

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Hans Leopold Koref

Claim Numbers: 401940/BW; 787013/BW¹

Award Amount: 69,187.50 Swiss Francs

This Certified Award is based upon the claims of [REDACTED], née [REDACTED], (the “Claimant”) to the published account of Hans Leopold Koref (the “Account Owner”) at [REDACTED] (the “Custodian”), which was located in Zurich.²

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.

¹ In 1999 [REDACTED] (the “Claimant”) submitted an Initial Questionnaire (“IQ”), numbered ENG-0659-190, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those IQ’s which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 787013. Following publication of the Account Owner’s name in 2005, the Claimant submitted claim number 401940.

² The CRT notes that, as is further described below, the relevant records indicate that Hans Leopold Koref’s assets were deposited with [REDACTED] (the “Custodian”) and held by the Custodian on his behalf. The CRT notes that it has jurisdiction over assets deposited with the Custodian under the Settlement Agreement reached by the parties to the Holocaust Victim Assets Litigation (the “Settlement Agreement”), even though the Custodian was not a bank and was not included in the investigation of Swiss banks carried out pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) in order to identify accounts of Victims of Nazi Persecution. According to the Settlement Agreement, “Deposited Assets means (1) any and all Assets actually or allegedly deposited . . . with *any custodian, including, without limitation, a bank, branch or agency of a bank, other banking organization or custodial institution or investment fund established or operated by a bank incorporated, headquartered or based in Switzerland at any time (including, without limitation, the affiliates, subsidiaries, branches, agencies, or offices of such banks, branches, agencies, custodial institutions, and investment funds that are or were located either inside or outside Switzerland at any time) in any kind of account* (including, without limitation, a safe deposit box or securities account) prior to May 9, 1945, that belonged to a Victim or Target of Nazi Persecution . . . and/or (2) *any and all Assets that the ICEP or the Claims Resolution Tribunal determines should be paid to a particular claimant or to the Settlement Fund because the Asset definitely or possibly belonged to an individual [or business entity] . . . actually persecuted by the Nazi Regime or targeted for persecution by the Nazi Regime for any reason.*” [Emphasis added.] In re Holocaust Victim Assets Litigation, 105 F. Supp. 2d 139 (E.D.N.Y. 2000), Exhibit I to Plan of Allocation, Class Action Settlement Agreement (26 January 1999), 2-3, text available at http://www.swissbankclaims.com/PDFs_Eng/exhibit1toPlanofAllocation.pdf.

Information Provided by the Claimant

The Claimant submitted a Claim Form and an Initial Questionnaire (“IQ”) identifying the Account Owner as her paternal grandfather, Hans Leopold Koref, who was born on 5 November 1885 in Vienna, Austria, and was married to [REDACTED], née [REDACTED], in approximately 1910 in Vienna. The Claimant stated that her grandparents, who were Jewish, had one child, [REDACTED] (the Claimant’s father), who was born on 8 June 1912 in Vienna. The Claimant explained that her grandfather was a lawyer, that he had his own law firm in Vienna at Helferstorferstrasse 3, and that he and his family lived at Anton Frankgasse 18 in Vienna until 1938. The Claimant stated that her grandfather frequently traveled to Switzerland. According to the Claimant, her parents and grandparents fled Austria in July 1938 after its incorporation into the Reich in March 1938 (the “Anschluss”), emigrating via France - where they resided in a hotel in Paris until October 1938 - to the United States. The Claimant stated that her grandparents lived in New York, New York from 1938 to 1940, when they moved to Larchmont, New York.

The Claimant stated that her grandfather died in New Rochelle, New York, on 2 February 1966, that her grandmother died in Mamaroneck, New York, and that her father died in New York, New York, on 29 June 1989.

In support of her claim, the Claimant submitted copies of documents, including:

- (1) a report by Eugen Primavesi, an expert in the valuation of antiques, dated 19 June 1938 and addressed to Dr. Hans Leopold Koref at Helferstorferstrasse 3 in Vienna, appraising various items at his home at Anton Frankgasse 18 in Vienna;
- (2) her grandfather’s United States certificate of naturalization, dated 11 April 1945, indicating that Hans Leopold Koref was 59 year old and that he was of Austrian nationality;
- (3) her father’s death certificate, indicating that [REDACTED] was born on 8 June 1912 in Austria and that his parents were Hans Leopold Koref and [REDACTED]; and
- (4) her own birth certificate, dated 18 November 1943, indicating that [REDACTED]’s father was [REDACTED], who was 31 years old on that date and who was born in Austria.

The Claimant indicated that she was born on 18 November 1943 in New York, New York.

Information Available in the Bank’s Records

The CRT notes that the Custodian was a company and not a bank or financial institution,³ and therefore did not fall within the scope of the investigation to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”). The documents evidencing assets belonging to Hans Leopold Koref, which are further described below, were obtained from archival sources in Austria.

³ The CRT notes that outside research indicates that the Custodian was not a financial institution, but acted rather as manufacturing chemists.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Hans Leopold Koref, numbered 18190.

These documents include Dr. Koref’s asset declaration, signed in Vienna on 13 July 1938, and various correspondences. According to the asset declaration, Dr. Hans Leopold Koref, who was Jewish, was born on 5 November 1885, was a lawyer by profession, and was married to [REDACTED], née [REDACTED]. The declaration states that he resided at Anton Frankgasse 18 in Vienna, and that his law firm was located at Helferstorferstrasse 3 in Vienna.

In his declaration, Dr. Koref reported owning securities worth 395,327.56 Reichsmark (“RM”), but did not indicate where these securities were held. He also reported owning works of art, jewelry, carpets, and other such items with an estimated total value of RM 7,797.00, and office furniture and furnishings worth a total of RM 6,173.93. He also reported holding RM 25,509.52 in cash deposits in Austria, as well as a savings deposit (*Spareinlagen*) of 5,535.00 Swiss Francs (“SF”), which was equivalent to RM 3,154.95. Dr. Koref did not state where the SF-denominated savings deposit was held. In a note (*Bemerkung*) to his signed declaration, Dr. Koref wrote that his total assets had decreased by RM 149,130.00 from the payment of RM 130,030.00 in flight tax (*Reichsfluchtsteuer*) as well as RM 19,100.00 in costs associated with moving him and his son to Australia. Dr. Koref wrote that the amounts for these payments came from his domestic assets, including the sale of securities he held domestically.

The files also contain a letter dated 13 October 1938 from the Finance Office in Vienna (*Devisenstelle Wien*) to Dr. Koref’s lawyer, Dr. Viktor Werner, in response to Dr. Werner’s letter of 6 October 1938, which is not included in the files. In this letter, the Finance Office offered to release the savings deposit in the amount of SF 5,535.00 held at the Zurich office of the Custodian, as well as 7% *Blair-Anleihe* bonds worth US \$12,000.00 that were held by a *Frau* (Mrs.) Elsa Popper in Bucharest, to Dr. Koref in return for a payment of RM 65,000.00 to the *Deutsche Golddiskontbank*, Department for the Purposes of Encouraging Exports (*Abteilung für Exportförderungszwecke*), which could not be substituted through any other payment (*ersatzlos*). The letter states that the offer was valid for one month.

In a letter dated 15 December 1938 from Dr. Werner to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property in Vienna (“VVSt.”), Finance Department (*Abteilung Finanzen*), Dr. Werner wrote that Dr. Koref had emigrated on 7 July 1938 and that he currently resided at the Franconia Hotel at 20 West 72nd Street in New York, New York. The letter states that Dr. Werner had informed Dr. Koref that he must report his assets as of 12 November 1938 and that he was required to pay atonement tax (*Sühneabgabe*) from the assets that remained in the Reich. Dr. Werner noted that he was not informed as to the status of Dr. Koref’s assets, and therefore requested an extension to report the changes to his assets and to pay atonement tax until 31 December 1938.

The files further contain Dr. Werner's report to the VVSt., dated 30 December 1938, regarding Dr. Koref's assets as of 12 November 1938, as ascertained by written information left behind by Dr. Koref. In his report, Dr. Werner listed several securities belonging to Dr. Koref, as well as a house located at Anton Frankgasse 18 in Vienna. Dr. Werner also reported that Dr. Koref held a savings deposit at the Zurich office of the Custodian in the amount of SF 5,535.00. He wrote that he would provide the value of the securities and real estate in a later submission.

The files contain this later submission, dated 18 January 1939, from Dr. Werner to the VVSt., providing the values of the assets listed in the 30 December 1938 report. In this 18 January 1939 report, Dr. Werner listed the value of assets included in the 30 December 1938 report as totaling RM 239,509.35 (this amount includes the value of half of house at Anton Frankgasse 18 and the savings deposit, worth SF 5,535.00, at the Custodian). In this report, Dr. Werner wrote that on 13 October 1938, the Finance Office offered to release the savings deposit in the amount of SF 5,535.00 held at the Custodian, as well as US \$12,000.00 (nominal) worth of the 7% *Blair Anleihe* bonds, in return for payment of an amount of RM 65,000.00, which could not be substituted through any other payment. Dr. Werner wrote that he had requested permission from the Finance Office to deliver securities with a market value of RM 65,000.00 rather than a cash payment of RM 65,000.00.⁴ He wrote that he therefore requested that the sum of RM 65,000.00 be subtracted from the total amount of Dr. Koref's assets of RM 239,509.35 as identified in his report, leaving total assets of RM 174,509.35, or, rounded, RM 174,000.00. Dr. Werner noted that the 20% atonement tax therefore amounted to RM 34,800.00.

In a letter dated 21 January 1939 to the Finance Office Moabit-West from the director of the VVSt., a copy of which was provided to Dr. Werner, the director of the VVSt. took issue with the way in which Dr. Werner calculated Dr. Koref's atonement tax. He wrote that a deduction of the full RM 65,000.00 as counter value for the SF 5,535.00 and the US \$12,000.00 (nominal) worth of 7% *Blair Anleihe* bonds was not possible. Rather, he wrote, the amount that should be deducted is the amount that could be obtained for the securities delivered. Thus, the correct calculation would be to determine the value of the securities, determine the difference between this value and RM 65,000.00, and subtract this amount from RM 239,509.35 (the total value of Dr. Koref's assets as reported by Dr. Werner in his 18 January 1939 report), and use that result to calculate the value of atonement tax due.⁵

The file also contains a final letter dated 13 July 1939 from the VVSt. to a moving company in Vienna (*Spedition*), which indicates the VVSt. was aware that the Account Owner had deposited objects of precious metal with the moving company and which informs the moving company that the proceeds of these objects were to be delivered to the VVSt.

⁴ The German original reads: “Die Durchführung dieser Angelegenheit ist in der Weise in die Wege geleitet, dass ich bei der Devisenstelle den Antrag gestellt habe, an Stelle des Betrages von RM 65,000.00 Wertpapiere im Kurswerte von RM 65,000.00 abliefern zu können.”

⁵ The German original reads: “Eine Abbuchung der gesamten RM 65,000.— des von der Devisenstelle freigegebenen Gegenwertes für sfr 5.535.— sowie \$12.000.— 7% Blairanleihe, kann nicht in Frage kommen, sondern höchstens die Auflage, die über den normalen Kurs dieser Papiere berechnet wurde. Es wäre demnach der normale Kurs einzusetzen, die Differenz zwischen diesem Betrag und RM 65,000.— den Betrag von RM 239.509.35 abzuziehen und davon die Sühneabgabe zu berechnen.”

The CRT notes that the documents contain no further correspondence regarding the proposed transaction regarding the release of the SF 5,535.00, and it remains unclear whether the RM 65,000.00 payment was affected and whether the SF-denominated assets of the Account Owner at the Custodian were released. The ultimate disposition of the assets held at the Custodian is unknown.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's grandfather's name matches the published name of the Account Owner. The Claimant identified the Account Owner's profession, spouse's name, city of residence, home address, and business address, which match information about the Account Owner contained in the 1938 Census records. The Claimant further identified information regarding the Account Owner's flight from Austria, which matches information contained in the 1938 Census records.

In support of her claims, the Claimant submitted documents, including her grandfather's certificate of naturalization and her father's death certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name, year of birth, spouse, and country of residence recorded in the 1938 Census records as the name, year of birth, spouse, and country of residence of the Account Owner. The Claimant further submitted a valuation report prepared by Eugen Primavesi, which provides independent verification that the person who is claimed to be the Account Owner had the same home address, business address, and title recorded in the 1938 Census as the home and business addresses and title of the Account Owner and that his assets were appraised by the same person recorded in the 1938 Census as the expert who appraised the Account Owner's assets.

The CRT notes that the Claimant filed an IQ in 1999, asserting her entitlement to a Swiss bank account owned by the Account Owner, prior to the publication in January 2005 of the additional list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "2005 List"). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the 2005 List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the 2005 List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the 2005 List. This supports the credibility of the information provided by the Claimant.

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 fled Austria after the *Anschluss*. The CRT notes that the Account Owner was required to register his assets pursuant to the 1938 Census, and that his declaration indicates he was assessed atonement tax, and required to pay flight tax.

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 grandfather. These documents include the Claimant's birth certificate, indicating that her father was [REDACTED]; and her father's death certificate, indicating that [REDACTED]'s parents were Hans Leopold Koref and [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

According to the correspondence contained in the asset declaration file of the Account Owner, the Vienna-based attorney of the Account Owner corresponded with the Finance Office in Vienna regarding an attempt to secure the release of the assets held by the Account Owner at the Custodian in Zurich. In order to secure the release, the attorney of the Account Owner was to transfer a payment of RM 65,000.00 to the *Deutsche Golddiskontbank* within a one-month period beginning on the date of the letter from the Finance Office in Vienna, which proposed the terms of the asset release procedure on 13 October 1938. Although the terms of this procedure are referenced again in further correspondence between the attorney of the Account Owner and various other Reich financial bodies, the documents do not indicate that this payment was made within the one-month window, whereupon the terms of the release procedure became invalid. Additionally, the correspondence available indicates that the attorney for the Account Owner was still contemplating the terms of the release procedure in January 1939, more than two months after the window to fulfill the terms of the release procedure had closed. Further, the documents indicate that in January 1939, the Reich financial authorities were in the process of assessing the atonement tax due by the Account Owner, who at that time was already residing in the United States.

Given these considerations, and given the further communication in July 1939 by the VVSt. to the moving company regarding the payment of the proceeds of the sale of the precious metal objects of the Account Owner, which appear to be an attempt by the VVSt. to secure any remaining financial assets of the Account Owner in settlement of the Account Owner's outstanding atonement tax owed, the CRT concludes that the available documents do not indicate that the Account Owner was able to secure the release of the SF-denominated assets that were held by the Custodian, that these assets were most likely directed to the VVSt. in settlement of the outstanding atonement tax in the same manner as the proceeds from the sale of the precious metal objects, and that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

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 grandfather, 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 savings/passbook account. The 1938 Census records indicate that the value of the savings account as of January 1939 was SF 5,535.00. The current value of the amount of the award is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 69,187.50.

Certification of the Award

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

Claims Resolution Tribunal
24 March 2011