

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1]
also acting on behalf of [REDACTED]
and to Claimant [REDACTED 2]
also acting on behalf of [REDACTED]

in re Accounts of Marcel Klein and Sylvain Klein

Claim Numbers: 219450/JT; 223089/JT

Award Amount: 222,240.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Marcel Klein (“Account Owner Marcel Klein”) and Sylvain Klein (“Account Owner Sylvain Klein”) (together the “Account Owners”) at the Geneva branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as the Claimants have in this case, the names of the claimants, any relatives of the claimants other than the account owners, and the bank have been redacted.

Information Provided by the Claimants

The Claimants submitted Claim Forms identifying Marcel Klein and Sylvain Klein as brothers. Marcel Klein is Claimant [REDACTED 1]’s great-uncle, and Claimant [REDACTED 2]’s maternal uncle. Sylvain Klein is Claimant [REDACTED 1]’s grandfather and Claimant [REDACTED 2]’s maternal uncle. The Claimants indicated that Marcel Klein was born on 2 March 1886 in Obernai, France, and was married to Aimée Klein, née [REDACTED], on 5 September 1921 in Haguenau, France. The Claimants further indicated that Aimée Klein had one sister, [REDACTED], the mother of representee [REDACTED]. The Claimants stated that Sylvain Klein was born on 24 December 1887 in Obernai, and was married to Yvonne Klein, née [REDACTED], on 23 July 1923, also in Obernai. The Claimants further stated that that the two brothers were industrialists who owned *Klein Frères*, a factory located at Route de Bernardsviller in Obernai that manufactured brushes and brooms. The Claimants indicated that the Kleins were Jewish and that Marcel Klein lived in Obernai from 1921 until 1940 when he moved to Toulouse, France from where he was arrested by the Nazis and deported in July 1944. The Claimants stated that their relative perished in April 1945 en route from the Buchenwald

concentration camp to Auschwitz. The Claimants further stated that Marcel Klein's wife, Aimée Klein, perished in the Ravensbruck concentration camp in July 1944.

The Claimants indicated that Sylvain Klein lived in Obernai until 1939, when he fled with his wife and daughter to the Vosges, Marseilles, France, and finally to Caraman, near Toulouse. The Claimants stated that Sylvain Klein and his family returned to Obernai after the end of the Second World War in 1945, and that he lived there until his death in Strasbourg, France on 1 February 1977. The Claimants submitted family trees, Marcel Klein's birth certificate, and the death certificate of [REDACTED], Claimant [REDACTED 1]'s mother, identifying her father as Sylvain Klein.

Claimant [REDACTED 1] indicated that he was born on 1 January 1952 in Toulon, France. Claimant [REDACTED 1] is representing his sister, [REDACTED], who was born on 19 July 1948 in Toulon. Claimant [REDACTED 2] indicated that he was born on 21 July 1921 in Mulhouse, France. Claimant [REDACTED 2] is representing his cousin, [REDACTED], who was born on 30 January 1927 in Strasbourg.

Information Available in the Bank Records

The bank records consist of customer cards and printouts from the Bank's database. According to these records, the Account Owner of three accounts was Marcel Klein of Obernai, France, the Account Owner of another three accounts was Sylvain Klein, also of Obernai, and the joint Account Owners of one account were Marcel Klein and Sylvain Klein.

According to the bank records, Account Owner Marcel Klein held one custody account, numbered 19647, and two demand deposit accounts, one in United States Dollars and the other in Swiss Francs, both numbered 19647G.E. The Power of Attorney Holders for the three accounts were Sylvain Klein and Aimée Klein, née [REDACTED]. The custody account and the demand deposit account containing Swiss Francs were opened on 23 December 1936 and the demand deposit account containing United States Dollars was opened on 4 October 1937. All three accounts were closed on or before 18 February 1941, unknown to whom. The custody account was also included in a New York State bank list of accounts frozen in 1941. The amount in the accounts on the dates of their closure is unknown.

The bank records further indicate that Account Owner Sylvain Klein held three accounts, one custody account, numbered 19650, and two demand deposit accounts containing United States Dollars and Swiss Francs, both numbered 19650K.R. The Power of Attorney Holders for the three accounts were Marcel Klein and Yvonne Klein, née [REDACTED]. The bank records show that the address used for bank correspondence was *de Messieurs Klein Frères* in Obernai, France. The three accounts were opened on 23 December 1936 and closed on or before 18 February 1941, unknown to whom. The amount in the accounts on the dates of their closure is unknown.

Account Owners Marcel Klein and Sylvain Klein also jointly owned a safe deposit box account, numbered 21672K.R, which was opened on 15 July 1938 and closed on 1 May 1951 after the bank opened the safe by force. The contents of the safe are unknown.

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

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owners. Their relatives' names match the published names of the Account Owner and the Power of Attorney Holders. The Claimants identified the unpublished maiden names of two of the Power of Attorney Holders, Aimée Klein, née [REDACTED], and Yvonne Klein, née [REDACTED]. Moreover, the Claimants identified their relatives' business, *Klein Frères*, which matches unpublished information about the Account Owners contained in the bank records. In support of their claims, the Claimants submitted documents, including the birth certificates of both Marcel Klein and Sylvain Klein, and the death certificate of Sylvain Klein's only child, [REDACTED], Claimant [REDACTED 1]'s mother, dated 1 September 2000.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Marcel Klein, and indicates that his date of birth was 2 March 1886, his place of birth was Obernai, France, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Status of the Account Owners as a Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that Account Owners Marcel Klein and Sylvain Klein were Jewish and that they lived in France during the Second World War. Furthermore, the Claimants stated that Account Owner Marcel Klein was arrested by the Nazis and deported to a concentration camp in 1944. The Claimants indicated that Account Owner Marcel Klein perished en route from the Buchenwald concentration camp to Auschwitz in April 1945. As indicated above, a person by the name of Marcel Klein is listed in the CRT's database of victims of Nazi persecution.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting documents demonstrating that Claimant [REDACTED 1] is the great-nephew of Account Owner Marcel Klein and the grandson of Account Owner Sylvain Klein, and that Claimant [REDACTED 2] is the nephew of both Account Owner Marcel Klein and Account Owner Sylvain Klein. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

With regard to the custody accounts and the two demand deposit accounts closed on or before 18 February 1941 and held by Account Owner Marcel Klein, given the Account Owner's persecution by the Nazis beginning in 1940, the freezing of his custody account in 1941 and the application of Presumptions (a) and (j), as provided in Article 28 of 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 Holders, or their heirs. With regard to the safe deposit box jointly owned by both Account Owners, given that the safe deposit box was forced open by the Bank in 1951 and the application of Presumptions (h) and (j), as provided in Article 28 of 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 determine whether Account Owners or their heirs received the proceeds of their accounts.

With regard to the custody account and the two demand deposit accounts closed on or before 18 February 1936 held by Account Owner Sylvain Klein, the CRT finds that the Account Owners received the proceeds of these accounts since it is not plausible that Account Owners would have maintained a business relationship at the Bank if these accounts had been confiscated, and the bank records indicated that Account Owners opened a safe deposit box with the Bank on 15 July 1938.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, their claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owners were their relatives, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the CRT is awarding one custody account, two demand deposit accounts and one safe deposit box. 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 ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs, the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of a safe deposit box account was 1,240.00 Swiss Francs. The total 1945 for the awarded accounts is 18,520.00 Swiss Francs. 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 222,240.00 Swiss Francs.

Division of the Award

Claimant [REDACTED 1] is representing his sister, [REDACTED] and Claimant [REDACTED 2] is representing his cousin, [REDACTED], in these proceedings.

According to Article 23, 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. As Account Owner Marcel Klein and his wife Aimée Klein, née [REDACTED], did not have any children, and as Claimant [REDACTED 2] and Claimant [REDACTED 1] are both descended from Account Owners' parents, both Claimants are entitled to receive one-half of the value of his three accounts.

With respect to the safe deposit box account jointly held by both Account Owners, Claimant [REDACTED 1] and his sister are entitled to the full value of his grandfather's share of the account in addition to one half of the value of his great-uncle's share, or three-fourths of the account value. Claimant [REDACTED 2] is entitled to one-fourth of the value of the account.

Claimant [REDACTED 2]'s representee, [REDACTED], is not a descendant of Account Owners Marcel Klein and Sylvain Klein, nor is she a descendant of the Account Owners' parents, and thus the CRT determines she is not entitled to any portion of this Award.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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 4, 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).