

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Janos Kende
acting on behalf of himself and Laszlo Kende, Gabor Kende,
and Julia Kende

in re Account of Heinrich Kende

Claim Number: 220680/AA

Award Amount: 73,080.00 Swiss Francs

This Certified Award is based upon the claim of Janos Kende (the “Claimant”) to the account of Heinrich Kende (the “Account Owner”) at the Zurich branch of 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 is redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his grandfather, Heinrich Kende, who was Jewish, was born in approximately 1876 in Maramarossziget, Hungary, and married Ella Kende, née Steinfeld, in 1911 in Maramarossziget. Heinrich and Ella Kende had three children: Magdolna Wildt, née Kende, who was born on 10 October 1911 in Maramarossziget and died in Geneva, Switzerland in 1942; Laszlo Kende, who was born on 16 July 1913 in Maramarossziget and died on 9 September 1942 in Krugloe, Soviet Union; and Istvan Kende, who was born on 13 March 1917 in Maramarossziget and died in Budapest, Hungary on 13 November 1988. Ella Kende died on 6 November 1976.

According to the Claimant, he is the biological son of the Account Owner’s daughter, Magdolna Wildt, née Kende, and of Johannes Wildt, and that upon the death of his mother in 1942, he was adopted by Istvan Kende, the son of the Account Owner. The Claimant explained further that his grandfather lived at Jokai u. 26 in Budapest and at Rakoczi u. in Felsögöd, Hungary, and worked as an administrator of a coal mining company.

According to information submitted by the Claimant, his grandfather died in Hungary just before the German occupation, but one of his grandfather’s children, Laszlo, perished during the Second World War while performing slave labor with a group of other Jewish men. In support of his claim, the Claimant submitted his grandfather’s burial notice, Istvan Kende’s birth, marriage, and death certificates, and his own birth and adoption certificates. The Claimant stated that he was

born in Marseille, France on 22 September 1941, and that his siblings, Laszlo Kende, Gabor Kende, and Julia Kende, all of whom he represents in these proceedings, were born in 1946, 1948, and 1951, respectively.

Information Available in the Bank Records

The bank records consist of printouts from the Bank's database and a list of Swiss bank accounts that were reported in the 1962 Survey, which required Swiss banks to register any assets that had been document since 9 May 1945 that were held by foreigners or stateless individuals who were known or were presumed to have been victims of persecution. According to these records, the sole Account Owner was Heinrich Kende of Hungary, and an additional name, J. Wildt of Paris, France, appears on the record. The records do not show that J. Wildt was an account owner, but his name was listed on the accounts. The bank records indicate that the Account Owner held two accounts: a demand deposit account and an account of unknown type. According to the records, the accounts were opened on 30 June 1935, but the records do not show when the accounts were closed or to whom the proceeds were paid. A notation in the records shows that the accounts, which had been merged, had a balance of 134.00 Swiss Francs on 15 November 1963.

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") did not find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the bank 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. His grandfather's name matches the published name of the Account Owner. Additionally, the name of the Claimant's biological father matches the unpublished name of J. Wildt that appears in the bank records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the beneficial owners of the account were Victims of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and died in Hungary less than a year before the German occupation. The accounts would have then passed to his heirs, who were Victims of Nazi Persecution because they were Jewish and lived in Hungary after the German occupation. One of the Account Owner's children perished during the Second World War while performing slave labor with a group of other Jewish men in 1942.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, including his adopted father's birth certificate, and his own birth and adoption certificates, demonstrating that he is the grandson of the Account Owner.

The Issue of Who Received the Proceeds

Given the application of Presumptions (b), (h), and (j) contained in Appendix A,¹ 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 Governing the Claims Resolution Process (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 the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his grandfather, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

The bank records indicate that the combined value of the demand deposit account and the unknown type of account as of 15 November 1963 was 134.00 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 285.00 Swiss Francs, which reflects standardized bank fees charged to the demand deposit account and unknown type of account between 1945 and 15 November 1963. Consequently, the adjusted balance of the two accounts at issue is 419.00 Swiss Francs. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs and the amount in an unknown type of account was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the demand deposit account shall be determined to be 2,140.00 Swiss Francs, and the amount in the unknown type of account shall be determined to be 3,950.00 Swiss Francs. The total for the two accounts is 6,090.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 73,080.00 Swiss Francs.

Division of the Award

The Claimant is representing his siblings, Laszlo Kende, Gabor Kende, and Julia Kende, in these proceedings. According to Article 29 of the Rules, each of his siblings are entitled to receive one-fourth of any payment made to the Claimant.

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

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 values, and 65% of the total award amount is 47,502.00 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

December 31, 2002

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).