

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Robert Charles Klein
also acting on behalf of Susanne Deutsch
represented by Jonathan Palmer

in re Accounts of Leo Klein

Claim Number: 402168/RS

Award Amount: 59,750.00 Swiss Francs

This Certified Award is based upon the claim of Robert Charles Klein (the “Claimant”) to the account of Leo Klein. This Award is to the published accounts of Leo Klein (the “Account Owner”), over which Martha Klein (the “Power of Attorney Holder”) held power of attorney, at the [REDACTED] (the “Bank”).¹

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his father, Leo Klein, who was born on 21 November 1889 in Prague (Weinberge), Austro-Hungary (now the Czech Republic), and was married to Martha Orszag on 10 April 1921 in Vienna, Austria. The Claimant indicated that his father, who was Jewish, lived in Vienna at Favoritenstrasse 48/8 and owned and operated his own industrial goods company, *Firma Leo Klein*, which was located at Favoritenstrasse 47. In a letter forwarded to the CRT on 19 April 2006, the Claimant stated that his maternal grandmother’s name was Clothilde Orszag, née Fleischman, and that his father, Leo Klein, also worked with her in her general merchandise and import-export business, *Wiedner Industrie*, in Vienna. According to the Claimant, his family fled to the United States in 1938 and in approximately 1941, his father’s assets in Austria were seized by the Nazis. The Claimant

¹ The CRT notes that on the February 2001 published 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”), the name Leopold Klein also appears, and that on the List of Account Owners Published in 2005 (the “2005 List”), the name Leo Klein also appears. Upon careful review, the CRT has determined that these account owners are not the same person addressed in the current decision and, consequently, the Claimant did not identify these other account owners as his relatives.

further indicated that that his mother died on 11 March 1981 in Fort Lee, New Jersey, the United States, and that his father died in October 1981 in New Milford, New Jersey, the United States.

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

- (1) his mother's birth certificate, indicating that Martha Orszag was born on 15 September 1900 and that her mother's name was Clotilde Orszag, née Fleischmann;
- (2) his parents' marriage certificate, indicating that Leo Klein and Martha Orszag were born on 21 November 1889 and 15 September 1900, respectively, that they were married in Vienna on 10 April 1921 and that Martha's mother's name was Clotilde Orszag, née Fleischmann;
- (3) his own birth certificate, indicating that he was born Robert Karl Klein on 22 December 1927 in Vienna to parents Leo Klein and Martha Klein, née Orszag;
- (4) his sister's birth certificate, indicating that Susanne Marie Klein was born on 5 February 1924 to parents Leo Klein and Martha Klein, née Orszag;
- (5) his father's residency certificate, dated 21 February 1933 in Vienna, issued by the Viennese provincial government, conferring residency status in Vienna on Leo Klein, born on 21 November 1889, residing at Favoritenstrasse 48/8 Vienna, IV, his wife Martha Klein, née Orszag, born on 15 September 1900, and their children, Susanna Maria Klein, born on 5 February 1924 and Robert Karl Klein, born on 22 December 1927;
- (6) a police transcript, dated 17 March 1938, noting that, due to the suspicion that large sums of money were being kept hidden at Leo Klein's business premises at Favoritenstrasse 47 and his apartment at Favoritenstrasse 48, as well as in the apartment of his mother-in-law, Clotilde Orszag, of Weyringergasse 29 Vienna IV, these premises were searched and various items seized, including large sums of money and documents, including Leo Klein's passport, his driver license, deposit books relating to bank accounts at various non-Swiss banks, and his car;
- (7) A court-ordered Notice of Termination (*Gerichtliche Aufkündigung*), dated 12 August 1938, indicating that Leo Klein of Favoritenstrasse 48, Vienna, was required to vacate these premises by November 1938 on the grounds that he was not Aryan and that his continued presence at the property with Aryan tenants had become untenable;²
- (8) a tax clearance certificate (*steuerliche Unbedenklichkeitsbescheinigung*), dated 2 October 1938, noting that the tax authorities had no objection to the following persons leaving the country: Leo Klein, merchant, born on 21 November 1889, residing at Favoritenstrasse 48, his wife Martha Klein, née Orszag, born on 15 September 1900, and their children Susie, born on 5 February 1924 and Robert, born on 22 December 1927;
- (9) his sister's marriage certificate, indicating that Susanne Klein was the daughter of Leo Klein and Martha Orszag, and that she was married to Alfred Deutsch on 1 January 1945 in New York, the United States;
- (10) his father's last will and testament, dated 4 June 1976, indicating that, in the event of the death of his wife, Martha Klein, Leo Klein's estate was to pass in equal shares to his children, Susanne Deutsch and Robert Charles Klein; and

² The original text states: „Die gekündigte Partei ist nicht arisch and daher ein weiteres Zusammenleben mit ihr ist für die arischen Parteien nicht länger tragbar.“

(11) his mother's death certificate, indicating that Martha Klein died on 11 March 1981, that her surviving spouse was Leo Klein, that she was born on 15 September 1900 in Austria, that the name of the person reporting her death was her son, Robert Klein, and that her parents were Julius Orszag and Klothilde Orszag, née Fleischmann.

The Claimant indicated that he was born on 22 December 1927 in Vienna. The Claimant is representing his sister, Susanne Deutsch, née Klein, who was born on 5 February 1924 in Vienna.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form, an extract from a numbered accounts closing register, and printouts from the Bank's database. Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents, including account cards and opening contracts, power of attorney forms and correspondence.

According to these records, the Account Owner was Leo Klein, who resided at Favoritenstrasse 48/8, Vienna IV, Austria, and the Power of Attorney Holder was Martha Klein, the Account Owner's wife, who also resided at Favoritenstrasse 48/8, Vienna IV. The Bank's records also indicate that Clotilde Orszag was the Account Owner's mother-in-law and that she resided at Favoritenstrasse 47, where her accessories, jewelry, paper-goods and toiletries company, *Wiener Industrie*, was also located.

The Bank's records indicate that the Account Owner held one savings account and one numbered account, the type of which is not indicated, numbered 61210. With respect to the numbered account of unknown type, the Bank's records indicate that it was closed on 15 September 1941. The amount in the account on the date of its closure is unknown.

With respect to the savings account, the Bank's records indicate that the account was opened in 1927. 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 activity on this account after 1945. There is no evidence in the Bank's records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts 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, 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 Leo Klein and Martha Klein.

The files concerning the assets of Leo Klein, numbered 13028, contain Leo Klein's 1938 Census declaration and official correspondence. His assets declaration indicates that Leo Klein was born on 21 November 1889 and that he lived at Favoritenstrasse 48/8 in Vienna IV. The declaration further indicates that Leo Klein was Jewish, was married to Martha Klein, née Orszag, who was also Jewish, and that he was a businessman (*Geschäftsmann*). The declaration indicates that Leo Klein was the owner of the industrial goods business *Firma Leo Klein*, which was located at Favoritenstrasse 47 in Vienna, and which had a total value of 116,322.72 Reichsmark ("RM"). According to his declaration, Leo Klein held a number of securities, cash and savings in the amount of RM 35,800.00. The declaration further indicates that Leo Klein and his wife, Martha Klein, paid flight tax (*Reichsfluchtssteuer*) in the amount of RM 28,000.00 on 18 May 1938. These records make no mention of assets held in a Swiss bank account.

The correspondence contained with Leo Klein's 1938 Census declaration includes the following documents: (1) a letter, dated 27 August 1938, from the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or "VVSt") to Leo Klein, requesting that he surrender to the Vienna office of the *Reichsbank* the foreign securities that he listed in his asset declaration, and, if so requested, that he sell those securities and offer the profits to the *Reichsbank*; (2) a letter, dated 3 September 1938, from the Vienna Magistrate's Office to the VVSt stating that Leo Klein was currently in protective custody (*in Schutzhaft*), but that he was preparing to emigrate to the United States; (3) an undated letter from Leo Klein to the VVSt stating that he had accidentally omitted some funds from his asset registration, and that the amount of cash and savings in his possession was actually RM 55,046.41, rather than the RM 35,800.00 originally reported and that the Austrian secret police (*Geheime Staatspolizei*) had seized many of his assets in March 1938 and that these had not been returned; (4) a letter, dated 12 November 1938, from the VVSt to Leo Klein, requesting him to come for an appointment to discuss his asset registration on 23 November 1938; (5) an internal memorandum, dated 22 November 1938, indicating that Leo Klein and his entire family, including his mother-in-law Clotilde Orszag, had emigrated to the United States and that Leo Klein's company would be aryanized (*entjudet*) in the following days; (6) a letter and accompanying form, dated 22 May 1939, from the VVSt to Dr. Wilhelm Leverenz and Adolf Hein of Vienna, indicating that these two individuals were the purchasers of the Leo Klein department store (*Wiener Industrie*)³ located at Favoritenstrasse 47 and that they should deposit the purchase price in an account labeled 'Aryanization proceeds' (*Entjudungserlös*); (7) a sequestration order (*Beschlagnahmeverfügung*), dated 7 August 1941, indicating that all of the assets and rights thereto formerly belonging to Leo and Martha Klein, and to their children Susanne and Robert, had been seized for the benefit of the Third Reich; (8) a memorandum, dated 27 August 1941, from the VVSt indicating that a perfumery (*Parfümerie*) formerly owned by Martha Klein had been sold for RM 4,840.73; (9) a notice from the flight tax authorities (*Reichsfluchtsteuerstelle*), dated 7 January 1942, advising that, on the basis of Leo and Martha Klein combined total assets of RM 164,942.00, Leo Klein had been assessed flight tax of RM 41,235.00, which was payable by 30 June 1938 [*sic*].

³ This wording is taken from the original document. It is not entirely clear from the document whether it refers to the separate businesses located at the same address, namely the *Firma Leo Klein* operated by Leo Klein and *Wiener Industrie* operated by his mother-in-law, Clotilde Orszag.

The files concerning the assets of Martha Klein, numbered 13025, contain Martha Klein's 1938 Census declaration and official correspondence. These records indicate that Martha Klein was born on 15 September 1900, that she was a business woman (*Geschäftsfrau*), and that she was married to Leo Klein, who was Jewish. In her assets declaration, Martha Klein indicated that her assets included an Austrian insurance policy, jewelry, carpets, and a business, the perfumery and leather bag company *Zur Linde*, located at Favoritenstrasse 17 in Vienna. Martha Klein indicated that this company had a value of RM 12,993.63, and that it had no debts. A letter dated 11 November 1939 from the VVSt to Frau Eleonore Bauer of Vienna indicates that the recipient of the letter had purchased the perfumery formerly owned by Martha Klein for a price of RM 4,840.77. 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 and the Power of Attorney Holder. The Claimant's father's and mother's names and city and country of residence match the published names and city and country of residence of the Account Owner and the Power of Attorney Holder. The Claimant also identified the Account Owner's street address which matches the unpublished street address identified in the Bank's records and which is the same as one of the addresses given for the Account Owner in his 1938 Census declaration. In addition, the Claimant identified the name of the Account Owner's mother-in-law and the name of her company, which matches unpublished information about the Account Owner contained in the Bank's records and which is again consistent with information contained in the Account Owner's 1938 Census declaration.⁴ Finally, the Claimant also identified the Account Owner's and the Power of Attorney Holder's respective dates of birth, the names of their children and the fact that they fled Austria for the United States in 1938, which matches information contained in the Account Owner's 1938 Census declaration.

In support of his claim, the Claimant submitted documents, including: his parents' marriage certificate, his birth certificate, his sister's birth certificate, a 1933 document issued by the Viennese provincial government, a 1938 police transcript, a 1938 court-ordered Notice of Termination, a 1938 tax clearance certificate, his sister's marriage certificate, his father's last will and testament, and his mother's death certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner. The Claimant also submitted samples of both his parents' signatures, which match the signature samples of the Account Owner and the Power of Attorney Holder contained in the Bank's records.

⁴ The CRT notes that Claimant stated that the company was called *Wiedner Industrie* and the Bank's records and 1938 Census records indicated that the company was called *Wiener Industrie*, however, given that all other information provided by the Claimant about the company matches the information in the Bank's records and 1938 Census records, the CRT concludes that the Claimant has plausibly identified the Account Owner's mother-in-law's company.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different country of residence or a different street address in Vienna, marital status, and signature than the country of residence, street address, marital status, and signature of the Account Owner, and because they failed to identify the Power of Attorney Holder.

Status of the Account Owner as a Victim or Target 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 lived in Austria after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”). The Claimant also submitted various documents which demonstrate that the Account Owner was a Victim of Nazi Persecution, including a March 1938 police transcript, noting that his father’s business premises and apartment were searched and various items seized; and a court-ordered Notice of Termination from 1938, requiring his father to vacate his apartment on the grounds that he was not Aryan. The CRT further notes that the Account Owner was required to register his assets in the 1938 Census and to pay flight tax. The official correspondence and other documents which form part of the Account Owner’s 1938 Census file and which are described above also indicate that the Account Owner was subjected to systematic persecution due to the fact that he was Jewish.

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 documents, demonstrating that the Account Owner was the father of the Claimant and his sister, Susanne Klein, whom the Claimant is representing. These documents include: (1) the Claimant’s and Susanne Klein’s birth certificates, indicating that their parents were Leo Klein and Martha Klein, née Orszag; (2) a document, issued by the Viennese provincial government in 1933, indicating that the names of Leo and Martha Klein’s children were Susanna and Robert; (3) a tax clearance certificate, dated in October 1938, noting that the children of Leo and Martha Klein were “Susie” and Robert; (4) Susanne Klein’s marriage certificate, indicating that she was the daughter of Leo Klein and Martha Orszag; and (5) Leo Klein’s last will and testament, indicating that his children were Susanne Deutsch and Robert Charles Klein.

There is no information to indicate that the Account Owner has other surviving heirs other than the party whom the Claimant is representing.

The Issue of Who Received the Proceeds

With respect to the account of unknown type, the CRT notes that the Bank’s records indicate that the account was closed on 15 September 1941, at which time, according to information provided by the Claimant and contained in the Account Owner’s 1938 Census records, the Account Owner was outside Nazi-dominated territory. However, given that the Bank’s records do not indicate to whom the account was closed, that the Account Owner fled his country of origin due to Nazi persecution, that the Account Owner may have had relatives remaining in his country of origin

and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety, that the Claimant stated that his father's assets were confiscated by Nazi authorities in 1941, that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 (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, the Power of Attorney Holder, or their heirs.

With respect to the savings account, the CRT notes that given that the Account Owner fled Austria for the United States in 1938 following the *Anschluss*; that there is no record of the payment of the Account Owner's accounts to him, nor any record of a date of closure of this account; that the Account Owner and his heirs would not have been able to obtain information about his accounts 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 (h) and (j), as provided in Article 28 of the Rules, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their 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 and the party he represents. 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 and the represented party's father, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held one savings account and one account of unknown type. 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 ICEP Investigation, in 1945 the average value of a savings account was 830.00 Swiss Francs ("SF") and the average value of an account of unknown type was SF 3,950.00. Thus, the combined 1945 average value for the two accounts at issue is SF 4,780.00. 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 59,750.00.

Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will, the award will provide for distribution among any beneficiaries named in the will who have submitted a claim. In this case, the Claimant submitted the Account Owner's will, which names both the Claimant and the party he is representing, namely his sister, Susanne Deutsch, as beneficiaries in equal shares. Accordingly, the Claimant and represented party Susanne Deutsch are each entitled to one-half of the total award amount.

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 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
12 October 2007