

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Leon Kellner

Claim Number: 787217/HS¹

Award Amount: 15,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Leon Kellner (the “Account Owner”) at the Zurich branch of 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 owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted an Initial Questionnaire (“IQ”) identifying the Account Owner as his father, Leon Kellner, an accountant who was born on 20 August 1879 and was married to [REDACTED]. The Claimant stated that his parents, who were Jewish, lived at Müllnergasse 14 in Vienna IX, Austria, before the Second World War. The Claimant indicated that his parents fled Vienna in December 1938, leaving their property behind, after receiving a tip that they would be arrested by the Nazi authorities. According to the Claimant, his parents had previously paid *Reichsfluchtsteuer* (flight tax) of 11,632.00 Reichsmark (“RM”) in anticipation of a legal departure. The Claimant further indicated that his parents both passed away in Los Angeles, California, the United States, his father in 1964 and his mother in 1966.

The Claimant submitted his birth certificate, indicating that he was born on 17 May 1920 in Vienna to Leon Kellner and [REDACTED], née [REDACTED], of Vienna.

¹ Claimant [REDACTED] did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered ENG-0666184, 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 IQs 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 787217.

Information Available in the Bank's Record

The Bank's record consists of a customer card. According to this record, the Account Owner was Leon Kellner, who resided in Vienna, Austria. The Bank's record indicates that the Account Owner held a safe deposit box, numbered 3663, which was opened on 21 November 1931 and closed on 25 June 1938. The contents of the safe deposit box on the date of its closure are 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.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/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 Leon Kellner, numbered 43998. According to these records, Leon Kellner, a chartered accountant who was born on 20 August 1879, was married to [REDACTED], née [REDACTED], and resided at Müllnergasse 14 in Vienna IX. These records indicate that the couple paid *Reichsfluchtsteuer* of RM 11,633.00 and *Judenvermögensabgabe* ("Atonement tax") of RM 1,950.00 sometime before 12 November 1938. These records make no mention of assets held in a Swiss bank account.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name and country of residence match the published name and country of residence of the Account Owner. The Claimant identified the Account Owner's city of residence, which matches unpublished information about the Account Owner contained in the Bank's record. Further, the Claimant submitted his own birth certificate, indicating that he was born in Vienna and that his father was Leon Kellner, providing independent verification that the person who is claimed to be the Account Owner had the same name and lived in the same city recorded in the Bank's record as the name and city of residence of the Account Owner.

The CRT also notes that the Claimant filed an IQ with the Court in 1999, regarding Leon Kellner, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant based his claim on a direct family relationship that was known to him before the publication of the ICEP List. This supports the credibility of the information provided by the Claimant. The CRT notes that the other claim initially matched to this account was disconfirmed because that Claimant provided a different country of residence than the country of residence of the Account Owner.

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 and his wife fled Vienna in order to avoid arrest by the Nazi authorities. Furthermore, the 1938 Census documents show that the Account Owner was obliged to pay discriminatory taxes.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and his birth certificate, demonstrating that the Account Owner was his father. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was closed on 25 June 1938, several months after the *Anschluss* (incorporation of Austria into the Reich in March 1938). The CRT notes that discriminatory measures against Austria's Jewish citizens commenced almost immediately after the *Anschluss*. In addition to murder, deportation, and forced labor, these measures included the confiscation of property, including foreign bank accounts.

Given the above, and given that there is no record of the payment of the Account Owner's account to him; that the Account Owner and his 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 father, 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 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 current value of the account being awarded. Based on the investigation carried out pursuant to ICEP's instructions (the "ICEP

Investigation”), in 1945 the average value of a safe deposit box was 1,240.00 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 15,500.00.

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
24 December 2004