

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant Michael Brodsky

in re Accounts of T. D. Kessel

Claim Number: 206981/MBC¹

This Certified Denial is based on the claim of Michael Brodsky (the “Claimant”) to a Swiss bank account of T. D. Kessel, as published on the February 2001 published list of accounts determined by Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”) and potentially owned by the Claimant’s relatives, Zelda Kessel and Ratzl Kessel (the “Claimed Account Owners”). The CRT did not locate an account belonging to Zelda Kessel or Ratzl Kessel in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

All denials 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 stating that Zelda Kessel and Ratzl Kessel were Jewish and resided in Poland. The CRT notes that the Claimant did not indicate that Zelda Kessel and Ratzl Kessel had any middle name or first name variations, or that they opened an account using any code name or pseudonym.

Information Available in the Bank’s Records

The CRT notes that the Claimant submitted a claim to an account belonging to his relatives, Zelda Kessel and Ratzl Kessel and held under the name “T. D. Kessel.” The auditors who carried out the investigation to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) reported one account whose owner's name matches that provided by the

¹ The Claimant should note that this determination relates only to the Claim Number and Claimed Account Owners stated above, and that the CRT is aware that the Claimant may have submitted other claims.

Claimant. Each account is identified below by its Account Identification Number, which is a number assigned to the account by the ICEP auditors for tracking purposes.

Account 4021041

The records indicate that the account owner was T. D. Kessel. The records do not indicate the account owner's domicile, or any other information about the account owner.

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").

Identification of the Account Owner

The CRT concludes that the Claimant has not identified the account owner as his relative. Although the Claimant claimed the published account of T. D. Kessel, stating that it was owned by his relatives Zelda Kessel and Ratzl Kessel, nowhere in his claim did the Claimant state why his relatives would have opened an account in the name of T. D. Kessel, nor did the Claimant indicate that either of his relatives had the initials of T. D., or a combination thereof.

The CRT notes that in such cases where the records contain only the account owner's published name, determining the identity of the account owner is especially difficult. In determining if a claimant has correctly identified the account owner, the CRT considers whether a claimant can show that a member of their family had the first and middle name which would match the account owner's initials. Birth and death registers often contain such information, and, in addition to the documents submitted by claimants, the CRT regularly consults archival sources in the attempt to locate such documents that would substantiate such claims.

The CRT takes into consideration the passage of time, alternative spellings of names, and the circumstances of the Holocaust. Thus, in the absence of documents that can show familial relationships, the CRT also considers whether a claimant identified the account owner's name as a family member prior to its publication on the ICEP List. For example, if a claimant identified a person with the same name as the account owner in an Initial Questionnaire filed with the Court in 1999, prior to the publication in February 2001 of the ICEP List, it is clear that a claimant based their claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same last name as their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. This supports the credibility of the information provided by that claimant.

Absent special circumstances, the identification of a name on the published list of account owners, without some evidence showing that a claimant's relative had the same name as the

published account owner, is insufficient to support a finding that a claimant's claim is plausible, and the claim must be denied.

In this case, the Claimant did not provide any documentary evidence to show that he had a family member with the first names to match the account owner's initials. Further, no evidence exists to show that this name was identified by the Claimant as the name of a relative prior to the publication of account owner's name. Accordingly, the CRT concludes that the Claimant has not identified the account owner as his relative.

The Claimant should note that all accounts awarded by the CRT are published upon release on the CRT's website at www.crt-ii.org.

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 Zelda Kessel and Ratzl Kessel closed. Please note that this decision applies only to the Claim Number and Claimed Account Owners identified herein, and that 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
24 May 2009