

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Paul Nathan Kahn
represented by Faye F. Kahn

in re Accounts of Amalie Kahn and Nathan Kahn

Claim Number: 218016/AH; 218017/AH

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of Paul Nathan Kahn (the “Claimant”) to the accounts of Amalie Kahn and Nathan Kahn (the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owners as his father, Nathan Kahn, who was born on 13 September 1872, in Thaleischweiler, Germany, and his mother, Amalie Kahn, née Hausmann, who was born on 15 December 1874, in Bamberg, Germany. The Claimant's parents were married on 19 June 1900, in Nurnberg, Germany. The Claimant stated that his parents had two sons, the Claimant, who was born on 20 February 1909, in Pirmasens, Germany, and his brother, Willy Jacques Kahn, who was born on 15 April 1901 in Pirmasens, and died in approximately 1960 in France. The Claimant stated that his mother was a housewife and that his father was a bank manager. The Claimant stated that his parents, who were Jewish, resided at 210 Geburks-Urkindon, Pirmasens, Germany, and that on 25 January 1939, following the Claimant's father's death on 13 November 1938, in the Dachau concentration camp, his mother moved to 10875/6 Fuhrings-Zeirguisse, Munich, Germany. On 19 July 1942, she was deported to a concentration camp, where she was killed. The Claimant indicated that during the Second World War he was living in the United States and submitted his mother's letters, stating that she last wrote him on 20 July 1941, and was never heard from since. The Claimant submitted various documents including his father's death certificate indicating his occupation, testimonies regarding his parents' family trees, and letters from the family's maid regarding his mother's fate. The Claimant stated that he is the only surviving heir of his parents.

Information Available in the Bank Records

The Account Owners held two joint accounts and another account was held solely by Nathan Kahn. With respect to the joint accounts, the bank records consist of an extract of the bank's customer ledger card. According to these records, the Account Owners were Nathan Kahn and Mrs. Amalie Kahn, née Hausmann, from Pirmasens, Germany. The bank records indicate that the Account Owners jointly held a demand deposit account, which was opened at an unknown date and was closed, by an unknown entity, on 31 January 1934, and a custody account which was opened on 15 January 1932, and was closed, by an unknown entity, on 16 January 1937. The amount in the accounts on the date of their closures is unknown. The bank records do not show to whom the accounts at issue were paid, nor do these records indicate the value of these accounts.

With respect to the account held solely by Nathan Kahn, the bank records consist of an extract of the bank's customer ledger card. According to these records, the Account Owner was Dir. (*Director*) Nathan Kahn, from Pirmasens, Germany. The bank records indicate that the Account Owner held a demand deposit account, which was opened on 31 March 1933, and was closed by an unknown entity on an unknown date. The amount in the account on the date of its closure is unknown. The bank records do not show when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this 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 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 records that the Account Owners or their heirs closed any of the accounts and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. His parents' names and country of residence match the published names and country of residence of the Account Owners. The Claimant also identified his parents' city of residence and his father's profession, which matches unpublished information about the Account Owners' domicile contained in the bank records. The CRT also notes that the names of the Account Owners were published separately, and the Claimant identified the connection between them and demonstrated that they were married. Moreover, although his father's name was published as Nathan Kahn-Hausmann, the Claimant indicated that his father's name was Nathan Kahn, which matches unpublished information contained in the bank records and provided evidence as to his mother's family name being Hausmann, thus explaining both names. In support of his claim, the Claimant submitted letters, testimonies and documents, including his father's death certificate, indicating his occupation as a bank manager, which supports the assumption that he owned accounts in foreign banks.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they were killed in concentration camps during the Second World War.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Amalie Kahn, née Hausmann, who was deported in 1942 and died in Minsk, Russia, and indicates that her date of birth was 15 December 1874 and place of birth was Bamberg, Germany, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is the son of the Account Owners by submitting documents including family trees, letters, the Claimant's birth certificate, and his father's death certificate. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.¹ With respect to the custody account closed in 1937 and the demand deposit account closed at an unknown date, the CRT concludes that Presumptions (a) (ii), (h) and (j) apply, and it is therefore plausible that the neither of the accounts' proceeds were paid to the Account Owners or their heirs.

With respect to the demand deposit account closed in 1934, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owners or their heirs received the proceeds of that account.

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 Owner were his parents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner 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 with regard to the demand deposit account closed in 1937 and the custody account, the average value

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

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 demand deposit account was 2,140.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs. The present value of these amounts is calculated by multiplying them by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 181,680.00 Swiss Francs.

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the accounts' values, and 35% of the total award amount is 63,588.00 Swiss Francs.

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

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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).