

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Albert Louis Klein
represented by Denis Delcros

in re Accounts of Marcel Francisque Klein and Emma Klein

Claim Number: 221856/JT

Award Amount: 367,440.00 Swiss Francs

This Certified Award is based upon the claim of Albert Louis Klein (the “Claimant”) to the accounts of Marcel Francisque Klein (“Account Owner Marcel Klein”), and Emma Klein, née Darnon, (“Account Owner Emma Klein”), together (the “Account Owners”), at the Geneva 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 Owners as his parents, Marcel Francisque Klein, who was born on 6 July 1894 in Lyon, France, and Emma Klein, née Darnon, who was born on 4 March 1898 in Saint Chamond, France. The Claimant stated that his parents were married on 1 October 1926 in Saint Chamond. The Claimant indicated that his father was an engineer, and that he and his wife lived at L’île Barbe in Saint Rambert, France until 1931, when they moved to L’avenue Sadi Carnot in Saint Chamond. The Claimant stated that he is an only child. The Claimant further stated that his maternal grandfather, a banker in Saint Chamond, opened an account in Geneva, Switzerland, and that the Claimant’s father did the same.

According to the Claimant, his paternal grandfather was Jewish and his paternal grandmother was Catholic. The Claimant explained that because his father was half Jewish, during the Second World War, he was persecuted, arrested and interned by the Nazis in a concentration camp, from which he managed to escape by jumping into a truck that was in the camp. The Claimant further stated that his father was pressured to join the military in France, but that he resisted. The Claimant stated that his father passed away on 22 November 1945 after falling gravely ill. The Claimant indicated that during the Second World War, it was impossible for his father to return to Switzerland to close his accounts before his death, and that all connection to the accounts was lost. The Claimant stated that his mother died on 18 June 1980 in Saint Just,

France. The Claimant submitted documents in support of his claim, including his mother's death certificate, identifying her as Perrine Eugénie Marie Emma Darnon, widow of Marcel Francisque Klein; his parents' marriage certificate, dated 1 October 1926 in Saint Chamond; and his own birth certificate, identifying him as the son of Marcel Francisque Klein and Emma Klein, née Darnon. The Claimant indicated that he was born on 20 April 1932 in Saint Chamond.

Information Available in the Bank Records

The bank records consist of an opening card, an extract from an account ledger and printouts from the Bank's database. According to these records, the Account Owners were Marcel Francisque Klein and Emma Klein, née Darnon, who resided in Saint Chamond, France. The bank records indicate that the Account Owners held two custody accounts, two safe deposit box accounts, and one demand deposit account.

The first custody account, numbered 7790, was opened on 27 July 1928 and closed on 21 July 1950. The second custody account, numbered L7700, was opened on 28 July 1928 and closed on 24 July 1950. The bank records do not show to whom the accounts at issue were closed, nor do these records indicate the value of these accounts on the dates of their respective closures.

The first safe deposit box account, numbered 476, was opened on 9 March 1929 and closed on 10 January 1950. The second safe deposit box account, numbered 156, was opened on 9 March 1929 and closed on 24 November 1952. The bank records do not show to whom the accounts at issue were closed, nor do these records indicate the value of these accounts on the dates of their respective closures.

The demand deposit account was opened on 21 July 1928 and closed on 18 December 1950. The bank records do not show to whom the account at issue was closed, nor do these records indicate the value of the account on the date of its closure.

There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His father's name and city of residence match the published name and city of residence of Account Owner Marcel Klein. The Claimant identified his mother's name, which matches unpublished information about Account Owner Emma Klein contained in the bank records. In addition, the Claimant submitted information showing that his mother's maiden name was Darnon, which matches unpublished information regarding Account Owner Emma Klein.

In support of his claim, the Claimant submitted documents, including his birth certificate and his parents' marriage certificate. The CRT notes that the other claim to these accounts has been disconfirmed due to a different middle name, a different spouse and a different city of residence provided by the other claimant.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Marcel Klein was a Victim of Nazi Persecution. The Claimant stated that Account Owner Marcel Klein was half Jewish, and that he was interned by the Nazis in a concentration camp.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that he is their son. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

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 Owners 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 Owners were his parents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owners held two custody accounts, two safe deposit box accounts and one demand deposit 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 present value of the account being awarded. Based on the investigation carried out pursuant to 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, the average value of a safe deposit box account was 1,240.00 Swiss Francs and the average value of a demand deposit account was 2,140.00 Swiss Francs, which produces a total of 30,620.00 Swiss Francs for the Account Owners' five accounts. The present

value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 367,440.00 Swiss Francs.

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
April 1, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).