

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Felix Jaffe and Eva Jaffe

Claim Number: 207763/SJ

Award Amount: 258,720.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Felix Jaffe and Eva Jaffe (the “Account Owners”) 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 the Account Owners as his great-uncle and great-aunt, Felix and Eva Jaffe, née [REDACTED], both of whom were Jewish. According to the Claimant, Felix Jaffe was born on 2 September 1857 in Posen, Germany; his wife Eva Jaffe was born on 4 February 1867 in Paris, France.

The Claimant stated that Felix Jaffe spent a considerable time in Frankfurt am Main as his brother, [REDACTED], who was the Claimant’s grandfather, had set up a medical practice in Frankfurt, and the brothers were close. The Claimant added that Felix Jaffe then traveled to Paris, where he became a banker and where he stayed until the outbreak of the First World War, at which time Felix Jaffe went to Switzerland with his wife Eva. According to the Claimant, his aunt and uncle returned to Paris after the end of the First World War, where his uncle continued his profession; he died in Paris on 14 February 1929, before the rise to power of the Nazi Party.

At some point after the death of her husband, the Claimant believes that Eva Jaffe, who had become a convert to Judaism after her marriage to Felix Jaffe, returned to Switzerland. After 1933, however, the Claimant stated that Eva Jaffe was unable to return to Germany due to the Nazi persecution of Jews. According to the Claimant, it is for this reason that Eva Jaffe remained in Switzerland until her death in Territet on 19 August 1938. The Claimant also stated that Eva and Felix’s lawyer in Switzerland was a gentleman named Hans Matti.

The Claimant also stated that his father, [REDACTED] left Germany in 1927 and settled in Italy where he remained until 1938, at which time he fled Italy for Switzerland due to the rise of Italian anti-Semitism. In Switzerland, according to the Claimant, his father and their family settled in Lugano and had a residence, a permit to live and work, and bank accounts. The Claimant added that all this changed at some point in the early 1940s when they were forced to submit their passports to authorities to be stamped with a red “J” for *Juden*, and were declared to be Stateless persons. This designation made it impossible for the Claimant’s family to own a bank account, a residence or to travel. The Claimant stated that at this time, his family’s bank accounts were frozen, but that his father found a banker in Lugano who felt that such treatment was reprehensible and agreed to “lend” money to the Claimant’s father — off the books, illegally and without record — in order to help him support his family. The Claimant stated that this allowed his family to survive and that at the end of the Holocaust his father promptly repaid the borrowed amounts with much gratitude.

The Claimant added that his uncle, [REDACTED], left Germany in 1919 and settled in Holland. At a certain point during the Second World War, the Claimant stated that the Nazis arrested [REDACTED]. The Claimant stated that this turn of events also led to the arrest of his own father in Switzerland. According to the Claimant, upon hearing of his brother’s arrest, the Claimant’s father, [REDACTED], arranged with another individual to have false papers created in order to facilitate [REDACTED]’s release in Holland. This activity caused the two men to be arrested and brought to trial where, according to the Claimant, his father yet again met a Swiss individual who understood the plight of Jews at the time and the judge dismissed the case.

Finally, the Claimant added that he was forced to become a Stateless person and was unable to travel outside of Switzerland due to the Nazi persecution of Jews. The Claimant states that he did become a Swiss Citizen in 1948. The Claimant added that, to the best of his knowledge, none of his relatives ever accessed these accounts. In support of his claim, the Claimant submitted a detailed family tree and history. The Claimant added that he was born on 25 June 1924 in Berlin, Germany.

Information Available in the Bank Records

The bank records consist of account cards and printouts from the Bank’s database. According to these records, the joint Account Owners were Felix Jaffe and Eva Jaffe, and the Power of Attorney Holder was Dr. Hans Matti. The bank records indicate that the Account Owners were of German origin and that they had a number of addresses, including one in Frankfurt am Main, Germany, one at 91 Rue Jouffroy in Paris, France and, as of 13 September 1924, an address at the hotel Mirabeau in Lausanne, Switzerland. The bank records also state that the Account Owners were married in Paris, that Felix Jaffe was born in Posen, Germany and that Eva Jaffe was born in Paris. Furthermore, the bank records indicate that the Account Owners held a numbered account (number 2260) which was opened on 18 March 1912. The bank records also indicate that account number 2260 contained five sub-accounts: one custody account and four separate demand deposit accounts in different currencies (Swiss Francs, French Francs, Pounds Sterling and a United States Dollars.)

The bank records do not indicate when the accounts at issue were closed, or to whom they were paid, nor do these records indicate 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 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. The names of his great-aunt and great-uncle match the published names of the Account Owners and the name provided by the Claimant of their lawyer matches the unpublished name of the Power of Attorney Holder. Additionally, the Claimant identified his relative’s connection to Frankfurt am Main, which matches published information about the Account Owners contained in the bank records, as well as their connection to Paris, France, which matches unpublished information contained in the bank records. Furthermore, the Claimant identified the place of birth of his uncle Felix as Posen, Germany, which matches unpublished information contained in the bank records. Finally, although their names were printed separately, the Claimant identifies Felix and Eva as husband and wife. In support of his claim, the Claimant submitted documents, including a detailed family tree and family history.

Status of the Account Owners as a Victim of Nazi Persecution

Although Felix Jaffe passed away before the Nazi Party rose to power, the Claimant has made a plausible showing that the Eva Jaffe and other members of the Jaffe family were Victims of Nazi Persecution. The Claimant stated that Eva Jaffe was Jewish, and that she was forced to remain in exile in Switzerland during the 1930s because of Nazi persecution of Jews in Germany. Additionally, the Claimant stated that other members of his family after the death of Felix in 1929 and Eva in 1938 — putative heirs to the accounts of Felix and Eva Jaffe — were victims of Nazi persecution. First, both the Claimant’s uncle and father were arrested as a result of the Nazis’ rise to power; his uncle for being Jewish, in occupied Holland, and his father, for attempting to obtain papers to facilitate the release of the Claimant’s uncle, in Switzerland. Furthermore, although the Claimant’s father and his family (the Claimant included) were living in Switzerland during the Second World War, their assets were frozen and they were forced to submit their passports (which were from Germany) to be stamped “J” for *Juden* and to become “Stateless” persons.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that he is their great-nephew. There is information to indicate that the Claimant has a sister, who would also be an equal surviving heir to the Account Owners, although the Claimant is not representing her in these proceedings and she has not submitted a claim on her own.

The Issue of Who Received the Proceeds

Despite the fact that the Account Owner Eva Jaffe died in Switzerland in 1938 and other of the Account Owners' relatives and heirs traveled through and/or resided for a time in Switzerland, the CRT finds it plausible that the Account Owners and their heirs would not have been able to obtain information about the 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 and their heirs because of the banks' concern regarding double liability. Furthermore, the bank records indicate that the Account Owners in this case were of German origin and had several addresses one of which was in Frankfurt am Main. Given the Nazi campaign to confiscate the domestic and foreign assets of its Jewish nationals and the application of Presumptions (h) and (j) contained in Appendix A,¹ 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 Governing the Claims Resolution Process (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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were his great-aunt and great-uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

Pursuant to Article 35 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 ICEP Investigation, 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. In this case, the Account Owners held four demand deposit accounts and one custody account, which produces a total historic value of 21,560.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

accordance with Article 37(1) of the Rules, to produce a total award amount of 258,720.00 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive payment of 100% of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on his 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

January 28, 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).