

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Erez Bernstein

in re Accounts of Martin Kaliski

Claim Number: 501865/HS

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published accounts of Martin Kaliski (the “Account Owner”): one account at the Zurich branch of the [REDACTED] (“Bank I”), and one account, over which Charles Jucker (“Power of Attorney Holder Jucker”), [REDACTED] (“Power of Attorney Holder [REDACTED]”), and [REDACTED] (“Power of Attorney Holder [REDACTED]”) (together the “Power of Attorney Holders”) held power of attorney, at the Zurich branch of the [REDACTED] (“Bank II”).

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her cousin, Martin Kaliski, who was born on 12 July 1907 in Breslau, Germany (now Wroclaw, Poland), to [REDACTED] and [REDACTED], née [REDACTED]. According to the Claimant, Martin Kaliski’s father [REDACTED] was the brother of the Claimant’s paternal grandfather, [REDACTED]. The Claimant indicated that Martin Kaliski, who was Jewish and never married, lived in Breslau during the 1930s, until he emigrated to Amsterdam, the Netherlands, where he lived until he was deported by the Nazis. The Claimant further indicated that Martin Kaliski perished on 10 September 1941 in the Mauthausen concentration camp.

In support of her claim, the Claimant submitted her own birth certificate, indicating that she was born on 22 May 1927 in Berlin, Germany, to [REDACTED] and [REDACTED]. The Claimant also submitted a detailed family tree available on the internet showing the family relationships described above. This family tree also shows that the Claimant has a brother, [REDACTED], who was born in 1931 in Berlin. The family tree additionally indicates that the Claimant’s great-grandparents (who were Martin Kaliski’s paternal grandparents), [REDACTED] and [REDACTED], had four children, including: [REDACTED] (the Claimant’s paternal grandfather), [REDACTED] (Martin Kaliski’s father), [REDACTED], and [REDACTED], née [REDACTED]. This tree indicates that [REDACTED], who was the mother of six children, may have living descendants.

Information Available in the Banks' Records

Bank I

Bank I's records consist of an account ledger, a list of dormant accounts, and a printout from Bank I's database. According to these records, the Account Owner was Martin Kaliski of Amsterdam, the Netherlands. These records indicate that the Account Owner held a custody account which was opened sometime before 10 March 1937. According to these records, because it was dormant for at least ten years during some period after 1945, the account was booked to Bank I's suspense account and subsequently closed on or before 30 June 1964. The balance of the account at closure is unknown. There is no evidence in Bank I's records that the Account Owner received the proceeds of the account.

Bank II

Bank II's records consist of a contract to rent a safe deposit box, customer cards, power of attorney forms, a receipt for payment of fees, a signed declaration, signature samples, and printouts from Bank II's database. According to these records, the Account Owner was Martin Kaliski, who resided in Amsterdam, the Netherlands. The report of 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 that the Account Owner also resided in Breslau, Germany, at some time.

Bank II's records indicate that the Account Owner rented a safe deposit box, numbered 1350, on 24 June 1937, at which time he resided at Keizersgracht 276 in Amsterdam. These records further indicate that rent on the safe deposit box was 36.00 Swiss Francs ("SF") per year. According to Bank II's records, the password (*Stichwort*) "MAKA" was associated with the account. On 30 November 1937, according to Bank II's records, the Account Owner signed a declaration that his safe deposit box did not contain Swiss bank notes, in compliance with an order by the *Swiss National Bank*.

Bank II's records show three power of attorney holders for this account. On 25 June 1937, according to Bank II's records, the Account Owner granted general power of attorney to Mrs. [REDACTED], née [REDACTED], whose address was *Haus Silvana* in Celerina, Switzerland. Additionally, Bank II's records indicate that the Account Owner granted limited power of attorney to Mr. [REDACTED] of Minervalaan 82 in Amsterdam on three separate occasions (3 April 1938, 7 November 1938, and 5 July 1939), each time allowing the latter to open the safe deposit box only once.¹ On 7 August 1939, according to Bank II's records, Power of Attorney Holder [REDACTED] paid SF 125.00 to Bank II to cover expenses for correspondence and insurance associated with the safe deposit box. On 21 December 1939, according to Bank II's records, the Account Owner granted general power of attorney to Dr. Charles Jucker, a lawyer with offices at Rämistrasse 29 in Zurich, Switzerland. Bank II's records also contain a typewritten and signed note from the Account Owner, dated 20 July 1940, specifically authorizing Power of Attorney Holder Jucker to dispose of the account.

¹ "[S]oll der Bevollmächtigte auf Grund dieser Vollmacht nur ein einziges Mal Zutritt zu dem Schrankfach erhalten. Danach soll diese Vollmacht vernichtet werden, wenn dies zulässig ist."

Finally, Bank II's records indicate that Power of Attorney Holder Jucker closed the safe deposit box four days later, on 24 July 1940. Bank II's records contain no information as to the nature or value of the safe deposit box's contents at closure.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's cousin's name and cities and countries of residence match the published name and cities and countries of residence of the Account Owner. The CRT notes that a database containing the names of victims of Nazi persecution includes information about a person named Martin Kaliski who resided in Breslau and Amsterdam, which matches the information about the Account Owner provided by the Claimant. The information in the CRT's victim database also indicates that Martin Kaliski's parents were [REDACTED] and [REDACTED], and that he was born in Breslau in 1910, which matches the information about the Account Owner provided by the Claimant. Finally, the CRT notes that the other claim to these accounts was disconfirmed because that claimant failed to identify either of the Account Owner's published cities of residence.

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, that he was deported from Amsterdam, and that he perished in Mauthausen concentration camp. Additionally, as noted above, a person named Martin Kaliski was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and her birth certificate, providing independent verification that the Claimant's paternal relatives had the same family name as the Account Owner and that they resided in the same country (Germany) as one of the Account Owner's countries of residence. Additionally, the Claimant submitted a detailed family tree, showing that Martin Kaliski was her cousin. The CRT notes that the family tree submitted by the Claimant shows that the Account Owner may have other surviving relatives, but that because they are not represented in the Claimant's claim, the CRT will not treat their potential entitlement to the Account Owner's accounts in this decision.

The Issue of Who Received the Proceeds

With regard to the Account Owner's custody account at Bank I, Bank I's records indicate that the account was booked to Bank I's suspense account and subsequently closed on or before 30 June 1964. Given that the Account Owner perished in the Holocaust; that the account was considered dormant for at least ten years during some period after 1945; that the account was booked to Bank I's suspense account and subsequently closed on or before 30 June 1964, after

the Account Owner's death; that there is no record of the payment of the Account Owner's account to his heirs, nor any exact record of a date of closure of the account; that the Account Owner's heirs would not have been able to obtain information about the account after the Second World War from Bank I 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), (b), (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 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.

With regard to the safe deposit box held at Bank II, the CRT notes that the Account Owner originally granted power of attorney over this account to Power of Attorney Holder Jucker on 21 December 1939, prior to the Nazi occupation of the Netherlands, where the Account Owner resided at the time. Accordingly, the CRT concludes that the Account Owner freely chose to grant power of attorney over this account to Power of Attorney Holder Jucker. Bank II's records indicate that Power of Attorney Holder Jucker then closed the Account Owner's safe deposit box on 24 July 1940, four days after the Account Owner signed a note specifically authorizing Power of Attorney Holder Jucker to dispose of the account. Accordingly, the CRT concludes that the Power of Attorney Holder, acting on specific instructions from the Account Owner, closed the account properly and, as a person so authorized, received the proceeds of the account.

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 her cousin, and that relationship justifies an Award. Third, the CRT has determined that the Account Owner did not receive the proceeds of his custody account at Bank I and that it is plausible that the Account Owner did not receive the proceeds of his safe deposit box at Bank II.

Amount of the Award

In this case, the Award is for one custody 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 SF 13,000.00. 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 a total award amount of SF 162,500.00.

Certification of the Award

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

Claims Resolution Tribunal
3 June 2009