

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by [REDACTED], [REDACTED] and [REDACTED]

in re Accounts of Caroline Kaufmann-Rahlenbeck

Claim Number: 221359/GH¹

Award Amount: 363,360.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Caroline Kaufmann-Rahlenbeck (the “Account Owner”) at the Zurich branches of the [REDACTED 1] (“Bank I”) and the [REDACTED 2] (“Bank II”), and at the [REDACTED 3] (“Bank III”).

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 Owner as his paternal aunt, Caroline Kaufmann-Rahlenbeck, née Kaufmann, who was probably born in 1907 or 1908 in Graz, Austria, was Jewish, was married in approximately 1930 in Graz, and had no children. The Claimant stated that between 1933 and 1943, his aunt had addresses at 37 rue de Coteaux in Brussels-Schaerbeek, Belgium, at 16 Thibergien in Brussels-St. Josse, as well as in Winterthur and Zurich, Switzerland, for both private and professional purposes. The Claimant further stated that Caroline Kaufmann-Rahlenbeck was an art dealer who owned an art gallery in Switzerland. The Claimant further stated that his aunt and her husband tried to escape the Nazis by way of France to Switzerland, but they were arrested at the last railway station before the Swiss border and deported. The Claimant indicated that his aunt probably perished in 1943 on the transport to or in a concentration camp. The Claimant identified Wilhelm Böhm as his aunt’s private secretary. In support of his claim, the Claimant submitted a detailed family tree. The Claimant indicated that he was born on 18 November 1935 in Brussels.

¹ The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 221358. The CRT will treat the claim to this account in a separate decision.

Information Available in the Bank Records

The bank record of Bank I consists of a customer card. According to this record, the Account Owner was Mrs. Caroline Kaufmann-Rahlenbeck who resided in Brussels (the cities of Düsseldorf and Wiesbaden, Germany, had been crossed out on the customer card). The bank record indicates that the Account Owner held three accounts: one custody account numbered L31264 that was closed on 18 July 1939, and two demand deposit accounts, which were closed on 10 February 1940 (in Pounds Sterling) and on 20 January 1947 (in United States Dollars). The amounts in these accounts on the dates of their closure are unknown, and the bank records do not show to whom they were paid.

The bank records of Bank II consist of a printout from the Bank's database and a power of attorney form dated 15 July 1931 in Zurich. According to the power of attorney form, the Account Owner was widow C. Kaufmann-Rahlenbeck from Brussels, and the Power of Attorney Holder was Wilhelm Böhm, who resided at Feldstrasse 21, Düsseldorf, Germany. The bank records indicate that the Account Owner held a custody account.² The bank record does not show when the account at issue was closed.

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 Bank II's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on the account after 1945. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

The bank records of Bank III consist of a customer card and printouts from the Bank's database. According to these records, the Account Owner was Caroline Rahlenbeck-Kaufmann from Düsseldorf, Germany, and Brussels, Belgium. The bank records indicate that the Account Owner held an account of unknown type, numbered 23894, which was closed on 4 April 1934 with a balance of 854.00 Swiss Francs. The bank records do not indicate who closed the account. There is no evidence in the bank records that the Account Owner or her heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant provided his aunt's first name, last name, and maiden name, which matches the Account Owner's published first and last

² The bank records contain a power of attorney form that references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that she held such an account.

names (Caroline Rahlenbeck) and unpublished maiden name (Kaufmann) that are contained in the records of Banks I, II, and III. The Claimant identified his aunt's city of residence as Brussels, which matches unpublished information about the Account Owner contained in the bank records of Banks I, II, and III.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Caroline Kaufmann and indicates that she had been living in Belgium, which matches the information about the Account Owner contained in the records of Bank I, Bank II, and Bank III. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

While the records of Bank II refer to the Account Owner as "Widow," and the Claimant does not provide information about the German cities that appear in the records of Banks I, II, and III, given that the Claimant identified the unpublished maiden name (Kaufmann) and city of residence (Brussels) of the Account Owner, which appear in the records of all three Banks, and given that information in the Nazi victim database discussed above matches information provided by the Claimant, the CRT considers it plausible that the Claimant's relative and the Account Owner are the same person.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, and that she perished in the Holocaust. Moreover, the CRT notes that the database discussed above containing the names of victims of Nazi persecution includes a person named Caroline Kaufmann and indicates that she had been living in Belgium.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that Caroline Kaufmann Rahlenbeck was his father's sister. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

At Bank I, the Account Owner held one custody account that was closed on 18 July 1939 and two demand deposit accounts that were closed on 10 February 1940 and 20 January 1947. At Bank II, the Account Owner held one custody account that was closed unknown when. And at Bank III, the Account Owner held one account of unknown type that was closed on 4 April 1934.

Regarding the unknown account closed on 4 April 1934 at Bank III, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or her heirs received the proceeds of those accounts.

Regarding the custody account closed on 18 July 1939 and the demand deposit account closed on 10 February 1940, given that the Account Owner was an Austrian national who had residences in

Austria and Germany during the 1930s, the Nazi program for confiscating the assets of Jewish nationals of Germany and Austria, the Account Owner's attempted flight from Austria to Switzerland in 1938, her apparent death in 1943 en route to or in a concentration camp, and given the application of Presumptions (a) and (j) as provided in Article 28 (see Appendix A) Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT concludes that it is plausible that the proceeds of these accounts were not paid to the Account Owner, the Power of Attorney Holder, or their heirs.

With respect to the Account Owner's accounts that appear to have been closed after her death and after the War--the demand deposit account closed on 20 January 1947 and the custody account closed unknown when--the CRT comes to the same conclusion given the application of Presumptions (h) and (j). 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 Owner was his aunt, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that the Account Owner, the Power of Attorney Holder, and their heirs did not receive the proceeds of the custody account or demand deposit accounts held at Bank I or the custody account held at Bank II.

Amount of the Award

In this case, the CRT is awarding two custody accounts and two demand deposit accounts, all of unknown value. 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 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 total 1945 value of the two custody accounts and two demand deposit accounts is therefore 30,280.00 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 an amount of 363,360.00 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 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
March 11, 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).