

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to the Estate of Claimant [REDACTED 1]¹
also acting on behalf of [REDACTED 2], [REDACTED 3] and [REDACTED 4]
represented by Nathan Leipziger

to Claimant [REDACTED 5]
also acting on behalf of [REDACTED 6] and [REDACTED 7]

and to Claimant [REDACTED 8]

in re Accounts of Hersz Koltun

Claim Numbers: 220316/HS; 400921/HS; 400394/HS

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the claim of the Estate of [REDACTED 1] (“Claimant [REDACTED 1]”) to the account of Chaskel Koltun,² and the claims of [REDACTED 5] (“Claimant [REDACTED 5]”) and [REDACTED 8] (“Claimant [REDACTED 8]”) (together the “Claimants”) to the accounts of Hersz Koltun. This Award is to the published accounts of Hersz Koltun (the “Account Owner”), over which Judyta Koltun (the “Power of Attorney Holder”) held power of attorney at the [REDACTED] (the “Bank”).

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

¹ The CRT notes that Nathan Leipziger, the executor of the Estate of [REDACTED 1], submitted this claim after [REDACTED 1]’s death on 4 August 1999, on behalf of the Estate, and forwarded a copy of [REDACTED 1]’s will to the CRT. Accordingly, this award refers to the Estate of [REDACTED 1] as Claimant [REDACTED 1].

² The CRT did not locate an account belonging to Chaskel (Yechezkel, Haskel) Koltun 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”).

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1]'s representative submitted a Claim Form claiming accounts belonging to [REDACTED 1]'s father, Chaskel Koltun. In a letter dated 13 August 2006, represented party [REDACTED 3] identified the Account Owner as [REDACTED 1]'s "second cousin,"³ Hersz Koltun, who was married to Judyta Koltun. Claimant [REDACTED 1]'s representative indicated that the Koltun family was Jewish. Represented party [REDACTED 3] stated that Hersz and Judyta Koltun resided in Amsterdam, the Netherlands, before the Second World War, and that both are believed to have perished during the Holocaust.

Claimant [REDACTED 1]'s representative submitted [REDACTED 1]'s will, dated 10 July 1995, listing his three children, [REDACTED 3], [REDACTED 4], and [REDACTED 2], as equal beneficiaries of his residual estate, and indicating that his surname was [REDACTED].

Claimant [REDACTED 1]'s representative indicated that [REDACTED 1] was born on 20 December 1932 in Zwolen, Poland. Claimant [REDACTED 1] is acting on behalf of [REDACTED 1]'s three children, who were born in Toronto, Canada: [REDACTED 2], who was born on 15 February 1956; [REDACTED 3], who was born on 27 December 1959; and [REDACTED 4], who was born on 9 May 1964.

Claimant [REDACTED 5]

Claimant [REDACTED 5] submitted a Claim Form identifying the Account Owner as his maternal uncle, Hersz Koltun (Koltunski), who was born on 21 September 1897 in Bialystok, Poland. Claimant [REDACTED 5] identified the Power of Attorney Holder as the Account Owner's wife, Judith Koltun, née Nichamovski. Claimant [REDACTED 5] indicated that in 1925 or 1926 his uncle, who was Jewish, moved to the free city of Danzig (now Gdansk, Poland), where he owned a meat factory.

According to Claimant [REDACTED 5], his maternal grandparents [REDACTED] and [REDACTED], his mother [REDACTED], née [REDACTED], and his mother's sister [REDACTED], née [REDACTED], emigrated from Bialystok to Palestine (now Israel) between 1925 and 1932. Claimant [REDACTED 5] indicated that his uncle resided in Danzig until sometime in 1937 or 1939, when he moved to Amsterdam. Claimant [REDACTED 5] also recounted a report from a cousin who survived the Second World War, that as he prepared to leave Danzig, Hersz Koltun purchased gold and jewelry in Warsaw, Poland, then traveled to Switzerland to deposit them in a bank safe. Claimant [REDACTED 5] indicated that his uncle was deported from Amsterdam to Auschwitz, and that his aunt was deported to Sobibor, where they perished.

Claimant [REDACTED 5] submitted documents, including: (1) a postcard that his mother received from his uncle in 1926, in which he addressed her as his "dear lovely sister," and listing

³ Represented party [REDACTED 3] did not indicate who Hersz Koltun's parents were or how exactly he was related to Claimant [REDACTED 1], other than saying that he was his second cousin.

his business as *H. Koltunski* in Danzig; (2) his parents' marriage certificate, indicating that [REDACTED] and [REDACTED] were married on 15 May 1930, and that the bride's parents were [REDACTED] and [REDACTED] of Bialystok; (3) his mother's Israeli passport, dated in 1961, indicating that her name was [REDACTED], née [REDACTED]; and (4) pages of testimony submitted to the Yad Vashem Memorial in Israel in 1957 by Hersz Koltun's sister, [REDACTED], and in 1999 by Hersz Koltun's niece, [REDACTED 6], indicating that Hersz and Juditha Koltun resided in Danzig and Amsterdam, that Hersz Koltun perished in Auschwitz in 1942, and that Juditha Koltun perished in Sobibor in 1943.

Claimant [REDACTED 5] indicated that he was born on 12 December 1931 in Palestine. Claimant [REDACTED 5] is representing his sister, [REDACTED 7], née [REDACTED], who was born on 11 December 1938, and his cousin, [REDACTED 6], née [REDACTED], who was born on 3 February 1938, both also born in Palestine.

Claimant [REDACTED 8]

Claimant [REDACTED 8] submitted a Claim Form identifying the Account Owner as his father's uncle by marriage, Hersz Koltun, who was born in 1897 in Bialystok, and was married to Jehudit Koltun, née Nichamovsky. Claimant [REDACTED 8] indicated that his great-uncle, who was Jewish, resided in Danzig and in Amsterdam. According to Claimant [REDACTED 8], his great-uncle was a businessman with offices in both Amsterdam and Danzig, and he divided his time between the two cities. Claimant [REDACTED 8] indicated that in 1941, his great-uncle and great-aunt, along with their two children, [REDACTED] and [REDACTED], were deported to a concentration camp in Poland, where they perished.

Claimant [REDACTED 8] indicated that he was born on 7 April 1951 in Russia and that he is the only child of his father, who died in 1986.

Information Available in the Bank's Records

The Bank's records consist of customer cards, a list of numbered accounts, correspondence, and printouts from the Bank's database. According to these records, the Account Owner was Hersz Koltun, who used a general delivery address (*poste restante*) in Gdynia, Poland, and resided in Danzig. The Bank's records further indicate that the Account Owner held two custody accounts, numbered 61079 and 39148. According to these records, the Power of Attorney Holder for custody account 39148 was *Frau* (Mrs.) Judyta Koltun. Notations in the Bank's records, dated in June and July 1936, indicate that the Account Owner instructed the Bank to hold all correspondence.

The Bank's records contain post-War correspondence between the Bank and the *Palestine Discount Bank Ltd.*, which wrote to the Bank on behalf of the Account Owner's brother, [REDACTED], to inquire about the Account Owner's accounts. In a letter to the Bank from the *Palestine Discount Bank*, dated 12 July 1946 in Tel Aviv, Palestine, the Bank was informed that the Account Owner had perished and that his last known address was 57 Minervalaan in Amsterdam. In reply, the Bank requested the Account Owner's death certificate, as well as

certificates of inheritance and representation, before searching for accounts belonging to the Account Owner. In another letter, dated 19 May 1951 in Paris, France, [REDACTED] again inquired regarding his brother's accounts, indicating that a Dutch court had designated him the sole heir of the late Hersz Koltun. The Bank's records do not indicate whether the Bank responded to this letter. Notations on the 1951 letter indicate that the Bank searched for accounts belonging to the Account Owner, but do not indicate whether any accounts were located. These records do not indicate whether any account proceeds were paid to the Account Owner's brother. The Bank's records indicate that custody account 39148 was closed on 21 July 1936, that custody account 61079 was closed on 20 March 1939, and that the numbered-account relationship between the Bank and the Account Owner was closed on 21 November 1940. The amounts in the accounts on the dates of their closure are unknown.

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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The names of their relatives match the published names of the Account Owner and the Power of Attorney Holder. The Claimants also identified the Account Owner's cities of residence. This information matches unpublished information about the Account Owner contained in the Bank's records.

In support of his claim, Claimant [REDACTED 5] submitted a postcard that his mother received from his uncle, providing independent verification that the person who is claimed to be the Account Owner had a business with the same first initial and surname⁴ located in the same city recorded in the Bank's records as the first initial, surname, and city of residence of the Account Owner. Claimant [REDACTED 5] also submitted pages of testimony written by his mother in 1957 and his cousin in 1999, predating the CRT's publication of the names of the Account Owner and Power of Attorney Holder, which contain information matching unpublished information in the Bank's records.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes further information about persons named Hersz (Hersh, Hershel) Koltun (Kolton) and Juditha (Judith, Jehudith, Yehudit) Koltun (Kolton), née Nikhamovski (Nichamoski). These records include the pages of testimony submitted to Yad Vashem by [REDACTED] and [REDACTED 6], as well as a page of testimony submitted in 1962 by Hersz Koltun's other

⁴ The CRT notes that "Koltun" is a common Germanization of the Polish surname "Koltunski" and that other documents submitted by Claimant [REDACTED 5] show a variety of spellings of this surname, including: Koltun, Kolton, Koltone, and Koltunski.

sister, [REDACTED]. Additionally, the CRT's database, which is a compilation of names from various sources including Yad Vashem, indicates that Hersz Koltun perished on 27 August 1942 in Auschwitz and that Juditha Koltun perished on 23 July 1943 in Sobibor.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants indicated that the Account Owner, his wife, and children, who were Jewish, perished in concentration camps during the Holocaust. As noted above, persons named Hersz and Juditha Koltun were included in the CRT's database of victims.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that the Account Owner was [REDACTED 1]'s paternal relative, Claimant [REDACTED 5]'s maternal uncle, and Claimant [REDACTED 8]'s great-uncle by marriage.

The Claimants identified unpublished information about the Account Owner as contained in the Bank's records. Additionally, Claimant [REDACTED 5] submitted his parents' marriage certificate and his mother's passport, and Claimant [REDACTED 1] submitted [REDACTED 1]'s will, which provide independent verification that [REDACTED 1]'s and Claimant [REDACTED 5]'s relatives bore the same family name as the Account Owner. Claimant [REDACTED 5] also submitted a postcard written by the Account Owner to Claimant [REDACTED 5]'s mother [REDACTED] identifying her as the Account Owner's sister. Furthermore, Claimant [REDACTED 5]'s mother, his aunt, and his cousin submitted pages of testimony to Yad Vashem in 1957, 1962, and 1999 identifying the Account Owner as their relative.

The Issue of Who Received the Proceeds

The Bank's records indicate that custody account 39148 was closed on 21 July 1936 and that custody account 61079 was closed on 20 March 1939. The CRT notes that Germany did not invade or occupy either of the Account Owner's cities of residence (Danzig and Amsterdam) until after the dates of closure of these accounts.⁵ Therefore, the CRT determines that the Account Owner himself closed these accounts and received the proceeds.

However, the Bank's records also indicate that the Bank retained its numbered-account relationship with the Account Owner until 21 November 1940, nearly two years after the closure of custody account 61079. Because of the Bank's retention of this numbered-account relationship with the Account Owner, the CRT determines that assets belonging to the Account Owner remained on deposit with the Bank until the Bank closed out the relationship on 21 November 1940. The Bank's records do not indicate the type of account in which these assets were deposited.

⁵ The CRT notes that Germany annexed Danzig on 1 September 1939, and that Germany invaded the Netherlands on 10 May 1940.

With regard to this account of unknown type, considering that the Bank listed the Account Owner's residence as Danzig when it closed the account on 21 November 1940, by which time the Account Owner actually resided in Nazi-occupied Amsterdam; that the Account Owner, his wife, and children were deported from Amsterdam to Auschwitz, where they perished; that there is no record of the payment of the Account Owner's account to him or his heirs; that the heirs of the Account Owner would not have been able to obtain information about this 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 (a), (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 Claimant [REDACTED 5] and the parties he represents. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 5] has plausibly demonstrated that the Account Owner was his maternal uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the account of unknown type.

Further, the CRT notes that Claimant [REDACTED 5] and represented parties [REDACTED 7] and [REDACTED 6], as the Account Owner's nephew and nieces, are more closely related to the Account Owner than are Claimant [REDACTED 8], [REDACTED 1], and the parties represented by Claimant [REDACTED 1] (represented parties [REDACTED 2], [REDACTED 3], and [REDACTED 4]).

Amount of the Award

For the purpose of this Award, the Account Owner held one account of 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 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"), 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)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 5] is representing his sister, [REDACTED 7], and cousin, [REDACTED 6]. Accordingly, Claimant [REDACTED 5] and represented party [REDACTED 7] are each entitled to one-fourth of the total award amount, and represented party [REDACTED 6] is entitled to one-half of the total award amount.

As noted above, Claimant [REDACTED 8], Claimant [REDACTED 1], and represented parties [REDACTED 2], [REDACTED 3], and [REDACTED 4] 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 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).

Certification of the Award

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

Claims Resolution Tribunal
15 November 2007