

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1], née [REDACTED]
also acting on behalf of [REDACTED 2], née [REDACTED], [REDACTED 3], and
[REDACTED 4]

and to [REDACTED 5]¹
also acting on behalf of [REDACTED 6], née [REDACTED]

in re Account of Ignatz Kalmus

Claim Numbers: 501423/BE; 750026/BE²

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”) to the account of Heinrich Kalmus and the claim of [REDACTED 5] (“Claimant [REDACTED 5]”) (together the “Claimants”) to the account of Fanny Landau.³ This Award is to the unpublished account of Ignatz Kalmus (the “Account Owner”), over which Grete Kalmus (the “Power of Attorney Holder”) at the Zurich branch of the [REDACTED] (the “Bank”). The account awarded is from the Total Accounts Database (“TAD”) at the Bank.

All awards 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.

¹ On 6 November 2006, the CRT was informed that [REDACTED 5] (“Claimant [REDACTED 5]”) passed away on 25 June 1999, and that his wife, [REDACTED 6], passed away on 15 October 2001.

² Claimant [REDACTED 5] did not submit a CRT Claim Form. However, in 1997 he submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-C-70-919-140-959, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 750026.

³ In separate decisions, the CRT awarded the account of Heinrich Kalmus to Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) and the account of Fanny Landau to Claimant [REDACTED 5]. See *In re Accounts of Heinrich Kalmus* (approved on 28 June 2006) and *In re Accounts of Fanny Landau* (approved on 7 June 2006).

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her paternal grandfather, Ignatz Israel Kalmus, who was born in 1868 in Mariampol, Galicia, Poland (today the Ukraine), and was married to Grete Kalmus. Claimant [REDACTED 1] indicated that her grandparents had two children, [REDACTED] (Claimant [REDACTED 1]'s father) and [REDACTED 6], née [REDACTED]. Claimant [REDACTED 1] stated that her grandfather, who was Jewish, was sent by his family to Vienna, Austria, to study and that he later took a job at the Austrian Railways, where he was quickly promoted. Claimant [REDACTED 1] indicated that her grandfather resided at Hasenauerstrasse 47 in Vienna. Finally, Claimant [REDACTED 1] indicated that her grandfather died on 18 April 1934 in Vienna.

Claimant [REDACTED 1] submitted copies of: (1) a letter to her from her aunt, who was Ignatz Kalmus' daughter, [REDACTED 6], written on 9 January 1986, in which [REDACTED 6] describes to [REDACTED 1] their family's legacy, including biographical information about Ignatz Kalmus, which indicates that he was born in Mariampol to a wealthy Jewish family, that he and his wife, Grete Kalmus, had two children, [REDACTED] and [REDACTED 6], that he worked in the Austrian Railways for many years and that he died on 18 April 1934; (2) her father's Austrian identification card, issued on 30 September 1921 in Vienna, indicating that [REDACTED]' father was Ignatz Kalmus; (3) a certificate (*Zeugnis*) issued by the Federal Police in Vienna (*Bundes-Polizeidirektion in Wien*) indicating that, at the time of his birth, [REDACTED]' family resided at Hasenauerstrasse 47 in Vienna XVII; (4) an obituary from the *Neue Freie Presse* newspaper, published on 21 April 1934, announcing the death of Ignatz Kalmus on 18 April 1934; (5) her father's birth certificate, indicating that [REDACTED]' father was Ignatz Kalmus, who was a senior official (*Ober-Official*) in the *Nordbahn* Austrian Railway line; (6) her father's death certificate, indicating that [REDACTED]' father was Ignatius Kalmus; (7) a letter to her father from a Viennese real-estate manager (*Hauserverwaltung*), named Ludwig Illeschitz, dated 19 August 1947, concerning real-estate property in which the Klamus family previously resided at in Vienna XVII at Hasenauerstrasse 47; and (8) a copy of her father's will, in which [REDACTED 4] is named as equal beneficiary with Claimant [REDACTED 1] and [REDACTED 3] to their father's estate.

Claimant [REDACTED 1] indicated that she was born on 27 February 1959 in Washington, D.C., the United States. Claimant [REDACTED 1] is representing her mother, [REDACTED 2], née [REDACTED], who was born on 30 November 1923 in Highland Park, Illinois, the United States; her sister, [REDACTED 3], who was born on 22 April 1956 in Washington D.C.; and her half-brother, [REDACTED 4] (the son of [REDACTED] and [REDACTED] and the step-son of [REDACTED]), who was born on 28 December 1947 in Washington D.C. The CRT notes that Claimant [REDACTED 1] emphasized that her father raised her half-brother as his own, even though he was not his biological child.

Claimant [REDACTED 5]

Claimant [REDACTED 5] submitted a Claim Form to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owner as his father-in-law, Ignatz Israel Kalmus, who was married to Grete Kalmus. Claimant [REDACTED 5] indicated that his father-in-law and his mother-in-law had a daughter, [REDACTED 6], who is Claimant [REDACTED 5]’s wife. Claimant [REDACTED 5] stated that his father-in-law, who was Jewish, resided with his wife at Hasenauerstrasse 47 in Vienna XVII. Claimant [REDACTED 5] submitted a copy of his marriage certificate issued by the Jewish community in Vienna on 20 June 1934, indicating that [REDACTED 5]’s wife, [REDACTED 6], resided at Hasenauerstrasse 47 in Vienna, and that her parents were Ignatz Israel Kalmus and Grete Kalmus, née Kohn.

Claimant [REDACTED 5] indicated that he was born on 26 September 1904 in Vienna. Claimant [REDACTED 5] is representing his wife, [REDACTED 6], née [REDACTED], who was born on 2 December 1907 in Vienna.

Information Available in the Bank’s Record

The Bank’s record consists of a power of attorney form, dated 18 June 1931. According to this record, the Account Owner was Ignatz Kalmus, who resided at Hasenauerstrasse 47 in Vienna XVII, Austria, and the Power of Attorney Holder was Grete Kalmus, the Account Owner’s wife. The Bank’s record indicates that the Account Owner held one account, the type of which is not indicated.

The Bank’s record indicates that the account was closed on 13 September sometime during the 1930s. The year of closure is handwritten on the Bank’s record and is not legible. The amount in the account on the date of its closure is unknown.

There is no evidence in the Bank’s record that the Account Owner, the Power of Attorney Holder or their heirs closed the account and received the proceeds themselves.

This account was not part of the Account History Database at the CRT, but was identified as a result of matching and research carried out at the Bank and using, as noted above, the TAD at the Bank. The TAD at the Bank is one of the several databases that comprise a total of approximately 4.1 million accounts. These are part of the approximately 6.9 million accounts that were identified by auditors in an investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 million accounts, in databases located at the 59 ICEP audited Swiss banks,⁴ are composed of 1.9 million savings accounts with unknown values or with a 1930-1940s value of 250.00 Swiss Francs or less and accounts with Swiss addresses, and

⁴ These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

2.2 million accounts that ICEP concluded should not be included within the Account History Database, that is, within the 36,000 accounts that ICEP determined were “probably or possibly” owned by victims of Nazi persecution.

The account awarded is part of a group of accounts identified in the TAD.

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 two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner and the Power of Attorney Holder. The name and city and country of residence of Claimant [REDACTED 1]’s grandfather and Claimant [REDACTED 5]’s father-in-law match the unpublished names and city and country of residence of the Account Owner and the Power of Attorney Holder. The Claimants identified the Account Owner’s wife’s name, which matches unpublished information about the Power of Attorney Holder contained in the Bank’s record.

In support of her claim, Claimant [REDACTED 1] submitted documents, including copies of (1) a letter to her from her aunt, [REDACTED 6], providing biographical information about Ignatz Kalmus and indicating that he was married to Grete Kalmus; (2) her father’s Austrian identification card, indicating that [REDACTED]’ father is Ignatz Kalmus; (3) a certificate issued by the Federal Police in Vienna indicting that, at the time of his son’s birth, Ignatz Kalmus resided at Hasenauerstrasse 47, in Vienna XVII; (4) an obituary from the *Neue Freie Presse* newspaper announcing the death of Ignatz Kalmus on 18 April 1934; (5) her father’s birth certificate indicating that [REDACTED]’ father was Ignatz Kalmus; (6) her father’s death certificate indicating that [REDACTED]’ father was Ignatius Kalmus; (7) a letter to her father from a Viennese real-estate managing company concerning a real-estate property in which the Klamus family previously resided at in Vienna XVII at Hasenauerstrasse 47; and (8) a copy of her father’s will, naming Claimant [REDACTED 1] and the parties she represents as beneficiaries of [REDACTED]’ estate, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the Bank’s record as the name and city of residence of the Account Owner.

In support of his claim, Claimant [REDACTED 5] submitted a copy of his own marriage certificate, indicating that [REDACTED 5]’s wife, [REDACTED 6], resided at Hasenauerstrasse 47 in Vienna, and that her parents were Ignatz Israel Kalmus and Grete Kalmus, providing independent verification that the person who is claimed to be the Account Owner had the same

name and resided in the same town recorded in the Bank's record as the name and city of residence of the Account Owner.

The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Target of Nazi Persecution

The CRT notes that while the Account Owner was not a Victim of Nazi Persecution, the Account Owner's children and direct heirs, [REDACTED] and [REDACTED 6], were Victims of Nazi Persecution. Claimant [REDACTED 1] stated that her father, [REDACTED], was Jewish and that he fled Austria in 1938, first to Romania, then to England and finally to New York. Claimant [REDACTED 5] indicated that his wife was Jewish, and that she resided in Austria after the *Anschluss*.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was Claimant [REDACTED 1]'s grandfather and Claimant [REDACTED 5]'s father-in-law. These documents include a letter written by [REDACTED 6] providing biographical information about Ignatz Kalmus, Claimant [REDACTED 1]'s father's Austrian identification card, indicating that [REDACTED]' father is Ignatz Kalmus, Claimant [REDACTED 1]'s father's birth certificate indicating that [REDACTED]' father was Ignatz Kalmus, Claimant [REDACTED 1]'s father's death certificate indicating that [REDACTED]' father was Ignatius Kalmus, Claimant [REDACTED 5]'s own marriage certificate, indicating that his [REDACTED 6]'s parents were Ignatz and Grete Kalmus. There is no information to indicate that the Account Owner has surviving heirs other than the parties whom the Claimants are representing.

The Issue of Who Received the Proceeds

In this case, the account was closed on 13 September sometime during the 1930s. Given that there is no record to whom the account was closed, nor any legible date of closing for the account, that the Account Owner's children and their heirs would not have been able to obtain information about the account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, 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 Claimants and the parties they represent. First, the claims are admissible in accordance with the criteria contained in

Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was her grandfather and Claimant [REDACTED 5] has plausibly demonstrated that the Account Owner was [REDACTED 6]'s father, and those relationships justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Further, the CRT notes that [REDACTED 6], as the Account Owner's daughter, has a better entitlement to the account than Claimant [REDACTED 5], the Account Owner's son-in-law, and that Claimant [REDACTED 1], [REDACTED 3], and [REDACTED 4], the Account Owner's grandchildren, have better entitlement to the account than [REDACTED 2], the Account Owner's daughter-in-law.

Amount of the Award

In this case, the Account Owner held one account of an unknown type. 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 current value of the account being awarded. Based on the ICEP investigation, in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs ("SF"). 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 SF 49,375.00.

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 representing her mother, [REDACTED 2], her sister, [REDACTED 3], and her half-brother, [REDACTED 4], and Claimant [REDACTED 5] is representing his wife, [REDACTED 6]. The CRT notes that Claimant [REDACTED 1]'s half-brother was not [REDACTED]' biological child and is therefore not a descendant of the Account Owner. However, Claimant [REDACTED 1] repeatedly emphasized in her claim form that her father raised her half-brother as his own, even though he was not his biological child. Claimant [REDACTED 1] also submitted a copy of her father's will, in which [REDACTED 4] is named as equal beneficiary with Claimant [REDACTED 1] and [REDACTED 3]. The CRT notes that, by representing him, Claimant [REDACTED 1] implies consent that he be included in the division of any award proceeds. Further, the CRT notes that the inclusion of [REDACTED 4] does not affect the award amount for Claimant [REDACTED 5] or represented party [REDACTED 6], only that of Claimant [REDACTED 1] and her sister. Therefore, in this case, the CRT considers [REDACTED 4] to be the [REDACTED]' son for the purposes of dividing the award amount.

Accordingly, Claimant [REDACTED 1], [REDACTED 3], and [REDACTED 4], as the children of the Account Owner's son [REDACTED], are entitled to share equally one-half of the award amount, or one-sixth of the award amount each, and [REDACTED 6], as the daughter of the Account Owner, is entitled to one-half of the award. As noted above, Claimant [REDACTED 5] and [REDACTED 2] are not entitled to share in the award.

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 he/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) at banks other than the Bank.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
10 November 2007