

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Patrick Jean Alexandre Kamenka

in re Accounts of Boris Kamenka and *Sofico Aktiengesellschaft*

Claim Number: 203291/AH

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of Patrick Jean Alexandre Kamenka (the “Claimant”) to the accounts of Boris Kamenka and *Sofico Aktiengesellschaft* (the “Accounts Owners”) at the Seefeld branch of the [REDACTED].

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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his paternal great-grandfather, Boris Kamenka, who was born in Russia in 1870, was married to a spouse whose name the Claimant didn't know. Boris Kamenka and his spouse had five children, Alexandre, the Claimant's grandfather, who was born on 18 May 1888 in Odessa, Russia, and Michel, Hyppolite, Georges, and Daria, who were all born in Russia. The Claimant added that his grandfather and his grandfather's siblings are all deceased. The Claimant indicated that his great-grandfather resided in St. Petersburg, Russia, where he was the owner of a Russian-based bank named *Azou Don*. The Claimant further stated that his great-grandfather escaped the Russian revolution with his family in 1917 via Helsinki, Finland, and they emigrated to Paris, France. In a telephone conversation with the CRT on 25 February 2002, the Claimant indicated that his great-grandparents resided at several addresses in Paris, but he could not remember the exact addresses or the period in which his great-grandparents resided there. The Claimant added that before the Second World War, his great-grandfather deposited his in numbered custody accounts in Switzerland, but later on the Swiss bank prevented him from withdrawing the money. The Claimant indicated that his great-grandfather, who was Jewish, died in Garches, in Nazi-occupied France, in 1941 or 1942, and that all his relatives were killed by the Nazis. The Claimant stated that his great-grandfather's money remained in the Swiss bank. The Claimant submitted documents including his identity records and his grandfather's military records, indicating his family name and Parisian origin, and an article about his grandfather describing

Boris Kamenka's wealth and profession as a bank owner. The Claimant indicated that he was born on 22 August 1943, in Aix en Provence, France.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting his entitlement to Swiss bank accounts owned by his great-grandfather Boris Kamenka from Paris, France.

Information Available in the Bank Records

The bank records consist of two account opening cards, Articles of Association of *Sofico Aktiengesellschaft* (the "Company"), dated 10 March 1928, and minutes of a General Meeting of the shareholders of the Company, dated 10 April 1929. According to these records, the Account Owners were Boris Kamenka, who resided at Avenue du Parc Monceau 5, Paris, France, and the Company. The bank records indicate that Boris Kamenka held a custody account numbered 67809 that was opened at an unknown date and was closed unknown by whom on 10 April 1938, and a demand deposit account that was opened on 11 December 1930 and was closed unknown by whom in January 1950. The records further indicate that Boris Kamenka, together with Arthur Ruegger from Avenue de Champel 29, Geneva, Switzerland, were the founding directors and managers of the Company, which was registered in Vaduz, Lichtenstein, on 10 March 1928, and dealt with the purchase and sale of shares, securities, goods, and real estate. The records further indicate that both Boris Kamenka and Arthur Ruegger had signatory rights on behalf of the Company. The bank records indicate that the Company held a custody account numbered 51643 that was opened on 31 May 1933 and was closed unknown by whom on 30 April 1938, and a demand deposit account that was opened at an unknown date and was closed unknown by whom on 20 October 1938. The amounts in the accounts on the dates of their closures are unknown. The bank records do not show to whom the accounts at issue were paid, nor do these records indicate the values of these accounts. There is no evidence in the bank records that the Account Owners closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His great-grandfather's name and his country of residence both match the published name and country of residence of the Account Owner. The Claimant identified his great-grandfather's city of residence, which matches unpublished information about the Account Owner's city of residence contained in the bank records. The CRT further notes that the Claimant did not identify his great-grandfather's Company. The Claimant did, however, indicate that his great-grandfather owned a bank that he closed during the Russian Revolution. The Claimant also indicated that his great-grandfather deposited assets in Switzerland in numbered custody accounts, which matches unpublished information about the types of accounts held by Account Owner Boris Kamenka.

Moreover, the Claimant filed an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Boris Kamenka, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possible those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimant 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. This supports the credibility of the information provided by the Claimant. Finally, the CRT notes that there are no other claimants to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Boris Kamenka was a Victim of Nazi Persecution. The Claimant stated that Account Owner Boris Kamenka was Jewish and died in Nazi-occupied France.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that the Account Owner was his great-grandfather. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

In this case, the Account Owner held a demand deposit account that was closed in 1950 and three other accounts that were closed in 1938. Regarding the demand deposit account closed in 1950, given the application of Presumptions (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the accounts proceeds were not paid to the Accounts Owner or this heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the “Rules”), the CRT applies presumptions to assist in the determination of whether or not Accounts Owners or their heirs or successors in interest received the proceeds of their accounts.

Regarding the accounts closed in 1938, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owners or their heirs or successors in interest received the proceeds of those accounts.

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 23 of the Rules. Second, the Claimant has plausibly demonstrated that Account Owner Boris Kamenka was his great-grandfather and that relationship justifies an Award. Finally, the CRT has determined that it is

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

plausible that neither the Account Owners nor their heirs or successors in interest received the proceeds of the claimed accounts.

Amount of the Award

Pursuant to Article 35 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 accounts being awarded. Based on the ICEP investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 25,680.00 Swiss Francs.

Initial Payment

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value, and 65% of the total award amount is 16,692.00 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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

January 28, 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).