

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Marianne Kuffner, Hedwig Lindenthal, and Eva Mandl

Claim Numbers: 224285/MBC; 224433/MBC; 224435/MBC¹

Award Amount: 1,351,071.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the accounts of Marianne Kuffner, Hedwig Lindenthal and Eva Mandl (the “Account Owners”) at the [REDACTED] (the “Bank”).

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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted Claim Forms identifying the Account Owners as his paternal aunt, Eva Mandl, née [REDACTED], his paternal grandmother, Hedwig Lindenthal, née [REDACTED], and his paternal great-aunt, Marianne Kuffner. According to the Claimant, his great-grandparents, [REDACTED] and [REDACTED], had three children: Marianne, Hedwig, and [REDACTED]. The Claimant stated that his great-aunt Marianne never married, and that she resided with her mother at Vegagasse 20 and at Skodagasse 15 in Vienna until approximately 1938. The Claimant stated that Marianne Kuffner perished in Auschwitz on 9 September 1942. The Claimant stated that Hedwig [REDACTED] married [REDACTED] on 2 April 1901 in Vienna, and they had two children: [REDACTED] (the Claimant’s father) and Eva Mandl, née [REDACTED]. The Claimant stated that Hedwig and her family resided at Pelikangasse 10 in Vienna until approximately 1938, and that Hedwig perished in Auschwitz in December 1943. The Claimant indicated that [REDACTED] was married to [REDACTED] and died on 19 March 1945 in Oxford, England.

¹ The Claimant submitted additional claims to the accounts of [REDACTED] and [REDACTED], which are registered under the claim numbers 224431 and 224432. The CRT will treat the claims to these accounts in a separate decision.

The Claimant stated that his father, [REDACTED], officially changed his name to [REDACTED]. [REDACTED] married [REDACTED] on 29 January 1927, and they resided at Josefstädterstrasse 30, in Vienna until 1938. In August 1938, [REDACTED] and his family fled to Switzerland, and later that year, they immigrated to Australia. The Claimant indicated that his father died in Melbourne on 2 July 1977 and his mother died in Melbourne on 24 November 1987.

The Claimant stated that Eva [REDACTED] Mandl fled Vienna to Vaduz, Liechtenstein in 1938. Around 1939, she moved to London with her husband, [REDACTED]. They resided in London from 1940 until [REDACTED]'s death in 1945. The Claimant stated that Eva then immigrated to Montreal, Canada, where she died on 17 March 1993. The Claimant indicated that Eva died without issue.

In a note attached to his Claim Forms, the Claimant explained that Hedwig Lindenthal had converted from Judaism to Catholicism, but that she and her descendants, including Eva and [REDACTED], were considered to be Jewish under the Nuremberg Laws and were persecuted as such. The Claimant indicated in his Claim Forms that [REDACTED], [REDACTED] and Marianne were all Jewish. The Claimant mentioned that he is the sole living heir of his family.

In support of his claims, the Claimant submitted numerous documents, including letters from his family members dating from 1939 to 1942, a document evidencing his father's name change, a document attesting that Marianne and Hedwig Kuffner were deported to concentration camps, the death certificates of [REDACTED] and Eva Mandl, and various inheritance documents pertaining to [REDACTED], [REDACTED] and Hedwig Lindenthal.

The Claimant stated that he was born on 8 September 1929 in Vienna.

Information Available in the Bank Records

Accounts of Hedwig Lindenthal

The bank record consists of an account opening card. According to this record, the sole account owner was Frau Hedwig Lindenthal, who resided at Pelikangasse 10, in Vienna, Austria. The bank record indicates that Hedwig Lindenthal held two demand deposits accounts in United States Dollars and one custody account numbered L42044, which were closed on 10 April 1938, 19 April 1938, and 8 October 1938, respectively. The bank record does not indicate the value of the accounts at their closure, or to whom they were paid.

Accounts of Marianne Kuffner

The bank record consists of an account opening card. According to this record, the sole account owner was Fraulein Marianne Kuffner, who resided at Vegagasse 20, in Vienna. The bank record indicates that the account owner held one demand deposit account in Swiss Francs, two demand deposits accounts in United States Dollars, and one custody account numbered L42043. The demand deposit accounts in United States Dollars and the custody account were closed on

10 April 1938, 20 January 1939, and 5 December 1938, respectively. The closure date of the demand deposit account in Swiss Francs is unknown. The bank record does not indicate the value of the accounts at their closure, or to whom they were paid.

Accounts of Eva Mandl

The bank record consists of an account opening card. According to this record, the sole account owner was Frau Eva Mandl, who resided at Laudongasse 12, in Vienna. The bank record indicates that the account owner held one safe deposit box numbered S790, three demand deposit accounts, and two custody accounts. The safe deposit box, the two custody accounts and one of the demand deposit accounts were closed on 25 February 1939, 28 March 1938, 14 April 1938, and 10 April 1938, respectively. The closure dates of the two other demand deposit accounts are unknown. The bank record does not indicate the value of the accounts at their closure, or to whom they were paid.

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

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents, numbered 44703, concerning the assets of Marianne Kuffner. These documents indicate that Marianne Kuffner was born on 30 June 1888, that she was a housewife, and that she resided at Skodagasse 15, Vienna IX, before moving at Vegagasse 20, Vienna XIX. According to these documents, Marianne Kuffner registered with the Nazi authorities that she owned: real estate and houses worth 163,295.00 Reichsmarks; securities worth 1,264,242.80 Reichsmarks; saving deposits and other bank accounts worth 318,547.93 Reichsmarks; and other valuables worth 4,000.00 Reichsmarks. In total, Marianne Kuffner was required to pay a 'flight tax' of 528,473.00 Reichsmarks. The list of securities owned included the following shares deposited in a Swiss bank:

475 Trifailer Shares worth Swiss Francs 6,650.00 = 3,803.14 Reichsmarks
1200 Trifailer Shares worth Swiss Francs 16,800.00 = 9,607.92 Reichsmarks
150 Hungarian General Coal Shares worth Swiss Francs 18,000.00 = 10,294.20 Reichsmarks
375 Donau-Save-Adria Railway Shares worth Swiss Francs 7,031.25 = 4,021.17 Reichsmarks
482 Trifailer Shares worth Swiss Francs 6,748.00 = 3,859.18 Reichsmarks

These securities had a total value of 55,229.25 Swiss Francs.

The CRT's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to related accounts may be joined in one proceeding at the discretion of the CRT. In this case, the CRT determines it appropriate to join three claims submitted by the Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The information provided by the Claimant about Marianne Kuffner and Hedwig Lindenthal, in particular their complete names, their marital status and their precise street addresses in Vienna, exactly matches the unpublished information about the Account Owners contained in the bank records. With respect to the accounts of Eva Mandl, the CRT notes that the address provided by the Claimant does not correspond exactly to that contained in the bank records. However, the Claimant provided numerous biographical details about Eva Mandl, showing that she was related to Marianne Kuffner and Hedwig Lindenthal. In light of these considerations, the CRT concludes that it is plausible that the Claimant's aunt and the Account Owner Eva Mandl are the same person.

Status of the Published Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The information submitted by the Claimant plausibly demonstrates that the Account Owners were considered to be Jewish by the Nazi Regime. Furthermore, the Claimant has shown that Marianne Kuffner and Hedwig Lindenthal perished in Auschwitz and that Eva Mandl fled Austria in 1938 to escape Nazi persecution.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners. Specifically, he has submitted documents showing that they are his paternal aunt, grandmother, and great-aunt. The documents submitted by the Claimant suggest that he is the sole living heir of the Account Owners.

The Issue of Who Received the Proceeds

With regard to the three accounts held by Hedwig Lindenthal, given the application of Presumptions (a) and (j) contained in Appendix A,² 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 Owner or her heirs received the proceeds of their accounts.

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

With regard to the two demand deposit accounts in United States Dollars and the custody account held by Marianne Kuffner, given the application of Presumptions (a) and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs. With regard to the demand deposit account in Swiss Francs held by Marianne Kuffner, given the application of Presumptions (h) and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs.

With regard Eva Mandl's safe deposit box, demand deposit account closed in 1938, and two custody accounts closed in 1938, given the application of Presumptions (a) and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs. With regard to the other two demand deposit accounts held by Eva Mandl, given the application of Presumptions (h) and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Published Account Owners were his paternal aunt, grandmother and great-aunt, and these relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Published Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

Pursuant to Article 35 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 was 1,240.00 Swiss Francs. Thus, the total 1945 value is 112,589.25 Swiss Francs for the thirteen accounts at issue, including one safe deposit box (SFr. 1,240), three custody accounts (SFr. 39,000), eight demand deposit accounts (SFr. 17,120) and Marianne Kuffner's custody account with the known value of 55,229.25 Swiss Francs, as evidenced by the list of securities declared in the Austrian census form. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 1,351,071.00 Swiss Francs.

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 for all but Marianne Kuffner's custody account. The Claimant is therefore entitled to 100% of the award amount for

Marianne Kuffner's custody account and 65% of the award amount for the other accounts, for a total initial payment of 1,110,159.00 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 claims 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

November 26, 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).