

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Joseph Geismar and Lucien Kahn

Claim Numbers: 221351/LK, 221407/LK

Award Amount: 468,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Joseph Geismar and Aline Geismar.¹ This Award is to the accounts of Joseph Geismar (“Account Owner Geismar”) and Lucien Kahn (“Account Owner Kahn”) (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 Claim Forms identifying Account Owner Geismar as her paternal grandfather’s brother-in-law, Joseph Geismar, who was born on 12 January 1875 in Grussenheim, France, and was married to [REDACTED], née [REDACTED], on 19 February 1900. The Claimant further stated that [REDACTED] was born in Zurich, Switzerland, and that her brother, Saly (Salomon) Levy, lived there. The Claimant further stated that Joseph Geismar, who was a merchant, moved from Grussenheim to Colmar, France in 1928. According to the Claimant, during the Second World War, the family, who was Jewish, fled Nazi persecution to the south of France, where they lived in Valence until they could return to Colmar in 1946. The Claimant asserted that Joseph Geismar died on 31 December 1959 in Colmar.

The Claimant further identified Account Owner Kahn as her father’s first cousin, Lucien Kahn, who was Jewish, born in 1889, lived in Colmar, and was married to Aline (or [REDACTED], [REDACTED]) Kahn, née Geismer.

In support of her claim, the Claimant submitted documents including a family tree, Joseph Geismar’s death certificate that describes his relationship to Lucien Kahn, family letters,

¹ The CRT will treat the claim to this account in a separate decision.

including one from [REDACTED] to the Claimant's father in Colmar mentioning his uncle Saly's address in Zurich, and a copy of Saly Levy's will. The Claimant indicated that she was born on 8 June 1964 in Lyon, France.

Information Available in the Bank Records

The bank records consist of a customer card and printouts from the Bank's numbered accounts database. According to these records, Account Owner Geismar held a custody account, numbered 21411. These records also indicate that Account Owner Lucien Kahn of Colmar (Elsass) held two custody accounts numbered 21410 and 23180 and that the Power of Attorney Holders were Joseph Geismar, *Frau* (Mrs.) Aline Kahn, née Geismar, and Saly Levy. The bank records indicate that all correspondence was directed to Saly Levy, Senior, who resided at Löwenstrasse 32, in Zurich, Switzerland. The bank records do not show when the accounts at issue were closed, to whom they were paid, or the value of these accounts. 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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the bank records that the Account Owners, the Power of Attorney Holders, or their heirs closed either of 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 relatives' names match the published names of the Account Owners and Power of Attorney Holders. The Claimant identified one of the Power of Attorney Holder's city of residence, which matches unpublished information about Power of Attorney Holder Saly Levy contained in the bank records. In support of her claim, the Claimant submitted documents, including a family tree, Joseph Geismar's death certificate that describes his relationship to Lucien Kahn, family letters including one from [REDACTED] to the Claimant's father in Colmar mentioning his uncle Saly Levy's address in Zurich, and a copy of Saly Levy's will. The CRT notes that other claims to these accounts were disconfirmed because other claimants provided incorrect information pertaining to the country of residence and name of Account Owner.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victim of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and fled to the South of France due to Nazi persecution during the Second World War.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that they were her grandfather's brother-in-law and her father's cousin.

The Issue of Who Received the Proceeds

Given the program of confiscation of Jewish property followed by the Nazis in Occupied France, the adoption of Nazi-style confiscation laws in Vichy, France, the fact that Account Owner Joseph Geismar and his family were in flight throughout the Second World War, and the application of Presumption (j), 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 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 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's brother-in-law and her father's cousin, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that none of the Account Owners, the Power of Attorney Holders, or their heirs received the proceeds of the claimed accounts.

Amount of the Award

The Account Owners in this case held three custody accounts. 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. Consequently, the value of the three custody accounts was 39,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 468,000.00 Swiss Francs.

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).