

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1],
represented by Peter Neivert,
also acting on behalf of [REDACTED 2]

and to Claimant [REDACTED 3]

in re Account of Ernst Kaiser

Claim Numbers: 208906/AZ; 750434/AZ; 750435/AZ; 750436/AZ; 750437/AZ; 751811/AZ¹

Award Amount: 10,375.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the account of Ernst Kaiser and the claims of [REDACTED 3], née [REDACTED], (“Claimant [REDACTED 3]”) to the accounts of Cäcilia Kaiser, Ernst Kaiser and David Brill.² This award is to the published account of Ernst Kaiser at the Rheinfelden branch of the [REDACTED] (the “Bank”).³

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 Claimant [REDACTED 3] did not submit a CRT Claim Form. However, in 1998 she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-T-80-205-105-706, 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). Claimant [REDACTED 3]’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 751811.

² The CRT will treat Claimant [REDACTED 3]’s claims to the accounts of Cäcilia Kaiser and David Brill in separate determinations.

³ In a separate decision, Claimant [REDACTED 1] was awarded another account belonging to Ernst Kaiser. See *In re Account of Ernst Kaiser* (approved on 1 April 2003). The CRT will consider Claimant [REDACTED 3]’s entitlement to this other account in a separate determination.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as her father, Dr. Ernst Kaiser, who was born on 4 January 1896 in Hindenburg, Germany (now Zabrze, Poland) or Ruda, Germany (now Ruda-Slaska Poland) and was married to [REDACTED], née [REDACTED], in September 1920 in Breslau, Germany (now Wroclaw, Poland). Claimant [REDACTED 1] indicated that her parents, who were Jewish, resided in Breslau, where her father was a lawyer and notary, and that they had two children, [REDACTED 2], who was born on 13 June 1921 in Breslau, and Claimant [REDACTED 1], who was born on 4 March 1924 in Breslau. Claimant [REDACTED 1] stated that her father, who was a decorated veteran of the First World War, was initially exempted from the deportation of Jews from Breslau; however, he accompanied his mother [REDACTED] when she was deported to Theresienstadt via Tormersdorf in 1941 or 1942 and then returned to Breslau. According to Claimant [REDACTED 1], her father was then deported to Theresienstadt in 1943, where he perished on 25 January 1944. Claimant [REDACTED 1] indicated that while she had little knowledge of her family's financial affairs, she was aware of attempts to smuggle money out of Germany.

Claimant [REDACTED 1] submitted copies of documents in support of her claim, including: 1) her own birth certificate, indicating that [REDACTED 1] was born on 4 March 1924 in Breslau, that her parents were Ernst Kaiser (who was a lawyer) and [REDACTED], née [REDACTED], that she was Jewish, and that she was given the middle name [REDACTED] by Nazi authorities on 1 January 1939; 2) a series of signature samples, signed Ernst or Ernst Kaiser, which Claimant [REDACTED 1] indicated were extracted from documents signed between 1915 and 1941; 3) her own marriage certificate, indicating that [REDACTED 1] was Jewish and that she was married to [REDACTED] in New York, the United States on 27 November 1947; and 4) a letter from a tracking service in Frankfurt am Main, Germany, indicating that Dr. Ernst Kaiser was deported from Breslau on 24 February 1943 and perished in Theresienstadt on 25 January 1944.

Claimant [REDACTED 1] is representing her brother [REDACTED 2], who was born on 13 June 1921 in Breslau.

Claimant [REDACTED 3]

Claimant [REDACTED 3], who was the second wife of Claimant [REDACTED 1]'s father, submitted an ATAG Ernst & Young claim form ("ATAG Form") identifying the Account Owner as her husband, Dr. Ernst Kaiser, who was born on 4 January 1896 in Ruda and was married to Claimant [REDACTED 3] on 29 June 1942 in Tormersdorf. Claimant [REDACTED 3] indicated that her husband, who was Jewish, resided in Breslau until 1941 and that he was a lawyer. Finally, Claimant [REDACTED 3] indicated that her husband perished in Theresienstadt in 1944.

Claimant [REDACTED 3] submitted copies of documents in support of her claim, including: her own marriage certificate indicating that [REDACTED 3], who was born on 9 July 1906 in

Kattowitz, Germany (now Katowice, Poland) and was Jewish, was married to *Doktor der Rechte* (doctor of law) Ernst Kaiser, who was born on 4 January 1896 in Ruda to [REDACTED] and who was Jewish, on 29 June 1942 in Tormersdorf; and her own identification card, indicating that [REDACTED 3], née [REDACTED], was born on 9 July 1906 in Kattowitz.

Information Available in the Bank's Records

The Bank's records consist of internal correspondence of the Bank and a list of German savings/passbook accounts transferred to the German *Reichsbank* on 8 December 1933. According to these records, the Account Owner was Ernst Kaiser, who resided in Wallbach, in an unspecified country, and who was German.

These records indicate that that the Account Owner held a savings/passbook account, numbered 18721, which had a balance of 365.60 Swiss Francs ("SF") upon its transfer to the *Oeffentliche Sparkasse Säckingen*⁴ on 8 December 1933. There is no evidence in the Bank's record that the Account Owner or his heirs closed the account and received the proceeds themselves.

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' relative's name matches the published name of the Account Owner. The Claimants identified the Account Owner's nationality which matches unpublished information about the Account Owner contained in the Bank's record.⁵ The CRT notes that there are several localities named Wallbach in both Germany and Switzerland, and that there is also a Wallbach, Switzerland near Rheinfelden, Switzerland and located directly across the border from Wallbach, Germany. The centers of these two localities are approximately one kilometer apart. Therefore, the CRT considers it plausible that an Account Owner from elsewhere in Germany would have used Wallbach, Switzerland - adjacent to Rheinfelden, the location of the branch where the account was held - or Wallbach, Germany - directly over the border - as a temporary address for the purposes of opening an account.

In support of their claims, the Claimants submitted documents, including Claimant [REDACTED 1]'s birth certificate and Claimant [REDACTED 3]'s marriage certificate,

⁴ *Oeffentliche Sparkasse Säckingen* was a German savings bank located in Säckingen, Germany.

⁵ The CRT notes that Breslau was part of Germany in 1933.

providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same country recorded in the Bank's records as the name and country of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Ernst Kaiser, and indicates that he was born on 4 January 1896 in Ruda and that he resided in Breslau, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the name Ernst Kaiser appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of victims of Nazi persecution (the "ICEP List").

The CRT notes that Claimant [REDACTED 3] filed her ATAG Form in 1998, asserting her entitlement to a Swiss bank account owned by the Account Owner, prior to the publication of the ICEP List. This indicates that Claimant [REDACTED 3] has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that Claimant [REDACTED 3] had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 3].

The CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimants have plausibly identified the Account Owner.

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 stated that the Account Owner was Jewish and that he perished in Theresienstadt in 1944. As noted above, a person named Ernst Kaiser was included in the CRT's database of victims.

The Claimants' Relationships 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 father and Claimant [REDACTED 3]'s spouse. These documents include Claimant [REDACTED 1]'s birth certificate and Claimant [REDACTED 3]'s marriage certificate. There is no information to indicate that the Account Owner has other surviving heirs other than the party represented by Claimant [REDACTED 1].

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was transferred to Germany on 8 December 1933, along with numerous other German accounts at the Bank.

Given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax- and other confiscatory measures, including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until his deportation in 1943; that the account was part of a large group of accounts transferred to the *Reichsbank*; that the Account Owners resided in Germany in 1933 when the transfer order was made, and thus they would not have been able to repatriate their accounts to Germany without their confiscation; that there is no record of the payment of the Account Owner's account to him; that the Account Owner's heirs would not have been able to obtain information about his 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; given the application of Presumptions (a), (h) and (j), as provided in Article 28 of the Rules (see Appendix A and Appendix C⁶), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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. 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 father and Claimant [REDACTED 3] has plausibly demonstrated that the Account Owner was her spouse, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one savings/passbook account. The Bank's record indicates that the value of the account as of 8 December 1933 was SF 365.60. According to Article 29 of the Rules, if the amount in a savings/passbook account was less than SF 830.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 830.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 10,375.00.

⁶ Appendix C appears on the CRT II website -- www.crt-ii.org.

Division of the Award

According to Article 23(1)(b) of the Rules, if the Account Owner's spouse and descendants have submitted a claim, the spouse shall receive one-half of the account and any descendants who have submitted a claim shall receive the other half, in equal shares by representation. In this case, Claimant [REDACTED 3] was the spouse of the Account Owner, and Claimant [REDACTED 1] and represented party [REDACTED 2] are the children of the Account Owner from his previous marriage. Accordingly, Claimant [REDACTED 3] is entitled to one-half of the total award amount and Claimant [REDACTED 1] and represented party [REDACTED 2] are each entitled to one-quarter 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
30 May 2007