

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Jacob Kafenbaum and Sarah Kafenbaum

Claim Number: 214078/TP

Award Amount: 14,260.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the "Claimant") to the account of Jacob Kafenbaum and Sarah Kafenbaum (the "Account Owners") at 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 and an Initial Questionnaire indicating that the Account Owner, Jacob Kafenbaum, was his father, who was born on 21 October 1901, in Warsaw, Poland, and married to Sarah Rebecca Kafenbaum, née [REDACTED], in Villeurbanne, France, on 17 September 1929. The Claimant stated that he was born in Aix-les-Bains, France, on 5 December 1931, and made no mention of any siblings or other surviving heirs. In support of his claim, the Claimant provided excerpts of judgements relating to the death of his parents and a governmental record entitled "*Fiche individuelle d'état civil*" which confirms that Jacob and Sarah Kafenbaum were his parents.

The Claimant identified his father, Jacob Kafenbaum, as a wealthy merchant who lived at 23, avenue de la Liberté in Aix-les-Bains, France. The Claimant stated that his father lived there from 1930 until his deportation to Auschwitz in February 1944. According to the documents provided by the Claimant, his parents were deported to Auschwitz, Poland, where they perished on 15 February 1944.

Information Available in the Bank Records

According to the bank records, which consist of a printout of an electronic database and an account opening card, the Account Owners were Jacob and Sarah Kafenbaum, who lived at 23, avenue de la Liberté in Aix-les-Bains, France. The Account Owners held a safe deposit box identified by the number 1017 A at the Bank. The bank records further show that the Account Owners' safe was opened on 17 October 1938 and officially closed on 28 June 1941. The bank documents provide no information concerning the contents of the safe nor do they indicate to whom the contents of the safe were transferred.

Tribunal's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His parents' names match the published names of the Account Owners, Jacob and Sarah Kafenbaum. The Claimant also provided a street address for his parents in Aix-les-Bains, France, before the Second World War that exactly matches the unpublished address of the Account Owners contained in the bank documents.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has provided plausible evidence that the Account Owners were Victims of Nazi Persecution. The Claimant has shown that the Account Owners, his parents, were Jewish and were deported to Auschwitz, Poland, where they perished on 15 February 1944.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly shown that the Account Owners were his parents, by providing documentation including a copy of a "*Fiche individuelle d'état civil*" showing his parents' names. The credibility of the information provided by the Claimant gives the Tribunal no basis to question this assertion.

The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to the contents of the safe if they were in fact transferred to the Account Owners or their heirs, the Tribunal must consider the question of what happened to the contents of the account.

The historical evidence developed by the Independent Committee of Eminent Persons during its investigation of Swiss banks (the "ICEP Investigation") demonstrates that the funds of Nazi victims in Swiss banks were disposed of in various ways. In some cases, the account owners and/or their families withdrew and received the funds. In other cases, Nazi authorities coerced account owners to withdraw the balances in their Swiss accounts and transfer the proceeds to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but account values were consumed by regular and special bank fees and charges, which resulted ultimately in closure without any payment to the account owners. In still other cases, particularly after a period of inactivity or dormancy, the proceeds were paid to bank profits. Moreover, Swiss banks were authorized, under certain conditions, to forcibly open safe deposit boxes in order to recover unpaid rental fees. Thus, if the funds were not in fact paid to the account owners or their family, as is apparently the case here as described below, there is a substantial likelihood that the funds in this case went to the Nazis.

Although the Tribunal cannot determine with certainty who received the proceeds of the account, the Tribunal concludes that a plausible showing has been made that neither the Account Owners nor their heirs received the proceeds. The Account Owners lived in France until their deportation to Auschwitz in February 1944. The

account was closed on 28 June 1941.¹ After the German invasion of France in May 1940, Switzerland froze all accounts belonging to residents of France in July 1940, which makes it unlikely that the Account Owners received the proceeds of the account. The Tribunal's conclusion is also required by Article 34(a) of the Rules Governing the Claims Resolution Process (the "Rules"), which provide that where an account was closed after the date of occupation of the country of residence of the account owner(s) and before 1945, the Tribunal shall presume that neither the account owner(s) nor their heirs received the proceeds of the claimed account. Moreover, there is no evidence in the bank records suggesting that the Account Owners closed the account and received the proceeds themselves.

Basis for the Award

The Tribunal has determined that an Award may be made in favour 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 parents and that relationship justifies an Award. Finally, the Tribunal 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

The bank records do not indicate a balance for the account. 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 safe deposit box account was 1,240.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 14,260.00 Swiss Francs.

According to Article 37(3) of the Rules, in cases involving unknown account values, claimants shall receive an initial payment of 35% of the total award amount. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65% of the total award amount. In this case, 35% of the total award amount for the account is 4,991.00 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal 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

¹ The account opening card bears the notation "*Clôture faite le 28 juin 1941 mais coffre soldé antérieurement*" ("*Closure done on 28 June 1941 but safe closed previously*"). Swiss banking practice during this time period indicates that filing was done manually by periodic updates of physical account or registry cards. In this case, it appears that the Bank closed the account for administrative purposes on 28 June 1941, but did not record the exact actual closing date on the card. Because registry cards were not updated on a consistent periodic basis, the Tribunal cannot determine with certainty the actual, as opposed to administrative, closing date of the account. In this proceeding, the Tribunal is using the record date of closing as the actual date of closing.

Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a strong case for entitlement to an award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same accounts will be forthcoming. The Special Masters appointed by the Court to supervise the Claims Resolution Process for Deposited Assets Claims have stressed the importance of moving ahead quickly to begin to make awards to Holocaust victim claimants or their heirs. They therefore have instructed the Tribunal that in particular cases where the Tribunal is satisfied that the currently identified claimant has a strong claim and that the risk of future competing claims is low, the Tribunal should prepare an award to that claimant and submit it to the Court for approval. This is such a case.

In this case, the Tribunal is of the opinion that the Claimant has presented a strong claim to the account, thus substantially reducing the likelihood of competing claims. On this basis, and taking into account the instructions of the Special Masters, the Tribunal recommends approval of the present Award by the Court for payment by the Special Masters in accordance with Article 37(3) of the Rules.

24 January 2002

Date

Kira A. Spreng
Kira A. Spreng
Resident Claims Judge