

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of [REDACTED]

in re Accounts of Oscar Henry Cahn and Johannes Heinrich Oscar Franz Osman Cahn

Claim Number: 200364/IG

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] née [REDACTED], (the “Claimant”) to the accounts of Oscar Henry Cahn (hereinafter “Account Owner Oscar Cahn”) and Johannes Heinrich Oscar Franz Osman Cahn (hereinafter “Account Owner Johannes Cahn”) at the Basel 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 Account Owner Oscar Cahn as her paternal grandfather, Oscar Henry Cahn, and Account Owner Johannes Cahn as her father, Johannes Heinrich Oscar Franz Osman Cahn. The Claimant indicated that her grandfather was married to Franzisca Catherina Wilhelmine Caroline Cahn, née Schlie. The Claimant stated that her father was born on 26 October 1914 in Hamburg, Germany, and was married to [REDACTED], on 13 September 1939 in Amsterdam, the Netherlands. The Claimant stated that her father, who was Jewish, held both Dutch and Czech citizenships, that he resided in Berlin, Germany in 1922, and that he moved to the Netherlands in 1933, where he lived at 26 Palestrinastraat in Amsterdam. The Claimant further stated that her father worked in a travel agency called *Middelandsche Zee* (Mediterranean Sea), that was located at 101 Beurstraat in Amsterdam between the years 1933 and 1938. The Claimant further indicated that her father served as staff sergeant of the Dutch Army in the United Kingdom from 1941 to 1946. The Claimant indicated that her father died on 8 January 1986 in Amsterdam.

In support of her claim, the Claimant submitted her father’s passport, marriage certificate, army documents, work certificate, business letterhead from 1938, will, and death certificate, and her own birth certificate.

The Claimant indicated that she was born on 11 March 1937 in Bogota, Colombia. The Claimant is representing [REDACTED], her sister, who was born on 7 February 1950 in Porto Alegre, Brazil.

Information Available in the Bank Records

The bank records consist of a power of attorney card signed on 26 October 1936 in Amsterdam, the Netherlands; an affidavit signed on 13 December 1938 by an official at the Czechoslovakian Delegation in the Hague, the Netherlands, indicating that Franziska Cahn was not a German national; an affidavit signed by Franziska Cahn on 16 January 1932 in Zurich, Switzerland on the letterhead of the *Mittelmeer Reisebureau*, indicating that Franziska Cahn was the spouse of the *Kaiserlicher Rat* (Adviser to the Emperor) H. Osc. Cahn and was an authorized representative of the company; a death certificate and certificate of inheritance of Henry Oscar Cahn; and printouts from the Bank's database. According to these records, the Account Owners were Henry Oscar Cahn and Johannes Heinrich Oscar Franz Osman Cahn, and the Power of Attorney Holder was Franzisca Catherina Wilhelmine Caroline Cahn, née Schlie, Account Owner Oscar Cahn's spouse, who resided at Palestrinastraat 26, Amsterdam, the Netherlands. The bank records indicate that the Account Owners held a custody account, numbered 37520, and a demand deposit account. The bank records indicate that the company was founded in 1906, was also called *H. Osc. Cahn & Co* and was located at Bülowstrasse 92 in Berlin W57, and that Henry Oscar Cahn died on 22 November 1938.

The custody account was closed on 11 November 1954, unknown by whom. The amount in the custody account on the date of its closure is unknown.

The bank records do not show when the demand deposit account was closed, or to whom it was paid, nor do these records indicate the value of the demand deposit account. 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 the demand deposit 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 the demand deposit account after 1945. There is no evidence in the bank records that the Account Owners, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her father's name matches the published name of Account Owner Johannes Cahn; her paternal grandfather's name matches the unpublished name of Account Owner Oscar Cahn; and her paternal grandmother's name matches the published name of the Power of Attorney Holder. The Claimant identified her father's and grandparents' street address in Amsterdam, the name of the family business and the family

relation between the Power of Attorney Holder and Account Owner Oscar Cahn, which matches unpublished information about the Account Owners contained in the bank records. In support of her claim, the Claimant submitted documents, including letterhead from her grandparents' company, which matches the letterhead from the company contained in the bank documents.

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 Account Owner Johannes Cahn was Jewish, and that his family fled Nazi Germany to the Netherlands in 1933.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that they were her paternal grandfather and father.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j), as provided in Article 28 (see Appendix A) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, 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 nor 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 Owners were her grandfather and father, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holder or their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case the Account Owner held one custody account and one demand deposit 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 present value of the account being awarded. Based on the investigation carried out pursuant to the instructions of the ICEP, in 1945 the average value of a custody account was 13,000.00 Swiss Francs and the average value of a demand deposit account was 2,140.00 Swiss Francs. The present value of these amounts is calculated by multiplying them by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 181,680.00 Swiss Francs.

Division of the Award

The Claimant is representing her sister in these proceedings. According to Article 23 of the Rules, the Claimant and her sister are both entitled to receive one half of the total award amount.

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 her claim to determine whether there are additional Swiss bank accounts to which she 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
March 5, 2003

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).