

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]
represented by Stephen M. Harnik

in re Accounts of Oskar Kantor

Claim Number: 500760/UM¹

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published accounts of Oskar Kantor (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).²

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 Claimant submitted a Claim Form identifying the Account Owner as her paternal uncle, Dr. Oskar Kantor, who was born on 4 November 1893, a son of [REDACTED] and [REDACTED], née [REDACTED]. The Claimant identified her father, [REDACTED], as her paternal uncle's older brother. In a telephone conversation with the CRT on 21 October 2004, the Claimant specified that her uncle was born in a small town near Brno, Austria-Hungary (now the Czech Republic). The Claimant stated that her uncle, who was Jewish, was married to [REDACTED], and resided at Lazarettgasse 9 in Vienna, Austria. In addition, the Claimant stated that her uncle was an attorney, that he worked at an office located at Gonzagagasse 23 in Vienna, and that this law practice belonged to her father, [REDACTED]. In that same conversation, the Claimant stated that her uncle and his wife never had any children. The Claimant further stated that she and her family fled from Vienna to France in August 1938, and that she believed her uncle was still living in Vienna at that time. Moreover, the Claimant stated that her uncle subsequently

¹ The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 500979. The CRT will treat the claim to this account in a separate decision.

² The CRT notes that, 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”), Oskar Kantor is indicated as having four accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only three accounts.

emigrated to London, England. Although the Claimant was unable to specify exactly when her uncle left Austria for England, she remembered visiting him in London during the early or mid-1950s. Finally, the Claimant indicated that her uncle died in London sometime before 1970.

The Claimant indicated that she was born on 8 September 1921, in Vienna. The Claimant represents her brother, [REDACTED 2], who was born on 30 March 1925, also in Vienna. The Claimant and her brother previously submitted Initial Questionnaires (“IQs”) with the Court in 1999, in which they both identified their father as [REDACTED]. In addition, in that form, the Claimant indicated that she and her family fled from Vienna to Grenoble, France in August 1938, and that they subsequently lived in France until March 1941; that they then lived in Cuba for two months, and finally settled in the United States in May 1941.

Information Available in the Bank’s Record

The Bank’s record consists of a customer card. According to this record, the Account Owner was Dr. Oskar Kantor, who resided in Vienna, Austria. The Bank’s record indicates that the Account Owner held one demand deposit account, which was closed on 10 February 1939. The Bank’s record further indicates that the Account Owner also held two custody accounts, one of which was closed on 21 April 1937, and one, numbered L 39849, which was closed on 6 February 1939. The amounts in the accounts on the dates of their closure are unknown. There is no evidence in the Bank’s record that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Oskar Kantor, numbered 21212. According to these records, Dr. Oskar Kantor was born on 4 November 1893 and resided at Lazarettgasse 9 in Vienna. The records further indicate that Dr. Oskar Kantor was an attorney, whose office was located at Gonzagagasse 23. These records make no mention of assets held in a Swiss bank account.

In addition, there are documents concerning the assets of [REDACTED], numbered 18999. According to these records, [REDACTED] was married to [REDACTED], née [REDACTED], with whom he had two children, [REDACTED 1] and [REDACTED 2]. The records further indicate that [REDACTED] was an attorney, whose office was located at Gonzagagasse 23, in Vienna I. A letter from an attorney to the Nazi authorities, dated 14 October 1939, indicates that [REDACTED] resided in France by that date. In addition, that letter indicates that [REDACTED] paid “flight tax” (*Reichsfluchtsteuer*) of approximately 70,000.00 Reichsmark (“RM”) before he left Austria on 8 August 1938. These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's uncle's name and country of residence match the published name and country of residence of the Account Owner. The Claimant identified the Account Owner's city of residence and professional title, which matches unpublished information about the Account Owner contained in the Bank's record.

The CRT notes that the 1938 Census records prepared by Dr. Oskar Kantor provide independent verification that the person who is claimed to be the Account Owner had the same name and professional title and resided in the same city recorded in the Bank's record as the name, professional title and city of residence of the Account Owner. The CRT further notes that the other claim to this account was disconfirmed because that claimant provided a different country of residence than the country of residence of the Account Owner.

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, and that he resided in Austria in 1938. The CRT notes that, although the Claimant did not specify when the Account Owner left Austria, she indicated that she believed that he remained in Vienna when her family fled to France in August 1938. The CRT further notes that the 1938 Census records prepared by the Account Owner demonstrate that he was residing in Austria after the country was annexed by Nazi Germany (the "*Anschluss*").

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant's paternal uncle.

The CRT notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's record. In addition, the CRT notes that the Claimant filed an IQ with the Court in 1999, identifying her father as [REDACTED], prior to the publication in February 2001 of the ICEP List, and that the 1938 Census records submitted by [REDACTED] identify his two children as Alice and [REDACTED 2]. Moreover, the CRT notes that the 1938 Census records submitted by both [REDACTED] and Dr. Oskar Kantor indicate that both individuals were attorneys at the same law office in Vienna, Austria. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form.

There is no information to indicate that the Account Owner has other surviving heirs who have submitted a claim, other than the party whom the Claimant is representing.

The Issue of Who Received the Proceeds

Regarding the demand deposit account and the custody account numbered L 39849, the CRT notes that the Bank's record indicates that these accounts were closed in February 1939, at which time the Account Owner may have resided outside Nazi-dominated territory. However, given that the Bank's record does not indicate to whom the accounts were closed, that the Account Owner fled Austria to England sometime after the *Anschluss*, that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety, that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 (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 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.

Regarding the second custody account, the CRT notes that the Bank's record indicates that this was closed on 21 April 1937, almost one year before the *Anschluss*. The CRT therefore determines that the Account Owner was able to access this account and concludes that the Account Owner closed the account, and received its proceeds.

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 uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the accounts that were closed in February 1939.

Amount of the Award

This Award is for 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 current value of the account being awarded. Based on the investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs ("SF"), and the average

value of a custody account was SF 13,000.00. Thus, the total 1945 average value of these accounts is SF 15,140.00. 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 189,250.00.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the 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, the Account Owner's spouse has not submitted a claim, and the Account Owner had no children. Moreover, the Claimant is representing her brother. Accordingly, the Claimant and her brother are each entitled to one-half of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she 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
10 December 2004