

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Erez Bernstein

in re Account of M. J. Kaplun

Claim Number: 501858/MBC

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published account of M. J. Kaplun (the “Account Owner”), over which Betti Kaplun (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).¹

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 great-uncle, Morris (Moritz, Moric, Moshe) J. Kaplun, who was born on 12 February 1888 in Russia or Ukraine, and was married to Bettina (Betty) Kaplun in Lwow, Poland (today Lviv, Ukraine). The Claimant indicated that Morris J. Kaplun, who was Jewish, was her maternal grandmother’s brother. According to the Claimant, her great-uncle worked in the textile business in Russia, then in Poland, and later in the United States. The Claimant explained that her mother was sent at the age of fourteen to Lwow to live with Morris Kaplun and his wife, Betty, where she was raised as a daughter. The Claimant indicated that her great-uncle and great-aunt had one child of their own, [REDACTED], who was born in 1924. The Claimant further indicated that the family lived in Lwow until 1939, when they fled Poland, and that via separate routes they all arrived in the United States by the end of 1940. The Claimant indicated that both Betti Kaplun and her son, [REDACTED], died in the United States in 1964.

¹ 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”), M.J. Kaplun is indicated as having two accounts, over which Betti Kaplun held power of attorney. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only one account.

The Claimant submitted copies of:

- (1) her great-uncle's death certificate, which indicates that Morris Kaplun was born on 12 February 1888 in Russia; that he died on 25 February 1971 in Miami Beach, Florida; and that [REDACTED] was the informant of death;
- (2) a printout from the website of the *Morris J. and Betty Kaplun Foundation*, which states that the foundation was established in 1955 by Morris J. and Betty Kaplun, who were refugees from Nazi persecution;
- (3) the obituary of Dr. [REDACTED], which indicates that he was born in 1924 Lwow, Poland, and that he died in 1964 in the United States. The obituary further indicates that [REDACTED] was survived by his father, Morris J. Kaplun;
- (4) the affidavit of Aaron Seligson, an attorney and partner in the law firm of *Seligson, Rothman and Rothman*, sworn 20 January 2009, in which Mr. Seligson states that he previously represented Morris J. Kaplun, that he was an Executor of his estate, and that he was well acquainted with Morris J. Kaplun's family members. Mr. Seligson further stated that [REDACTED] is a great-niece of Morris J. Kaplun;
- (5) the Last Will and testament of Morris J. Kaplun, signed in 1967, which indicates that [REDACTED] is his grand-niece, an executor of his will, and the recipient of a specific bequest;
- (6) her own certificate of marriage registration, dated 12 October 1958, which indicates that Morris J. Kaplun was a witness at the Claimant's wedding;
- (7) a number of documents containing the signature of Morris J. Kaplun, signing on behalf of the *Morris J. and Betty Kaplun Foundation Inc*;

The Claimant indicated that she was born on 17 April 1936 in Lodz, Poland.

Information Available in the Bank's Records

The Bank's records consist of several dormant account lists, reports and documents prepared by the Bank in relation to the 1945 freeze of assets held in Switzerland by the citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze"), and printouts from the Bank's database. These dormant account lists include lists of accounts belonging to residents of Poland from whom nothing had been heard since the end of the Second World War.

According to these records, the Account Owner was M. J. Kaplun and the Power of Attorney Holder was Betti Kaplun, both of whom resided at 29 Kochanowskiego, in Lwow, Poland. The records indicate that the Bank had not heard from the Account Owner since 1936. The Bank's records indicate that the Account Owner held one demand deposit account that was opened on 25 March 1933. The Bank's records indicate that the account held a balance of 151.50 Swiss Francs ("SF") as of 17 February 1945, a balance of SF 126.50 as of 31 May 1950, a balance of SF 96.00 as of 11 August 1955, and SF 62.00 as of 15 November 1963. The records also indicate that the account was frozen in the 1945 Freeze, but was released from the 1945 Freeze in June 1955.

The printouts from the Bank's database indicates that this account was closed on an unknown date in 1970, but do not indicate the balance of the account as of that year. There is no evidence

in the Bank's records that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's great-uncle and great-aunt's names and city and country of residence match the published names and city and country of residence of the Account Owner and the Power of Attorney Holder.

In support of her claim, the Claimant submitted documents, including her great-uncle's will and death certificate; the affidavit of Aaron Seligson; her own certificate of marriage registration, which indicates that her great-uncle was a witness; and a number of documents which display her great-uncle's signature, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's records as the name of the Account Owner.

The CRT notes that the name M. J. Kaplun appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of victims of Nazi persecution ("ICEP" or the "ICEP List"). The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different city and country of residence than the city and 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 fled Poland for the United States in 1939. The Claimant also submitted a printout from the website of the *Morris J. and Betty Kaplun Foundation*, which states that Morris J. and Betty Kaplun were refugees from Nazi persecution.

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 documents, demonstrating that the Account Owner was the Claimant's great-uncle. These documents include the Account Owner's will and the affidavit of Aaron Seligson, both indicating that [REDACTED] is the great-niece of Morris J. Kaplun. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the Account Owner fled Poland in 1939; that the account was frozen in the 1945 Freeze of German assets; that the Bank included the accounts in lists of accounts whose Polish owners were not heard of after the War, and that in this case the Bank had no contact with the

Account Owner since 1936; that the account was considered dormant and was suspended by the Bank, although it continued to deduct fees from the account during its dormancy; that the account was closed unknown to whom in 1970; there is no record of the payment of the Account Owner's account to him; that the Account Owner and his 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; 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, the Power of Attorney Holder, 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 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 great-uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one demand deposit account. The Bank's records indicate that the value of the demand deposit account as of 17 February 1945 was SF 151.50. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. 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, to produce a total award amount of SF 26,750.00.

Certification of the Award

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

Claims Resolution Tribunal
12 May 2009