

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Estate of [REDACTED]¹
represented by Stephen Harnik

in re Account of Richard Kastner

Claim Number: 501089/RT

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of the Estate of [REDACTED], née [REDACTED], (the “Claimant”) to the published account of Richard Kastner. This award is to the published and unpublished accounts of Richard Kastner (the “Account Owner”), over one of which Carlo Conti (“the Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (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.

Information Provided by the Claimant

The Claimant, which is the Estate of [REDACTED], submitted a Claim Form identifying the Account Owner as the spouse of [REDACTED], née [REDACTED], Richard Castner (Kastner), who was born on 25 October 1889 in Vienna, Austria, and was the son of [REDACTED] and [REDACTED]. According to information provided by the Claimant, Richard Kastner, who was a merchant and who was Jewish, resided at Pötzleinsdorferstrasse 62 in Vienna until 1935, when he moved to France, where he resided at 72 Avenue d’Iéna in Paris. The Claimant further indicated that Richard Kastner fled France for the United States, where he died on 24 July 1946.

The Claimant submitted documents, including: (1) a copy of Richard Castner’s death certificate, indicating that he was born on 25 October 1889 in Vienna and died on 24 July 1946 in New York, and that his wife was [REDACTED], née [REDACTED]; (2) a copy of [REDACTED]’s death certificate, indicating that [REDACTED] was born on 5 March 1898 in Vienna, that she

¹ The CRT notes that the claim was submitted by Stephen Harnik on behalf of the executor of the estate of [REDACTED], née [REDACTED], who died on 28 February 1995. The Claimant’s representative included copies of [REDACTED]’s will and death certificate, indicating that [REDACTED] was appointed to be the executor of her estate.

was the daughter of [REDACTED]; and that she died on 28 February 1995; and (3) a copy of a sworn statement by [REDACTED], [REDACTED]'s grandson, dated in April 1995, indicating that his grandmother had only been married once, and that she was the widow of Richard Castner, who died on 24 July 1946. Finally, the Claimant submitted records from the Austrian State Archive relating to Richard Kastner, which are described in detail below.

The Claimant indicated that [REDACTED] was born on 3 May 1898 in Vienna and passed away on 28 February 1995 in New York.

Information Available in the Bank's Records

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") reported one account held by a person named Richard Kastner, who resided in Vienna, Austria, but did not provide any documents pertaining to this account. The CRT notes that this name and city of residence was included on the February 2001 published list of accounts determined by the ICEP auditors to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List").

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 this account ("Voluntary Assistance"). The Bank provided the CRT with additional documents referencing accounts belonging to Richard Kastner. These documents include a customer card and a power of attorney form. With regard to the account reported by the ICEP auditors, the CRT notes that the documents received during Voluntary Assistance indicate that the person who held the account referenced in the auditors' report did not reside in Vienna but in another city in Austria at least through 1938. The Voluntary Assistance records also indicate that a person named Richard Kastner resided at 72, Avenue d'Iéna in Paris, France, as of 1934. Accordingly, and based upon the careful review of these documents received during Voluntary Assistance, the CRT has determined that two different individuals named Richard Kastner held accounts at the Bank.

With regard to the account owned by Richard Kastner of Paris, the Bank's records indicate that the Account Owner was Richard Kastner, who resided at 72, Avenue d'Iéna in Paris, France, as of 1934. The Bank's records indicate that the Account Owner held one custody account, numbered 657, and one demand deposit account. According to these records, the Account Owner granted power of attorney over the demand deposit account to Dr. Carlo Conti, who resided in Trieste, Italy, on 1 November 1937. These records include signature samples for the Account Owner and the Power of Attorney Holder. The Bank's records further indicate that the custody account was closed on 21 May 1938 and the demand deposit account was closed on 20 May 1938. The amounts in the accounts on the dates of their closure are unknown. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Richard Kastner, numbered 66444.

According to these records, Richard Kastner, who formerly resided at Pötzleinsdorferstrasse 62 in Vienna, resided at 72 Avenue d’Jena in Paris. In a letter sent in July 1938 to the Office in the Ministry for Economics and Labor charged with registering and administrating Jewish-owned property (“*Vermögensverkehrsstelle*” or “*VVSt*”), Dr. Ludwig Rochlitzer, an attorney, requested an extension for the filing of the report on behalf of Richard Kastner, and an extension was then granted until 31 August 1938. The records also indicate that Richard Kastner never filed a report of his property and the *VVSt* and the financial administration therefore began investigating his whereabouts. In a letter dated 6 August 1940, Dr. Rochlitzer stated that Richard Kastner only visited his office once and that he knew neither who nor where Richard Kastner was. After an inquiry from the *VVSt*, the central residents’ registration office (“*Zentralmeldeamt*”) advised that Richard Kastner’s change of address to Paris was reported as of 13 September 1935. Additionally, the 1938 Census records contain a list of silverware and tableware items belonging to Richard Kastner had been bought by the Dorotheum auction house, as part of the regulation mobilizing Jewish-owned assets for use by the Reich, for a price of 300.00 Reichsmark (“RM”). These records make no mention of assets held in a Swiss bank account.

The CRT’s Analysis

Identification of the Account Owner

[REDACTED]’s spouse’s name and original place of residence match the name and place of residence of the Account Owner.² The Claimant also identified the Account Owner’s subsequent city and country of residence, which matches unpublished information about the Account Owner contained in the Bank’s records. The CRT notes that the Claimant claimed the published account of Richard Kastner of Vienna, Austria. As noted above, the documents obtained from the Bank during Voluntary Assistance indicate that the person who owned this account actually resided in another city in Austria at the same time as the Account Owner (the relative of [REDACTED]) resided in Paris. The CRT has therefore concluded that the documents refer to accounts owned by two different individuals, and that the Claimant has not identified the owner of the published account as the relative of [REDACTED].

² The CRT notes that the Bank’s documents indicate the spelling of the Account Owner’s last name as Kastner whereas the Claimant and the documents provided by the Claimant indicate the spelling as Castner. Taking into consideration that the Account Owner emigrated to the USA and may have changed the spelling of his last name, the CRT determines that this discrepancy does not undermine the plausibility of the Claimant’s identification of the Account Owner.

In support of its claim, the Claimant submitted documents, including records pertaining to the 1938 Census related to Richard Kastner; Richard Castner's death certificate; and a sworn statement by [REDACTED], 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 records as the name and city of residence of the Account Owner. The CRT notes that the name Richard Kastner appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of victims of Nazi persecution. The CRT notes that there are no other claims to these accounts. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish. The Claimant also submitted records from the 1938 Census file of to the Account Owner, which indicate that Account Owner was targeted by the Nazi regime in Austria.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that [REDACTED] was related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was [REDACTED]'s spouse. These documents include Richard Castner's death certificate, and a sworn statement of [REDACTED], indicating that Richard Castner was married to [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The CRT notes that the Bank's records indicate that the custody account was closed on 21 May 1938 and the demand deposit account was closed on 20 May 1938, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the accounts were closed, that the records from the Account Owner's 1938 Census file indicate that the Nazi regime in Austria was aware of or investigating the Account Owner's whereabouts, that the accounts were closed shortly after the incorporation of Austria into the Reich in March 1938 (the "*Anschluss*"), that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety, 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, even for the stated purpose of obtaining indemnification from the German authorities, 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 Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was [REDACTED]'s spouse, and that relationship 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 accounts.

Amount of the Award

In this case, the Account Owner held one custody account and one demand deposit account. 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 a custody account was 13,000.00 Swiss Francs ("SF") and the average value of a demand deposit account was SF 2,140.00, for a combined average 1945 value of SF 15,140.00 for the two accounts at issue. 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 189,250.00.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on its claim to determine whether there are additional Swiss bank accounts to which it 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
23 June 2006