

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Etel Shprintze Bronsteter and Simon Galperin

in re Accounts of Schimel Kamber and Lea Kamber

Claim Numbers: 212416/SA; 212564/SA

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claims of Etel Shprintze Bronsteter, née Galperin, (“Claimant Bronsteter”), and Simon Galperin (“Claimant Galperin,”) (together the “Claimants”) to the accounts of Schimel Kamber and Lea Kamber (together the “Account Owners”) at the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimants

The Claimants, who are siblings, submitted two Claim Forms identifying one of the Account Owners as their maternal grandmother’s sister, Lea Kamber (Leja Kamberiene), who was born in 1870 in Kaunas, Lithuania, and was married to Account Owner Simon (Schimel) Kamber in Kaunas. The Claimants indicated that the Account Owners had one child, Miriam Kamber (Kamberyte), who was a pediatrician, and that the Account Owners owned a business in the boating or marine industry that was located on Lake Namonas, Kaunas. The Claimants identified the Account Owners’ home address as Laiswess Alea, Kaunas, located near the “Central Office.” According to the Claimants, the Account Owners were killed in their home by the Nazis in 1941, and the Account Owners’ daughter was last seen in the Ereda Waiwara concentration camp in Estonia, where she was also killed in 1943 or 1944. The Claimants are the children of Chaim Galperin and Feige Galperin, née Alperovitz, the Account Owners’ niece. Claimant Bronsteter indicated that she was born on 18 February 1923, in Kaunas. Claimant Galperin submitted his birth certificate indicating that he was born on 8 January 1925, also in Kaunas.

Claimant Galperin previously submitted an Initial Questionnaire with the Court in 1999 asserting his entitlement to a Swiss bank account owned by his grandmother’s sister, Mrs. Kamber, whom he indicated was born in 1870 in Kaunas and lived at Laiswess Alea, beside the “Central Office,” where she was killed in 1941 by the Lithuanian Gestapo. Claimant Galperin also indicated that

he was in a concentration camp in Estonia with the Account Owners' daughter, by whom he was told about the Account Owners' assets in Switzerland.

Information Available in the Bank Records

The bank records consist of a joint account opening contract signed in Basel on 11 December 1931, a letter dated in Wilkowischki on 2 June 1932 confirming receipt of account regulations, instructions for all correspondence to be sent to the Account Owners in Wilkowischki, and a report from the Basel Custodial Authorities dated 17 May 1946. The bank records indicate that the Account Owners were Simelis Kamberis (Schimel Kamber) and Leja Kamberiene (Lea Kamber), who resided in Wilkowischki, near Kaunas, Lithuania.¹ According to these records, the Account Owners held a joint custody account numbered 37457 and a related demand deposit account opened in Basel on 11 December 1931.

The report from the Basel Custodial Authorities contained in the bank records states that Miriam Kamberyte, the Account Owners' daughter, died on 15 September 1945. This report states further that, according to information received from the Lithuanian General Consulate in Switzerland on 14 December 1943 and 19 December 1944, the Account Owners and their relatives were deported to Russia in 1941. Confirming that the Account Owners had not been heard from since 1941, the Basel Custodial Authorities placed the accounts with a custodial administrator on 17 May 1946.

The bank records indicate that the demand deposit account was eventually closed on 22 October 1965. It is unknown when or if the custody account was closed. The bank records do not indicate to whom the accounts were paid or the values of the accounts on the dates of their closure. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts 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 (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 claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The Claimants identified the Account Owners' approximate date of death as 1941, which matches unpublished information

¹ The bank records contain the Lithuanian names along with alternative spellings. The records specify that "Kamber" is the German equivalent. The CRT notes that the name ending in "-is" signifies a man and the name ending in "-ene" signifies a married woman, while names ending in "-yte" signify an unmarried woman.

about the date of the Account Owner' deportation contained in the bank records. The Claimant also identified the daughter of the Account Owners and indicated that she was killed in a concentration camp in 1943 or 1944 which substantially matches unpublished information contained in the bank records regarding the Account Owner's daughter and her date of death on 15 September 1945 as reported by the Basel Custodial Authorities. In further support of their claim, the Claimants have provided evidence that Claimant Galperin was born in Kaunas, which is near Wilkowischski, the same city where the Account Owners resided.

The CRT notes that Claimant Galperin filed an Initial Questionnaire previously with the Court in 1999 prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant Galperin has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. In the Initial Questionnaire, Claimant Galperin also correctly named Kaunas as the place of residence of the Account Owners prior to the publication of such information on the ICEP List. This supports the credibility of the information provided by the Claimant. The CRT also notes that there are no other claimants to these accounts.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, that they were killed by the Nazis in their home in 1941, and that the daughter and heir of the Account Owners was last seen in a concentration camp.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Shimon Kamber, and indicates his residence as Wilkowischki, located outside Kaunas, which is a plausible match to the information about one of the Account Owners provided by the bank records. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owners. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

The bank records indicate that, due to the Bank's determination that the Account Owners and their only known heir were deceased, the accounts were placed under administrative custodianship on 17 May 1946 and was eventually closed on 22 October 1965. Additionally, given the application of Presumptions (b), (h), (i), and (j), as provided by Article 28 of the Rules

(see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners 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 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 the Account Owners were their grandmother's sister and brother-in-law, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owners held one demand deposit account and 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 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 and the average value of a demand deposit account was 2,140.00 Swiss Francs. The present value of these amounts is calculated by multiplying the sum of both accounts by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 181,680.00 Swiss Francs.

Division of the Award

As noted above, the accounts at issue were joint accounts. According to Article 23(1)(d) of the Rules, if neither the spouse nor any descendants of an 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, as both Account Owners and their only known child are deceased, the Claimants are each entitled to one-half of the amount awarded as the descendants of the parents of the Account Owners.

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 11, 2003

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); see also Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999)

(hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; see also ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, see Albers v. Credit Suisse, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, see Bergier Final Report at 450 -51, and possibly Romania as well, see Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. See Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." Id. at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. See In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).