

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also representing [REDACTED 2], née [REDACTED], and [REDACTED 3]

in re Account of A. Cohen and J. Cahen

Claim Number: 752872/LH^{1,2}

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (the “Claimant”) to the account of Wilhelm (Willy) Cohen and to accounts belonging to family members with the last names Heymann, Fraser, Friesem and Cozijn.³ This Award is to the unpublished account of A. Cohen (“Account Owner Cohen”) and J. Cahen (“Account Owner Cahen”) (together the “Account Owners”) at the Zurich branch of [REDACTED] (the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 ATAG Ernst & Young claim form in 1998, identifying Account Owner Cohen as her paternal uncle, [REDACTED 3], who was born on 13 July 1910 in Weseke, Westphalia, Germany, and was married to [REDACTED], née [REDACTED], with whom he had one child, [REDACTED], who was born on 14 June 1940. The Claimant stated that her uncle, who was Jewish, resided at Rue Berkman 100 in Brussels, Belgium. The Claimant further stated that

¹ [REDACTED] (the “Claimant”) did not submit a CRT Claim Form. However, in 1998 she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-NYC-C-71-208-051-529, 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 752872.

² The Claimant submitted four additional claims, which are registered under the Claim Numbers 752873, 752874, 752875, and 752876. The CRT will treat these claims in separate determinations.

³ The CRT will treat the claims to these accounts in separate determinations.

her uncle's parents were [REDACTED], and [REDACTED], née [REDACTED], who was born on 6 August 1886, and who died on 2 January 1916. According to the Claimant, her grandfather subsequently remarried his late wife's sister, [REDACTED], née [REDACTED]. The Claimant indicated that her uncle and her father ([REDACTED]) had two siblings, and that her father was the only one of the four siblings to survive the Second World War - the Claimant indicated that her grandparents, her aunts and uncles, and their children all perished in the Holocaust. More specifically, the Claimant indicated that her uncle [REDACTED 3] perished in Auschwitz in 1943. In a telephone conversation with the CRT, the Claimant, who has two siblings, stated that her family fled for Panama sometime before 1942.

In support of her claim, the Claimant submitted copies of documents, including: (1) a list of Jewish victims from the city of Borcken, Germany, indicating that [REDACTED 3] was born on 13 July 1910, that he perished in Auschwitz on 7 January 1943, and that [REDACTED] and [REDACTED] perished in Auschwitz, as well; (2) a letter from the Claimant's father, [REDACTED], dated 21 February 1945, sent via the War Organization of the British Red Cross, in which he attempted to contact his father, [REDACTED] in Holland; and (3) the Claimant's United States certificate of citizenship, indicating that [REDACTED 1] was born on 30 November 1944 in Panama.

The Claimant indicated that she was born on 30 November 1944 in Panama. The Claimant is representing her siblings, [REDACTED 2], née [REDACTED], and [REDACTED 3].

Information Available in the Bank's Records

The Bank's records consist of a list of demand deposit accounts and a printout from the Bank's database. According to these records, the Account Owners were J. Cahen and A. Cohen, who resided in Brussels, Belgium. The Bank's records indicate that the Account Owners held a demand deposit account with a value of 438.00 Swiss Francs ("SF") as of an unknown date.

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 (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 Owners or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant's uncle's first initial, surname and city and country of residence match the unpublished first initial, surname and city and country of residence of Account Owner Cohen.

In support of her claim, the Claimant submitted documents, including a list of Jewish victims from the city of Borcken, providing independent verification that the person who is claimed to be Account Owner Cohen had the same first initial and surname recorded in the Bank's records as the first initial and surname of Account Owner Cohen.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named [REDACTED 3], and indicates that his date of birth was 13 July 1910 and place of birth was Weseke, which matches the information about Account Owner Cohen 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 claims to this account were disconfirmed because those claimants provided a different country of residence than the country of residence of the Account Owners. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified Account Owner Cohen.

The CRT notes that the Claimant did not identify Account Owner Cahen. However, the CRT notes that the Claimant was an infant at the end of the Second World War, and that she was born in Panama, and therefore determines that it is plausible that the Claimant would not know the names of all of her extended family members, and that the Claimant's failure to identify Account Owner Cahen does not adversely affect the plausibility of her identification of Account Owner Cohen.⁴

Status of Account Owner Cohen as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Cohen was a Victim of Nazi Persecution. The Claimant stated that Account Owner Cohen was Jewish, that he resided in Nazi-occupied Belgium, and that he and his family perished in the Holocaust. The Claimant also submitted a list of Jewish victims from the city of Borcken, indicating that [REDACTED 3] perished in Auschwitz on 7 January 1943, and that [REDACTED] and [REDACTED], the Claimant's grandfather and great-aunt, perished in Auschwitz as well. As noted above, a person named [REDACTED 3] was included in the CRT's database of victims.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to Account Owner Cohen by submitting specific biographical information, demonstrating that Account Owner Cohen was the Claimant's uncle.

The CRT notes that the Claimant identified unpublished information about Account Owner Cohen as contained in the Bank's records; and that the Claimant also identified information which matches information contained in the Yad Vashem records. The CRT further notes that the Claimant submitted a copy of a list of Jewish victims from the city of Borcken, and a letter from the Claimant's father that was sent via the War Organization of the British Red Cross,

⁴ The CRT notes that Cahen and Cohen are variations of the same surname.

which provide independent verification that the Claimant's relatives bore the same family name as Account Owner Cohen. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner Cohen was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to Account Owner Cohen, as she has asserted in her Claim Form.

There is no indication that the Account Owner has surviving heirs other than the Claimant and the parties whom she is representing.

The CRT notes that the Claimant did not indicate that she is related to Account Owner Cahen. However, given that the Bank's records indicate that the Account Owners shared a variant of the same surname and resided in the same city, the CRT concludes that it is plausible that the Account Owners were related, and that by plausibly demonstrating that she is related to Account Owner Cohen, the Claimant has also plausibly demonstrated that she is related to Account Owner Cahen.

The Issue of Who Received the Proceeds

Given that Account Owner Cohen resided in Nazi-occupied Belgium until he was deported to Auschwitz, where he perished; that there is no record of the payment of the Account Owners' account to them nor any record of a date of closure of the account; that the Account Owners and their heirs would not have been able to obtain information about their 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 (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 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 parties she 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 Account Owner Cohen was her uncle and the uncle of her siblings, and that Account Owner Cahen was her relative, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners held one demand deposit account. The Bank's records indicate that the value of the demand deposit account on an unknown date was SF 438.00. According to Article 29 of the Rules, if the amount in a demand deposit was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to

be SF 2,140.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 26,750.00.

Division of the Award

In this case, the Claimant is representing her siblings, [REDACTED 2], née [REDACTED], and [REDACTED 3]. Pursuant to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. Accordingly, the Claimant, [REDACTED 2], and [REDACTED 3] are each entitled to one-third 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
21 December 2007