

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Barry Friedman

in re Account of Alfred Kessler

Claim Number: 402253/RT

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of Barry Friedman (the “Claimant”) to the published account of Alfred Kessler (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 has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his paternal grandmother’s brother, Alfred Kessler, who was born in May 1892 in Vienna, Austria, and who was never married. The Claimant stated that Alfred Kessler, who was Jewish, was an engineer and resided in Vienna. The Claimant indicated that one of Alfred Kessler’s sisters was Irma Kessler, who was married to Isidor Friedmann and whose son Eugene Friedman was the Claimant’s father. According to the Claimant, Alfred Kessler also had a second sister, Johanna Freund, née Friedmann. The Claimant further stated that Alfred Kessler was killed in May 1939.

In support of his claim, the Claimant submitted copies of: (1) his father’s birth certificate, issued by the Jewish Religious Community in Znojma, Czechoslovakia, indicating that Eugen Friedmann’s parents were Isidor Friedmann and Irma Friedmann, née Kessler; (2) Johanna Freund’s marriage certificate, indicating that Johanna Friedmann and Alfred Freund married on 25 March 1939 in Vienna, and that Johanna Friedmann’s parents were Isidor Friedmann and Irma Friedmann, née Kessler; and (3) his own birth certificate, indicating that Barry Friedman’s father was Eugene Jack Friedman.

The Claimant indicated that he was born on 27 December 1953 in New York, New York, the United States.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Alfred Kessler, who resided at Wallfischgasse 12/3 in Vienna I, Austria. The Bank's record indicates that the Account Owner held one custody account numbered 42490. The Bank's record further shows that the account was closed on 5 June 1939. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank's record 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 paternal grandmother's brother's name matches the published name of the Account Owner. The Claimant further identified the Account Owner's country and city of residence, which matches unpublished information about the Account Owner contained in the Bank's record.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a page of testimony submitted by the Claimant's aunt Johanna Freund, née Friedmann, in 1969, which indicates that Alfred Kessler was born in May 1892 in Vienna and resided in Vienna, where he was killed by a SS automobile in May 1939, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the name Alfred Kessler appears only once on the List of Account Owners Published in 2005 (the "2005 List"). The CRT notes that there are no other claims to this account.

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 after the incorporation of Austria into the Reich in March 1938 (the "*Anschluss*").

Further, as noted above, a person named Alfred Kessler was included in the CRT's database of victims; the Yad Vashem entry for the Account Owner indicates that he was killed by a SS automobile in May 1939.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimant's paternal grandmother's brother. The CRT notes that the Claimant indicated that he has other

surviving relatives, but that because they are not represented in the Claimant's claim, the CRT will not treat their potential entitlement to the Account Owner's account in this decision.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's record; and that the Claimant also identified information which matches information contained in the Yad Vashem records. The CRT also notes that the Claimant submitted a copy of his father's birth certificate, indicating that his paternal grandmother's maiden name was Kessler, which provides independent verification that the Claimant's relatives bore the same family name as the Account Owner. 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 of this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

The Bank's record indicates that the account was closed on 5 June 1939. Given that the Account Owner resided in Vienna after the *Anschluss*; that he was killed in May 1939; that there is no record of the payment of the Account Owner's account to his heirs; that the Account Owner's 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 (a), (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.

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 his grandmother's brother, 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 claimed account.

Amount of the Award

In this case, the Account Owner held 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 custody account was 13,000.00 Swiss Francs ("SF"). 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 162,500.00.

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 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
18 December 2008