

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Gaston Cahen and Georges Cahen

Claim Numbers: 707353/MBC;¹ 750612/MBC²

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the accounts of Gaston-Gabriel Cahen. This award is to the unpublished accounts of Gaston Cahen (“Account Owner Gaston Cahen”) and Georges Cahen (“Account Owner Georges Cahen”) (together the “Account Owners”) over which [REDACTED], née [REDACTED] (“Power of Attorney Holder [REDACTED]”), and [REDACTED], née [REDACTED] (“Power of Attorney Holder [REDACTED]”) (together the “Power of Attorney Holders”), held power of attorney, at the London and Basel branches of the [REDACTED] (the “Bank”).³ The accounts awarded are from the Total Accounts Database (“TAD”) at 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.

¹ [REDACTED] (the “Claimant”) did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered FRE-0008-036, 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 Initial Questionnaires 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 707353.

² In 1998, the Claimant submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-H-80-213-152-733, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 750612.

³ 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”), a person named Gaston Cahen is indicated as having owned accounts. Upon careful review, the CRT has determined that the Gaston Cahen on the ICEP List is not the same person addressed in this decision, and consequently, the Claimant did not identify the Gaston Cahen on the ICEP List as his relative.

Information Provided by the Claimant

The Claimant submitted an Initial Questionnaire (“IQ”) and an ATAG Ernst & Young claim form identifying the Account Owners as his paternal uncle, Gaston-Gabriel Cahen (formerly Kahn or Cahn), and his (the Claimant’s) father, Georges Cahen, who were the children of [REDACTED] and [REDACTED]. The Claimant indicated that his father, who was born in Colmar, Germany (today France), on 29 June 1885, and his mother, [REDACTED], née [REDACTED], who was born in Wintzenheim, Germany (today France), were Jewish, were married on 17 February 1933 in Wintzenheim, and had three children: the Claimant and his two sisters, [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED].

The Claimant indicated that his uncle was born on 8 October 1891 in Wintzenheim and was married to [REDACTED], née [REDACTED], on 27 November 1929 in Saverne, France. The Claimant explained that his uncle managed a factory in Schiltigheim, France, with the Claimant’s father. The Claimant stated that his aunt and uncle, who were Jewish, resided at 37, rue de Maréchal Foch in Strasbourg until 1939, at which time they were evacuated to La Baule, France, in the Loire-Atlantique region. The Claimant indicated further that after France was invaded by Nazi Germany, his aunt and uncle and their children fled to Gimont, France, and in 1943, they attempted to enter Switzerland, but were intercepted by Swiss border guards and handed over to the Germans, who deported them to Auschwitz, where they perished in 1944.

The Claimant submitted copies of: (1) his parents’ marriage certificate, indicating that Georges Cahen and [REDACTED], née [REDACTED], were married on 17 February 1933 in Wintzenheim, and that Georges Cahen’s parents were [REDACTED] and [REDACTED]; (2) his uncle’s birth certificate, indicating that Gabriel Cahn was born on 8 October 1891 in Wintzenheim, that his parents were [REDACTED] and [REDACTED], that he was married to [REDACTED], that he changed his surname to Cahen in 1931, and that he perished in Auschwitz in 1944;⁴ and (3) an extract from his family book (*livret de famille*), indicating that Georges Cahen and [REDACTED] had three children: [REDACTED], [REDACTED], and [REDACTED]. The Claimant indicated that he was born on 2 November 1941 in Gimont.

Information Available in the Bank’s Records

The Bank’s records consist of a customer card and a printout from the Bank’s database. According to these records, the Account Owners were Mr. Gaston Cahen and Mr. Georges Cahen, and the Power of Attorney Holders were *Mme.* (Mrs.) [REDACTED], née [REDACTED], the wife of Account Owner Gaston Cahen, and *Mme.* [REDACTED], née [REDACTED], the wife of Account Owner Georges Cahen. The Bank’s records indicate that Account Owner Gaston Cahen and Power of Attorney Holder [REDACTED] resided at 37, rue du Maréchal Foch in Strasbourg, France, and that Account Owner Georges Cahen and Power of Attorney [REDACTED] resided at 12, rue du Général Gouraud, also in Strasbourg. According to the Bank’s records, the Account Owners instructed the Bank to hold all correspondence as of 19 October 1936. The Bank’s records indicate that the Account Owners were industrialists, and

⁴ The CRT notes that the birth certificate is partially illegible, and that the legible portion contains only the notation for “Gabriel Cahen.”

that their address had originally been listed as a factory located at 6 rue de la Poste in Schiltigheim, France, but as of 18 October 1939, they used an address in Nantes, France, in the Loire-Inférieure region (today, Loire-Atlantique).

The Bank's records indicate that the Account Owners jointly held two demand deposit accounts and one custody account under the numbered relationship 39281, which was opened on 5 January 1934. The Bank's records indicate that these three accounts were closed on 11 December 1939, but that a small balance remained after this date in one of the demand deposit accounts, which was liquidated on 14 August 1941. With respect to the demand deposit account liquidated on 14 August 1941, there is no evidence in the Bank's records that the Account Owners, the Power of Attorney Holders or their heirs received the proceeds.

Additionally, the Bank's records indicate that a new custody account was opened at the Bank's London office on 23 March 1939, and was declared on 1 March 1940. The Bank's records do not contain any information about the disposition of this account. There is no evidence in the Bank's records that the Account Owners, the Power of Attorney Holders or their heirs closed the accounts and received the proceeds themselves.

These accounts were not part of the Account History Database at the CRT, but were identified as a result of matching and research carried out at the Bank and using, as noted above, the TAD at the Bank. The TAD at the Bank is one of the several databases that comprise a total of approximately 4.1 million accounts. These are part of the approximately 6.9 million accounts that were identified by 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") as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 million accounts, in databases located at the 59 ICEP audited Swiss banks,⁵ are composed of 1.9 million savings accounts with a 1930-1940s value of 250 Swiss francs or less or with unknown balances and accounts with Swiss addresses, and 2.2 million accounts that ICEP concluded should not be included within the Account History Database, that is within the 36,000 accounts that ICEP determined were "probably or possibly" owned by victims of Nazi persecution. The accounts awarded are part of a group of accounts identified in the TAD.

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.

⁵ These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners and Power of Attorney Holders. The names and city and country of residence of the Claimant's parents and his aunt and uncle match the unpublished names and city and country of residences of the Account Owners and the Power of Attorney Holders. The Claimant also identified the Account Owners' profession and the relationship between the Account Owners and the Power of Attorney Holders, and indicated that Account Owner Gaston Cahen and Power of Attorney Holder [REDACTED] moved to the Loire-Atlantique region in France, which matches unpublished information contained in the Bank's records.

In support of his claim, the Claimant submitted documents, including his parents' marriage certificate and family book, as well as his uncle's birth certificate,⁶ providing independent verification that the persons who are claimed to be the Account Owners and Power of Attorney Holders had the same names and resided in the same city recorded in the Bank's records as the names and city of residence of the Account Owners and Power of Attorney Holders.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Gaston Gabriel Cahen, and indicates that his place of birth was Wintzenheim, which matches the information about Account Owner Gaston Cahen provided by the Claimant. This database also includes a person named [REDACTED], née [REDACTED], and indicates that she was married to Gaston Gabriel Cahen, which matches the information about Power of Attorney Holder [REDACTED] provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the other claim to these accounts was disconfirmed because that claimant provided a different city of residence and occupation than the city of residence and occupation of the Account Owners.

Status of the Account Owners as Victims 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, and resided in France at the outbreak of the Second World War. The Claimant stated that Account Owner Gaston Cahen and Power of Attorney Holder [REDACTED] and their family attempted to flee to Switzerland in 1943, but that they were stopped at the border and handed over to the Germans, and deported to Auschwitz, where they perished. As noted above, persons named Gabriel Gaston Cahen and [REDACTED] were included in the CRT's database of victims.

⁶ The CRT notes that although the partially-illegible birth certificate of Gaston-Gabriel Cahen does not list his first name, a database containing the names of victims of Nazi persecution lists "Gaston-Gabriel Cahen," indicating that he was born on the 8th of October, which matches the day and month contained on the birth certificate. The CRT notes further that all of the information provided by the Claimant matches the information about Account Owner Gaston Cahen contained in the Bank's records as well as the database containing the names of victims of Nazi persecution, and concludes, therefore, that it is not material to the Claimant's identification of Account Owner Gaston Cahen that the partially-illegible birth certificate only contains his middle and last names.

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 the Claimant's father and uncle. These documents include (1) his parents' marriage certificate, indicating that Georges Cahen's parents were [REDACTED] and [REDACTED]; (2) his uncle's birth certificate, indicating that Gabriel Cahn's parents were [REDACTED] and [REDACTED]; and (3) an extract from his family book Georges Cahen had a son named [REDACTED].

The Issue of Who Received the Proceeds

Regarding the Account Owners' first custody account and one of their demand deposit accounts, both of which were closed on 11 December 1939, the CRT notes that the accounts were closed prior to Nazi Germany's occupation of France, and therefore determines that the Account Owners closed these accounts and received the proceeds themselves.

Regarding the custody account opened at the Bank's London office and the demand deposit account held at the Bank's Basel branch, given that there is no record of the payment of the Account Owners' accounts to them; that the demand deposit account still had a remaining balance after it had been ostensibly closed, and was subsequently liquidated after France was invaded by Nazi Germany; that the Account Owners and their heirs would not have been able to obtain information about their 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 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 Owners, the Power of Attorney Holders, 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. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were his father and uncle, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, nor the Power of Attorney Holders, nor their heirs received the proceeds of the demand deposit account that was liquidated in 1941 and the custody account that was held at the London branch of the Bank.

Amount of the Award

In this case the Award is for one demand deposit account and one custody account. 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 demand deposit account was 2,140.00 Swiss Francs (“SF”), and the average value of a custody account was 13,000.00. This, the total 1945 average value of the accounts at issue is SF 15,140.00. 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 189,250.00.

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 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) at banks other than the Bank.

Certification of the Award

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

Claims Resolution Tribunal
24 October 2008