

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Accounts of Emanuel Agoston and *Kispester Textilfabrik AG*

Claim Numbers: 220291/AH; 220514/AH¹; 220304/AH²

Award Amount: 229,080.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and the claims of [REDACTED 2] (“Claimant [REDACTED 2]”) to the accounts of Emanuel Agoston (“Account Owner Agoston”) and *Kispester Textilfabrik AG* (“Account Owner *Kispester Textilfabrik AG*”) at the Zurich branch of the [REDACTED] (“Bank I”) and the Zurich branch of the [REDACTED] (“Bank II”).

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 Claimants submitted identical Claim Forms identifying the Account Owner as their maternal grandfather, Emanuel Agoston, who was born on 19 August 1885 in either Czechoslovakia or Hungary, and was married to [REDACTED], née [REDACTED]. Emanuel and [REDACTED] Agoston had one daughter, the Claimants’ mother [REDACTED], who was born on 21 August 1921 in Budapest, Hungary, and one son, [REDACTED], who was born in 1924 in Budapest. The Claimants stated that their grandfather, who was Jewish, lived in Szabadsaghezy, Budapest at Otvos Utca 30-40, and then at Muvesz Utca 6. He was the owner and manager of one of Hungary’s largest textile mills, *Kispesti Textilgyar Reszvenytarsasag* in Budapest, and its Yugoslavian subsidiary *Apatini Kedidergyar*. The Claimants stated that in 1939, their uncle was sent to the United States at the age of 15. In March 1944, their grandfather was arrested by the occupying German military forces and was sent to a concentration camp from which he was

¹ Claimant [REDACTED 1] submitted two additional Claim Forms, which were registered under the Claim Numbers 220290 and 220513. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Numbers 220514 and 220291, respectively.

² Claimant [REDACTED 2] submitted three additional Claim Forms, which were registered under the Claim Numbers 220925, 220926 and 222783. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 220304.

released in August 1944. He then went into hiding until March 1945, and emigrated to the United States on 14 November 1946. The Claimants stated that their grandfather died without leaving a will on 8 December 1946 in New York, New York, the United States, that their grandmother died on 9 November 1952 in New York, and that their mother died on 10 April 1982 in Miami, Florida. The Claimants submitted various documents including their grandfather's immigration record and death certificate and their mother's birth and death certificates, and will, in which she bequeathed her estate to the Claimants in equal shares. The Claimants indicated that Claimant [REDACTED 1] was born on 14 March 1961, and Claimant [REDACTED 2] was born on 2 September 1958, both in Ridgewood, New Jersey, the United States. The Claimants also provided an affidavit of Account Owner *Kispester Textilfabrik AG*'s legal counsel, demonstrating that during the Nazi occupation, the Company's management was not allowed to convene and that Account Owner Agoston was denied any managerial rights.

The Claimants stated in their claims, and in their letters to and telephone conversations with the CRT, that they are not representing their uncle, [REDACTED], the surviving child of the claimed account owner. The Claimants indicated that on 15 November 1954, [REDACTED] filed a claim to the Foreign Claims Settlement Commission of the United States ("FCSC"), regarding his and his father's assets and his rights and shares in his father's company. In his claim, he asserted that his father transferred to him full ownership of the companies, in a series of letters and declarations between 1939 to 1944, and he submitted various documents including statements and letters of his parents, and an affidavit of the companies' legal counsel, who was also a director therein, dated 12 June 1951. One statement dated 16 March 1944, the 12 June 1951 affidavit, and the FCSC's proposed and final decisions were submitted by the Claimants to the CRT. The first decision, dated 15 December 1954, determined that the issued and outstanding shares of *Apatini Kendergyar R.T.* were fully owned by *Kispesti Textilgyar*, of which [REDACTED] owned 25.2%. [REDACTED] was therefore awarded 12,600.00 United States Dollars, which was 25.2% of the estimated value of *Apatini Kendergyar R.T.* in 1938. The second decision, dated 17 July 1959, determined that [REDACTED] owned several companies and assets including 63.166% of *Kispesti Textilgyar*, and awarded him the amount of 848,817.07 United States Dollars. In a letter to the CRT dated 12 November 2002, the Claimants indicated that despite said decisions, they believe that their mother was entitled to an equal share in any personal and corporate assets of her father because the transfer of ownership interest to [REDACTED] was made under duress in their grandfather's attempt to prevent confiscation of his assets and companies, with no true intent on his part to deprive his daughter a share of his estate. The Claimants also asserted that the companies were transferred to their uncle, who was only 15 years old, because he was the only foreign citizen in their family, and in any case, was entitled to only 25% of the companies. The Claimants further indicated that their mother was prevented from claiming her share in said assets from the FCSC because she was not a United States citizen at the time the companies were confiscated, but was trapped behind the Iron Curtain until 1956.

Information Available in the Bank Records

The bank records refer to three accounts. With respect to the account of Account Owner Agoston at Bank I, the records consist of copies of a suspension ledger pertaining to the account, extracts from the Bank's dormant accounts list and suspension records, and printouts from the

Bank's database. According to these records, the Account Owner was General Director Emanuel Agoston, from Budapest, Hungary, the president of *Kispester Textilfabrik AG* in Budapest. The bank records indicate that Account Owner Agoston held a demand deposit account, numbered 61568, in United States Dollars and that there had been no contact with the Account Owner. The account was opened on an unknown date, and was included in an internal bank survey dated 7 September 1959. The records further indicate that the account was transferred to a suspense account on 8 November 1963. The amount in the account on the date of its suspension was 82.00 United States Dollars, which was the equivalent of 354.24 Swiss Francs. The account remains open and dormant.

With respect to the account of Account Owner Agoston at Bank II, the records consist of copies of the account's closing ledger and printouts from the Bank's database. According to these records, the Account Owner was Emanuel Agoston from Budapest, Hungary. The bank records indicate that the Account Owner held a custody account, numbered 21391, containing Reichbonds. The account was opened on 16 June 1938. On 31 December 1966, after at least ten years of dormancy, the account was taken into the bank profits. The amount in the account on the date of its closure is unknown.

With respect to the account of Account Owner *Kispester Textilfabrik AG* at Bank I, the bank records consist of copies of the Bank's declaration form to the 1962 survey of assets of missing foreigners (the "Survey"), correspondence between the Bank and Swiss authorities regarding the reporting of the account, authorized signatory form with signature samples of the company owner and Power of Attorney Holders dated 15 January 1943, and a memorandum of the accountants who reviewed this account. According to these records, the Account Owner was the *Kispester Textilfabrik AG Company*, with an address of Postfach 184, Budapest 62, Hungary, which was solely owned by Emanuel Agoston from Budapest, who was also the company's president and general director. The Power of Attorney Holders to the account were [REDACTED], also a general director, and [REDACTED], a director of the company. The bank records indicate that the Account Owner held an account of an unknown type, in United States Dollars, which was opened on an unknown date. On 12 December 1963, after not having contact with the Account Owner since May 1945, the Bank included the account in the Bank's declaration form to the 1962 Survey. The amount in the account on that date was 402.55 United States Dollars, which equaled 1,739.02 Swiss Francs. The account remains open and dormant. In the declaration form, the Bank provides information about the Company and states that the Company's owner was probably Jewish and may have been a victim of Nazi persecution. The declaration also refers to a letter dated 16 April 1964, from the Board of Directors of the Bank to the Swiss Survey Registration Offices ("SRO"), which was not included in the records. The records include a response letter issued to the Bank by the SRO, dated 11 May 1964, in which it is stated that a review of the Bank's questions had not been completed, and until such time as it would be completed, the account should not be listed in the Survey report. On 16 October 1965, the Swiss Federal Justice Department wrote to the Bank, stating that according to the Swiss Federal Regulation of 20 December 1962, any assets must be registered in the Survey whose last known owners were foreign nationals from whom no notice was received since 9 May 1945 and are known or believed to be victims of racist, religious or political persecution. The Justice Department further states that according to said regulation, the reported "owners" can only be "natural persons", since only such entities could be subject to such persecution, and concluded

by stating that since the account at issue was registered in the name of a company, it should not be reported in the Survey. The Justice Department also noted that one of the Power of Attorney Holders, [REDACTED], eventually went to Switzerland, where he stayed until his death, and that his widow and son live in Argentina, and therefore none of these individuals can be considered a victim. The letter does not refer to the Jewish owner of the Company. The records further include an internal letter issued by the Bank to its legal counsel, dated 22 May 1967, stating that based on the reasons outlined in the legal counsel's letter dated 9 May 1967, and their telephone conversation, the Bank has decided not to contact [REDACTED] widow or his son regarding the Company's account.

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 Owners

The Claimants have plausibly identified the Account Owners. With respect to the accounts of Account Owners Agoston and *Kispester Textilfabrik AG* at Bank I, the Claimants identified their maternal grandfather's name, city and country of residence, which matches the published name and place of domicile of the Account Owner Agoston. The Claimants also identified the name of their grandfather's Company, *Kispester Textilfabrik AG*, its line of business and location, all of which match unpublished information about Account Owners Agoston and *Kispester Textilfabrik AG* contained in the bank records. The Claimants also identified their grandfather's occupation as owner and general director of the Company, which also matches unpublished information about Account Owners Agoston and *Kispester Textilfabrik AG* contained in the bank records. In support of their claim, the Claimants submitted detailed information about their grandfather's family, his residence before, during and after the Second World War, and various documents dating back to 1944, including a statement by their grandfather regarding the Company's shares, his death certificate and an affidavit of his Company's legal counsel. Finally, the Claimants submitted samples of their grandfather's signature, which matches the signature contained in the bank records.

With respect to the account of Account Owner Agoston at Bank II, the Claimants identified their maternal grandfather's name, city, and country of residence, which match the published name and place of domicile of the Account Owner. Based on the information available to the CRT with respect to the accounts at Bank I, the CRT concludes that it is plausible that the same person identified as the Account Owner of these accounts at Bank I is also the Owner of the accounts at Bank II.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Agoston was a Victim of Nazi Persecution and that Account Owner *Kispester Textilfabrik AG* was affected by such persecution due to its owner's Jewish faith. The Claimants stated that their grandfather, who was Jewish, was sent to a concentration camp and upon his release went into hiding until March 1945. The Claimants also provided an affidavit of Account Owner *Kispester Textilfabrik AG*'s legal counsel, demonstrating that during the Nazi occupation, the Company's management was not allowed to convene and that Account Owner Agoston was denied any managerial rights.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to Account Owner Agoston by submitting various documents demonstrating that he was their maternal grandfather and the sole owner of Account Owner *Kispester Textilfabrik AG*. The Claimants indicated that an heir of Account Owner Agoston, his son, [REDACTED], who was also a shareholder in Account Owner *Kispester Textilfabrik AG*, is still alive. The CRT notes that [REDACTED] did not submit a claim to the CRT, an Initial Questionnaire with the Court in 1999, an ATAG Ernst & Young claim form or an HCPO claim form, asserting his entitlement to any of the Accounts at issue or any other account. There is no information to indicate that Account Owner Agoston has other surviving heirs.

The Issue of Who Received the Proceeds

The bank records indicate the account of Account Owner Agoston at Bank I and the account of Account Owner *Kispester Textilfabrik AG* at Bank I were both transferred to a suspense account and remain open and dormant, and that the account proceeds of Account Owner Agoston at Bank II were taken into bank profits on 31 December 1966.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that Account Owner Agoston was their maternal grandfather and that he was the sole owner of Account Owner *Kispester Textilfabrik AG*, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

With respect to the accounts of Account Owner Agoston and Account Owner *Kispester Textilfabrik AG* at Bank I, the bank records indicate that the value of the demand deposit account of Account Owner Agoston as of 8 November 1963, was 354.24 Swiss Francs. According to Article 29 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The bank records indicate that the

value of the account unknown type of Account Owner *Kispester Textilfabrik AG* as of 12 December 1963 was 1,739.02 Swiss Francs. According to Article 29 of the Rules, if the amount in an account of unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs. The present values of these amounts of the award are determined by multiplying the balance as determined by Article 29 by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 73,080.00 Swiss Francs.

With respect to the custody account of Account Owner Agoston at Bank II, 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 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

The total award amount in this case is 229,080.00 Swiss Francs.

Division of the Award

According to the principles of distribution set forth in Article 23 of the Rules, an Award will provide for an equal division among the children of the Account Owner's parents or their descendants who have submitted claims to the account. Since [REDACTED] did not file a claim with the CRT, and the CRT is bound to follow the disposition provisions of Article 23 of the Rules and cannot be bound by the decision of the FCSC on the ownership of *Kispester Textilfabrik AG* in which the Claimants were not able to participate. Therefore, according to Article 23(1) and (2) of the Rules, Claimant [REDACTED] and Claimant [REDACTED], as the daughters and sole heiresses of [REDACTED], are each entitled to one-half of the total award amount.

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
March 5, 2003