In support of his claim, the Claimant submitted documents, including correspondence and applications submitted to various German post-war restitution agencies regarding the Account Owner Kary’s real estate and malt factory in Breslau, as well as a letter sent to his father in Australia, from Richard Gerson in England, which chronicles particular business transactions of the two business partners that occurred after the Claimant’s father had emigrated to Australia.

¹ The Claimant submitted a claim, numbered B-02064, on 15 October 1999, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600826.

² The CRT notes that the Claimant indicated in his original claim form that his father, Walter Kary, possibly held Swiss accounts. After an extensive search of the CRT Account History Database, a decision was issued on 18 January 2006, which informed the Claimant that the CRT was unable to locate an account belonging to his father. The Claimant appealed this decision, and has submitted new, relevant, documents to the CRT. These newly acquired documents form the basis for this denial.

Information Available in the Bank's Records

The CRT notes that 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 report an account belonging to Walter Kary during their investigation of the Bank.

The Claimant submitted a letter, dated 24 August 1939, from Richard Gerson to Walter Kary that references a transfer of assets denominated in British Pound Sterling from Luxembourg to the Bank. According to the letter, Richard Gerson was to receive half of the value of these assets. In the letter, Mr. Gerson informed Mr. Kary that he had charged Mr. Kary's account for the value due to him. (*"Mir gehören davon [die Hälfte] für welche ich Dein Conto belastet habe."*)

The 24 August 1939 letter also references what appears to be a private financial arrangement existing between Mr. Kary and Mr. Gerson, which is evidenced by Mr. Gerson's use of the phrase "Your account with me" (*"Dein Conto bei mir"*). In this letter, Mr. Gerson also referred to another private financial arrangement between Mr. Kary and a woman named *Frau* (Mrs.) Salinger, evidenced by the phrase "Your credit with Salingers" (*"Dein Guthaben bei Salingers"*).

Finally, the Claimant submitted a letter from Mr. Kary to Mr. Gerson, dated 18 September 1939, which references the "agreement made in Switzerland" (*"die z.Z. [zur Zeit] in der Schweiz getroffene Vereinbarung"*), and the "Swiss agreement" (*"schweizer Vereinbarung"*), and also references "our assets abroad" (*"Auslandsguthaben"*).

The CRT's Analysis

Admissibility of the Claim

The CRT has determined that the claim is admissible according to Article 18 of the Rules Governing the Claims Resolution Process, as amended (the "Rules").

Basis for the Denial

The CRT notes that the Claimant bases his claim that his father owned an account at the Bank upon the letter of 24 August 1939 from Richard Gerson to Walter Kary regarding a transfer of assets denominated in British Pound Sterling from Luxembourg to the Bank. According to the letter, Richard Gerson was to receive half of the value of these assets. The CRT notes that, in the letter, Mr. Gerson informed Mr. Kary that he had charged Mr. Kary's account for the value due to him. The fact that Mr. Gerson was able to charge Mr. Kary's account for the value due him clearly demonstrates that Mr. Gerson, and, similarly, Mr. Kary, had access to the account and were able to dispose of the proceeds. Therefore, to the extent that this letter demonstrates that an account existed at the Bank, the CRT concludes that the Account Owner, as well as Mr. Gerson, had access to the account and received the proceeds.

With respect to the references to what appears to be a private financial arrangement existing between Mr. Kary and Mr. Gerson, and between Mr. Kary and a woman named *Frau* (Mrs.) Salinger, the CRT has determined that the evidence submitted by the Claimant is insufficient to justify an award based on these references. According to Article 17 of the Rules, the CRT shall use the records and files available from the Account History Database, the Account Dossiers, and the Total Accounts Database, the information submitted by the Claimants, and to the extent that the CRT deems relevant, other sources of information to determine whether an award is justified. While the CRT has previously awarded accounts to Claimants when the ICEP Investigation failed to locate an account belonging to their relative (an account not included in the Account History Database, the Account Dossiers, and the Total Accounts Database), the evidence submitted by these Claimants falls into very limited categories. Article 17 of the Rules lists certain categories of evidence that the CRT has used to justify an award when an account is not identified in the ICEP Investigation. These categories include Austrian State Archives Records and other government records, records of the New York State Holocaust Claims Processing Office, and any other historical and factual material available to the CRT. Examples of facially reliable evidence submitted by Claimants include actual bank documents, documents submitted to an official governmental agency, and official letterhead indicating a connection to a Swiss bank.

While the CRT bears in mind the difficulties of proving a claim after the destructive events of the Second World War, it has determined in this case, because the references to these private financial arrangements in the letter provided by the Claimant do not fall into any of the categories discussed above, nor do they indicate an official connection to the Bank, they are insufficient to support the existence of an awardable account belonging to the Claimant's relative. Accordingly, the CRT is unable to make an award to the Claimant based on this evidence.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the Claimant 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 Claimant 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 Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

Scope of the Denial

The CRT now considers the Claimant's claim to the accounts of Walther Kary closed. This decision applies only to the Claim Number and Claimed Account Owner identified herein. The CRT is aware that the Claimant may have claimed accounts held by other persons or entities both in the Claim Number specified above and in other claims submitted to the CRT.

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
30 May 2007