

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Bernard Kern and Lucia Kern

Claim Number: 201117/KG¹

Award Amount: 119,203.13 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the unpublished account of Bernard Kern and Lucia Kern (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).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 a Claim Form identifying the Account Owners as his parents, Bernard Kern, who was born in 1890, and Lucia Kern, née Lippa, who was born on 30 October 1898 in Romania. The Claimant indicated that his father was a certified accountant (“CPA”), that his mother was a housewife, and that they lived in Bucharest, Romania. According to the Claimant, his parents, who were Jewish, were persecuted by the Nazis in Bucharest and forced to perform slave labor between 1941 and 1945.

In a series of memoranda and other submissions to the CRT, the Claimant stated that, in 1940, his parents opened a savings account at the Bank, numbered 8833, into which they deposited 25,000.00 Swiss Francs (“SF”). According to the Claimant, at the end of 1940 his parents transferred a further amount of SF 30,000.00 into the account. The Claimant stated that his parents received a receipt for the first SF 25,000.00, but did not receive confirmation of the deposit of SF 30,000.00. The Claimant added that, despite the travel restrictions which existed in Romania at the time, in 1970, his mother, Lucia Kern, who was then 73 years of age, applied for and was granted a tourist visa to visit a friend in Frankfurt, Germany. According to the Claimant, once in Germany, his mother traveled to Zurich, Switzerland, where she visited the

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 201117 and 208942. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 201117.

Bank in order to inquire about and reactivate her account. The Claimant further stated that a few days after his mother's visit, the Bank confirmed by telephone that the account had been found and that the balance was a little under SF 25,000.00 (approximately SF 24,700.00). According to the Claimant, his mother alerted the Bank to the discrepancy between the SF 55,000.00 she believed was in the account and the SF 24,700.00 the Bank stated was in the account, as well as to the failure to calculate interest to the principal amount, and was told that a representative from the Bank would make inquiries. The Claimant further stated that, at the time his mother was making these inquiries with the Bank in 1970, she added his name, which was then Alexandru Conta,² as a joint account owner of the account. The Claimant indicated that, in 1972, he and his mother were able to emigrate to the United States, where they settled in New York. According to the Claimant, he and his mother arranged to transfer the balance from savings account 8833, which was approximately SF 24,500.00 at the time, to the Franklin Bank in New York, where they opened an account. The Claimant has submitted to the CRT that, as no interest was paid to the account for a period of 32 years (between 1940 and 1972), he is entitled to the interest on the principal sum for this period. In a memorandum dated 2 October 2001, the Claimant also stated that he is claiming interest on the account from 1972 to 2001 (this being the year in which he filed his Claim Form).

In a letter dated 12 August 2005, which was forwarded to the CRT by the Office of the Special Master, the Claimant stated that he had conducted his own investigation, and had obtained information from the Bank. The Claimant enclosed a letter from the Bank, dated 14 July 2005, which states:

We have checked all our archives in Switzerland and could trace the account 8833, which was opened with [the Bank] and closed at the end of 1968 by transferring the balance to account No. 603.891 in the name of Bernhard and Lucia Kern. This account was closed on May 6, 1971, after your mother had got in contact with bank [sic].

The remaining balance was transferred to a savings account No. 611.228 in the name of Lucia Kern according to her instructions. However, we do not have any further information on this account.

The Claimant indicated that his father died on 4 April 1965 in Bucharest and that his mother passed away on 13 September 1992 in New York, the United States.

In support of his claim, the Claimant submitted documents, including his birth certificate, which indicates that he was born on 8 March 1926 and that his parents were Bernard Kern, a 36-year-old office worker, and Lucia Kern, née Lippa, a 27-year-old housewife; Bernard Kern's death certificate, indicating that he died on 4 April 1965 at the age of 75, and that his last domicile was Bucharest; and Lucia Kern's death certificate, indicating that she died on 13 September 1992, that her place of birth was Romania and that [REDACTED] was her son. The Claimant indicated that he was born on 8 March 1926 in Bucharest, Romania.

² The Claimant indicated that he changed his name back to the original [REDACTED] after immigrating to the United States in 1972.

The Claimant previously submitted two Initial Questionnaires (“IQs”) with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Bernard and Lucia Kern.

Information Available in the Bank’s Records

The Bank’s records consist of three lists of the Bank’s clients listing debtors and creditors and an account statement dated 7 June 1949. According to these records, the numbered account CQUE 8833 was held by a Romanian account owner. The name or names of the holder of this numbered account are not revealed in the Bank’s records. The Bank’s records do not indicate the type of account at issue. The Bank’s records indicate that the amount in the account as of 30 June 1949 was SF 24,592.00 and that the amount in the account as of 30 June 1964 was SF 23,823.45. The CRT notes that the Bank’s records do not contain any evidence that interest was ever paid to the account. The records indicate that the account was transferred to a suspense account on or before 30 June 1964. The records do not indicate when the account at issue was closed, or to whom it was paid.

The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) did not find this account in the Bank’s system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of customer activity on this account after 1945. The last known date of existence of this account was 30 June 1964.

Other than the payment recognized by the Claimant, there is no evidence that the Account Owner or his heirs closed the account and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant’s parents’ country of residence matches the unpublished country of residence of the Account Owners. The Claimant also identified the exact account number, bank, and approximate balance of the account, which matches unpublished information about the Account Owners contained in the Bank’s records.

In support of his claim, the Claimant submitted documents including his birth certificate, indicating that his parents names were Bernard Kern and Lucia Kern, née Lippa; Bernard Kern’s death certificate, indicating that his last place of residence was Bucharest; and Lucia Kern’s death certificate, indicating that her place of birth was Romania, providing independent verification that the persons who are claimed to be the Account Owners had the same name and resided in the same country as the name and country of residence of the Account Owners recorded in the Bank’s records.

Additionally, the CRT notes that the Claimant filed two IQs with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Bernard and Lucia Kern, and that this account was not published on the February 2001 list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP 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 Owners as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, that they were persecuted by the Nazis in Romania and that they were forced to perform slave labor from 1941 until 1945.

The Claimant’s Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were his parents. These documents include the Claimant’s birth certificate, indicating that his parents were Bernard Kern and Lucia Kern, née Lippa; and Lucia Kern’s death certificate, indicating that [REDACTED] was her son. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

The Bank’s records indicate that the account was transferred to a suspense account on or before 30 June 1964. The ICEP auditors indicated that the account was closed, but the circumstances of the account’s closure are unknown. However, the information provided by the Claimant corresponds with the information known about the account from the Bank’s records, from the auditors’ report, and from the Bank’s letter of 14 July 2005. The CRT therefore accepts that the Claimant’s mother closed the account on 6 May 1971 and that she received the proceeds herself. Moreover, the Bank’s records indicate that the amount in the account decreased in value over time, from SF 24,592.00 on 30 June 1949 to SF 23,823.45 on 30 June 1964. The records thereby confirm that fees were deducted from the account, but no interest was credited to it. The CRT therefore concludes that, with respect to the deposit of SF 25,000.00, the Claimant is entitled to the interest that should have accrued to the account between 1940 and 1972.

With respect to the Claimant’s assertion that his parents made a second deposit in 1940 of SF 30,000.00, the CRT declines to make a decision at this time, pending further research into the circumstances of the deposit.

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 Governing the Claims Resolution Process, as amended (the “Rules”). Second, the Claimant has plausibly

demonstrated that the Account Owners were his parents and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received any interest between 1940 and 1972, and that neither the Account Owner nor their heirs received the interest on the deposit of SF 25,000.00.

Amount of the Award

In this case, the Account Owner held one savings account. To determine the appropriate award amount with respect to the interest owed on the deposit of SF 25,000.00 from 1940 to 1972, the CRT accepts that SF 25,000.00 was deposited into a savings account at the Bank in 1940. The Claimant has indicated that, in 1972, approximately SF 24,500.00 was transferred from the Bank to a bank account in New York. The Bank's records indicate that, in 1964, the balance of the account was SF 23,823.45. The CRT accepts this balance as the closest balance date to the assumed closing date of the account. The CRT notes that a savings account with a balance of SF 23,823.45 in 1964, adjusted for fees and compound interest, would have been worth SF 15,463.75 in 1940. This amount is subtracted from SF 25,000.00 (the amount actually deposited in 1940), to obtain the computed value of SF 9,536.25, which reflects the principal amount for which the Claimant did not receive interest. The current value of the amount of the award is determined by multiplying this computed balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount of SF 119,203.13 for the interest on the deposit of SF 25,000.00.

With respect to the deposit of SF 30,000.00 that was made to the account in 1940, as noted above, the CRT defers judgment on this amount, pending further research regarding the circumstances of the deposit.

Consequently, the total award amount is SF 119,203.13.

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
21 September 2005