

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1],
also acting on behalf of [REDACTED 2]

and to the Estate of Claimant [REDACTED 3],¹
also acting on behalf of [REDACTED 4] and [REDACTED 5]²

in re Accounts of Sylvain Klein

Claim Numbers: 219450/MC; 223089/MC³

Original Award Amount: 222,240.00 Swiss Francs

Award Amendment Amount: 216,000.00 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published accounts of Sylvain Klein and Marcel Klein. This Certified Award Amendment is to the published accounts of Sylvain Klein (“Account Owner Sylvain Klein”), over which Marcel Klein (“Power of Attorney Holder Marcel Klein”) and Yvonne Klein (“Power of Attorney Holder Yvonne Klein”) held power of attorney, at the Geneva branch of the [REDACTED] (the “Bank”).⁴

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

¹ The CRT notes that Claimant [REDACTED 3] passed away on 23 July 2003.

² The CRT notes that [REDACTED 5] was erroneously omitted in the 2003 Award as a represented party of Claimant [REDACTED 3], despite the submission of the power of attorney form given by [REDACTED 5] to Claimant [REDACTED 3]. The CRT notes that this omission did not affect the division of the 2003 Award, as [REDACTED 5] was not entitled to share in that award amount.

³ The CRT notes that, since the original award to these accounts were issued in April 2003, [REDACTED 2] submitted a claim, numbered 501396; [REDACTED] submitted one claim, numbered 501651; and [REDACTED 1] submitted an additional claim, numbered 501652. Since these claims were all submitted after the April 2003 award was issued and after the deadline for submitting claims had passed, and since this Award Amendment addresses accounts that have already been awarded, the CRT will not address these claims in this Award Amendment.

⁴ In separate decisions, the accounts of Yvonne Levy and Yvonne Berthe Klein were awarded to the Claimants. See *In re Accounts of Yvonne Levy* (approved on 18 November 2004) and *In re Account of Yvonne Berthe Klein* (approved on 20 October 2006). The CRT will treat another account belonging to Marcel Klein that was not included in the April 2003 Award in a separate decision.

Procedural History

On 4 April 2003, the Court approved a decision awarding Claimant [REDACTED 1], represented party [REDACTED 2], and Claimant [REDACTED 3] one account jointly owned by the Account Owners and three accounts owned by Account Owner Marcel Klein and denying three accounts owned by Account Owner Sylvain Klein (the “April 2003 Award”).

In this Award Amendment, the CRT adopts and amends its finding to address the disposition of the accounts held by Account Owner Sylvain Klein that were denied in the April 2003 Award.

This Award Amendment does not change the findings regarding the accounts held by Marcel Klein or the account jointly owned by the Account Owners.

The April 2003 Award

The CRT notes that in the April 2003 Award, the CRT determined that the Account Owners jointly owned one safe deposit box account, and that Account Owner Marcel Klein held one custody account and two demand deposit accounts, and that Account Owner Sylvain Klein held one custody account and two demand deposit accounts. The CRT further determined that Claimant [REDACTED 1], represented party [REDACTED 2], and Claimant [REDACTED 3], who represented [REDACTED 4], plausibly identified the Account Owners, that they plausibly demonstrated that they were related to the Account Owners, that they made a plausible showing that the Account Owners were Victims of Nazi persecution. The CRT determined that it was plausible that the Account Owners did not receive the proceeds of their joint account and that Account Owner Marcel Klein did not receive the proceeds of his three accounts. The CRT determined, however, that Account Owner Sylvain Klein did receive the proceeds of his three accounts. Based on these determinations, the CRT determined that Claimant [REDACTED 1], acting on behalf of his sister, [REDACTED 2], and Claimant [REDACTED 3] were entitled to receive a total award of 222,240.00 Swiss Francs (“SF”).

The CRT’s Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process (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 five claims of the Claimants in one proceeding.

The Issue of Who Received the Proceeds

The April 2003 Award correctly stated on page 2 of the decision that the Bank’s records showed that the three accounts held by Account Owner Sylvain Klein were opened on 23 December 1936 and closed on or before 18 February 1941. Nevertheless, on page 4 of the decision, in

concluding that Account Owner Sylvain Klein closed the accounts and received the proceeds himself, the CRT noted that the accounts were closed on or before 18 February 1936 [sic]. In relevant part, the April 2003 Award states:

With regard to the custody account and the two demand deposit accounts closed on or before 18 February 1936 held by Account Owner Sylvain Klein, the CRT finds that the Account Owners [sic] received the proceeds of these accounts since it is not plausible that Account Owners [sic] would have maintained a business relationship at the Bank if these accounts had been confiscated, and the bank records indicated that Account Owners [sic] opened a safe deposit box with the Bank on 15 July 1938.

The conclusion reached by the CRT in the April 2003 Award was clearly erroneous and apparently based upon a typographical error contained in the original decision text. The three accounts at issue were not closed on or before 18 February **1936** but rather 18 February **1941**, after the Account Owner opened a safe deposit box on 15 July 1938 and after the Nazi occupation of France. Given this clear error, and given that Account Owner Sylvain Klein resided in France during the Second World War; that there is no record of the payment of these three accounts to him, to Power of Attorney Holder Marcel Klein or Power of Attorney Holder Yvonne Klein; and given the application of Presumptions (a) 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 of these three accounts were not paid to Account Owner Sylvain Klein, the Power of Attorney Holder Marcel Klein, Power of Attorney Holder Yvonne Klein, or their heirs. Based on its precedent and the Rules, the CRT applies presumptions to determine whether the Account Owners or their heirs received the proceeds of their accounts.

Basis for the Award Amendment

The CRT has determined that an Award Amendment to custody account numbered 19650, as well as the two demand deposit accounts, all closed no later than 18 February 1941, held by Account Owner Sylvain Klein may be made in favor of Claimant [REDACTED 1] and Claimant [REDACTED 2]. The CRT previously determined in the April 2003 Award that their Claims are admissible in accordance with Article 18 of the Rules, and Claimant [REDACTED 1] and Claimant [REDACTED 2] have plausibly demonstrated that they were Account Owner Sylvain Klein’s grandchildren, and that relationship justifies an award. Third, the CRT has determined in this Award Amendment that it is plausible that neither Account Owner Sylvain Klein, nor his heirs received the proceeds of these three accounts.

Furthermore, the CRT notes that Claimant [REDACTED 1] and Claimant [REDACTED 2], as Account Owner Sylvain Klein’s descendants and as his heirs through an unbroken chain of inheritance documents, have a better entitlement to his accounts than Claimant [REDACTED 3], Claimant Renée Geissmann and represented parties [REDACTED 4] and [REDACTED 5], who are not mentioned in those documents and who are related to Account Owner Sylvain Klein by marriage only.

Amount of the Award Amendment

In this case, the Award Amendment is for one custody and two demand deposit accounts. As noted in the April 2003 Award, the Bank records did not specify a value for any of these accounts.

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 present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00, and the average value of a demand deposit account was SF 2,140.00. Thus, the value for the custody account and the two demand deposit accounts at issue is SF 17,280.00. 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 an award amendment amount of SF 216,000.00.

Division of the Award Amendment

According to Article 23(2)(b) of the Rules, if none of the named beneficiaries has filed a claim, the CRT shall make an award to any claimant who has submitted an unbroken chain of wills or inheritance documents, starting with the will of, or other inheritance documents pertaining to, the Account Owner. In this case, the Claimants submitted a copy of Berthe Yvonne Levy's certificate of inheritance, indicating that she was the sole heir of her deceased husband Sylvain Klein, and that in turn, her residual property was to go to her daughter, [REDACTED], as her sole heir; and a copy of [REDACTED]'s certificate of inheritance, indicating that her two heirs were her children, [REDACTED 2], née [REDACTED], and [REDACTED 1], who were to receive equal shares of her estate. Accordingly, Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to one-half of the total award amendment amount.

As noted above, Claimant [REDACTED 3] and represented parties [REDACTED 4] and [REDACTED 5] are not entitled to a division of the award amendment amount.⁵

Scope of the Award Amendment

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 they 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).

⁵ The CRT notes that the division of the Award Amendment amount is not affected by the exclusion of the late claims referenced in note 2, above.

Certification of the Award Amendment

The CRT certifies this Award Amendment for approval by the Court.

Claims Resolution Tribunal
18 December 2008