

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

**in re Accounts of Isidor Alcalay, Fortunato Alcalay, Adolf Alcalay,
and Nissim Alcalay**

Claim Number: 601460/AV¹

Award Amount: 857,203.75 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Isidor Alcalay. This Award is to the unpublished accounts of Isidor Alcalay (“Account Owner Isidor Alcalay”), Fortunato Alcalay (“Account Owner Fortunato Alcalay”), Adolf Alcalay (“Account Owner Adolf Alcalay”), and Nissim Alcalay (“Account Owner Nissim Alcalay”) (together the “Account Owners”), over the latter three of which Jacques Haim Asseoff (the “Power of Attorney Holder”) held power of attorney, all at the New York branch of the [REDACTED] (the “Bank”). The account of Account Owner Isidor Alcalay is from the Total Accounts Database (“TAD”) at the Bank.

All awards are published, but where a claimant has requested confidentiality, as in this case, the name of the claimant, any relatives of the claimant other than the account owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a claim to the Holocaust Claims Processing Office (“HCPO”) identifying Account Owner Isidor Alcalay as her father, Isidor Haim Alcalay, who was born on 28 September 1905 in Dupnitsa, Bulgaria, and was married to Susana Alcalay, née Konfino, on 3 July 1933. According to the Claimant, her father, who was Jewish, owned textile and garment manufacturing businesses. The Claimant specified that her father had two children, [REDACTED], née [REDACTED], and the Claimant. The Claimant stated that her family, including her father, fled Bulgaria to Tel Aviv, Palestine in approximately 1944. The Claimant indicated that her father subsequently became a United States citizen, and that he died on 30 October 1966 in Israel.

¹ The Claimant submitted a claim, numbered B-00399, on 23 January 1998, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601460.

In subsequent correspondence with the HCPO, the Claimant identified Account Owner Fortunato Alcalay, Account Owner Adolf Alcalay, and Account Owner Nissim Alcalay as her paternal uncles, Fortunato, Adolf, and Nissim Alcalay. The Claimant indicated that her uncles, who were Jewish, were born in Bulgaria, where they lived until the mid-1940s. The Claimant specified that Fortunato Alcalay fled Bulgaria to the United States, and that Adolf Alcalay fled Bulgaria to Palestine. Finally, the Claimant identified the Power of Attorney Holder as her great-uncle, Jacques Haim Asseoff.

In support of her claim, the Claimant submitted the petition for the probate proceeding for the estate of her father, identifying him as Isidor Haim Alcalay, identifying Adolf Alcalay as an executor and trustee of his estate, and identifying [REDACTED] as his daughter. The Claimant indicated that she was born on 17 October 1937 in Sliven, Bulgaria.

Information Available in the Bank's Records

Account Owner Isidor Alcalay

The Bank's record consists of a printout from the Bank's database of the approximately 1,300 accounts at the Bank that were frozen by the U.S. Treasury on 14 June 1941 in accordance with the U.S. government's Trading with The Enemy Act (the "1941 Freeze"). Account Owner Isidor Alcalay's name was published in 1997 by the World Jewish Congress as having had an account at a Swiss bank that was frozen pursuant to the 1941 Freeze. Additional records for this account were obtained from the Bank by the HCPO on the Claimant's behalf and were forwarded to the CRT. These records consist of an account card and lists of account owners at the Bank.

According to these records, Account Owner Isidor Alcalay was *Monsieur* (Mr.) Isidor H. Alcalay, who resided in Palestine. The Bank's records indicate that Account Owner Isidor Alcalay held a demand deposit account, numbered 20241, which had a balance of 14,994.50 United States Dollars ("US \$") on 14 June 1941. The Bank's records indicate that the account was closed on 18 December 1941. The amount in the account on the date of its closure is unknown. The Bank's records do not show to whom the account at issue was paid.

This account was not part of the Account History Database at the CRT, but was identified as a result of matching and research carried out at the Bank and using, as noted above, the TAD at the Bank. The TAD at the Bank is one of the several databases that comprise a total of approximately 4.1 million accounts. These are part of the approximately 6.9 million accounts that were identified by the auditors who carried out the investigation to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 million accounts, in databases located at the 59 ICEP audited Swiss banks,² are composed of 1.9 million savings accounts with a 1930-1940s value of 200 Swiss francs or less and accounts with Swiss addresses, and 2.2 million accounts that ICEP concluded should not be included within the

² These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

Account History Database, that is within the 36,000 accounts that ICEP determined were “probably or possibly” owned by victims of Nazi persecution.

Account Owners Fortunato Alcalay, Adolf Alcalay, and Nissim Alcalay

The CRT notes that the auditors who carried out the ICEP Investigation did not report any accounts belonging to Fortunato Alcalay, Adolf Alcalay, or Nissim Alcalay during their investigation of the Bank. The Bank’s documents were obtained from the Bank by the HCPO on Claimant Roth’s behalf and were forwarded to the CRT.

Account Owner Fortunato Alcalay

The Bank’s records consist of an account card, a card identifying a power of attorney holder, and a list of account holders at the Bank. According to these records, Account Owner Fortunato Alcalay was *Monsieur* (Mr.) Fortunato H. Alcalay, who resided in Sofia, Bulgaria, and the Power of Attorney Holder was Mr. Jacques Haim Asseoff. The Bank’s records indicate that Account Owner Fortunato Alcalay held an account, numbered 20565, the type of which is not indicated. The Bank’s records indicate that the account was closed on 3 December 1940. The Bank’s records do not show to whom the account at issue was paid, nor do these records indicate the value of this account.

Account Owner Adolf Alcalay

The Bank’s records consist of an account card, a card identifying a power of attorney holder, and a list of account holders at the Bank. According to these records, Account Owner Adolf Alcalay was *Monsieur* (Mr.) Adolf H. Alcalay, who resided in Palestine, and the Power of Attorney Holder was Mr. Jacques Haim Asseoff. The Bank’s records indicate that Account Owner Adolf Alcalay held an account, numbered 20240, the type of which is not indicated. The Bank’s records further indicate that there was activity on the account, the type of which is not specified, on 1 May 1940. Finally, the Bank’s records indicate that the account was closed on 2 December 1940. The Bank’s records do not show to whom the account at issue was paid, nor do these records indicate the value of this account.

Account Owner Nissim Alcalay

The Bank’s record consists of a card identifying a power of attorney holder. According to this record, the Power of Attorney Holder was Mr. Jacques Haim Asseoff, and he held power of attorney over accounts belonging to Account Owners Adolf, Nissim, and Fortunato Alcalay. According to this record, Account Owner Adolf Alcalay held an account numbered 20240, Account Owner Nissim Alcalay held an account, the type of which is not indicated, numbered 20062, and Account Owner Fortunato Alcalay held an account numbered 20565. The Bank’s record indicates that all three accounts were closed, but does not specify the date of their closure. The Bank’s record does not show to whom any of the three accounts were paid, nor does this record indicate the value of these accounts.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's father's name matches the unpublished name of Account Owner Isidor Alcalay, the Claimant's uncles' names match the unpublished names of Account Owner Fortunato Alcalay, Account Owner Adolf Alcalay and Account Owner Nissim Alcalay, and the Claimant's great-uncle's name matches the unpublished name of the Power of Attorney Holder. The Claimant identified Account Owner Fortunato Alcalay's country of residence, which matches unpublished information about Account Owner Fortunato Alcalay contained in the Bank's records. The Claimant further indicated that Account Owner Isidor Alcalay and Account Owner Adolf Alcalay resided in Palestine after fleeing from Bulgaria, which is consistent with information about Account Owner Isidor Alcalay and Account Owner Adolf Alcalay contained in the Bank's records. In support of her claim, the Claimant submitted documents, including the petition for the probate proceeding for the estate of her father, which identifies him as Isidor Haim Alcalay and contains the name of Adolf Alcalay, providing independent verification that the persons who are claimed to be Account Owner Isidor Alcalay and Account Owner Adolf Alcalay had the same names recorded in the Bank's records as the names of Account Owner Isidor Alcalay and Account Owner Adolf Alcalay. The CRT notes that there are no other claims to the accounts of Account Owners Isidor, Fortunato, and Adolf Alcalay, and that the other claims to the account of Account Owner Nissim Alcalay were disconfirmed because those claimants did not identify Account Owner Nissim Alcalay's brothers and other family members.

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 fled Bulgaria in the 1940s.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to Account Owner Isidor Alcalay by submitting specific information and documents, demonstrating that Account Owner Isidor Alcalay was the Claimant's father. These documents include the petition for the probate proceeding for the estate of her father, identifying him as Isidor Haim Alcalay and identifying the Claimant as his daughter.

Moreover, the Claimant has plausibly demonstrated that she is related to Account Owner Fortunato Alcalay, Account Owner Adolf Alcalay, and Account Owner Nissim Alcalay by submitting specific biographical information, demonstrating that Account Owner Fortunato Alcalay, Account Owner Adolf Alcalay, and Account Owner Nissim Alcalay were her uncles. The CRT notes that the Claimant submitted a copy of the petition for the probate proceeding for the estate of her father, naming Adolf Alcalay as an executor and trustee of her father's estate. The CRT notes that it is plausible that this document is a document which most likely only a family member would possess. The CRT further notes that this document provides independent

verification that the Claimant's bore the same family name as Account Owner Fortunato Alcalay, Account Owner Adolf Alcalay, and Account Owner Nissim Alcalay. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner Fortunato Alcalay, Account Owner Adolf Alcalay, and Account Owner Nissim Alcalay were well known to the Claimant as family members, and all of this information supports the plausibility that the Claimant is related to Account Owner Fortunato Alcalay, Account Owner Adolf Alcalay, and Account Owner Nissim Alcalay, as she has asserted in her Claim Form. The CRT notes that the Claimant indicated that her mother, Susanna Alcalay, survived her father, and that she has a sister, Medi Arav, who would be entitled to share in this Award, but that it has not received any claims from them.

The Issue of Who Received the Proceeds

With respect to Account Owner Isidor Alcalay's demand deposit account, the CRT notes that the Bank's records indicate that the account was frozen by the U.S. Treasury on 14 June 1941 pursuant to the Trading with the Enemy Act. The records also indicate that the account was closed on 18 December 1941 and that Account Owner Isidor Alcalay resided in Palestine. The CRT notes, however, that the Claimant stated that her father did not emigrate to Palestine until 1944. The CRT finds it plausible that Account Owner Isidor Alcalay may have given the Bank an address in Palestine in preparation for his emigration to Palestine, and the account may have been released from the 1941 Freeze under these conditions. Given these circumstances, and given that neither the Bank's nor U.S. official records indicate to whom the account was closed, that Account Owner Isidor Alcalay fled his country of origin due to Nazi persecution, that Account Owner Isidor Alcalay had relatives, including his brother Nissim, remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety, that Account Owner Isidor Alcalay and his heirs would not have been able to obtain information about his account after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability, and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Isidor Alcalay or his 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.

With respect to Account Owner Fortunato Alcalay's account of unknown type that was closed on 3 December 1940 and Account Owner Adolf Alcalay's account of unknown type that was closed on 2 December 1940, the CRT notes that these accounts were closed before Bulgaria was formally allied with Germany on 1 March 1941. Accordingly, the CRT concludes that these accounts were closed by Account Owner Fortunato Alcalay and Account Owner Adolf Alcalay and that they received the proceeds of these accounts.

With respect to Account Owner Nissim Alcalay's account of unknown type, given that Account Owner Nissim Alcalay resided in Bulgaria until the mid-1940s, that there is no record of the

payment of Account Owner Nissim Alcalay's account to him nor any record of a date of closure of the account; that Account Owner Nissim Alcalay and his heirs would not have been able to obtain information about his account 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 because of the banks' concern regarding double liability; and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules, the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Nissim Alcalay, the Power of Attorney Holder, or their heirs.

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 Account Owner Isidor Alcalay was her father and that Account Owner Fortunato Alcalay, Account Owner Adolf Alcalay, and Account Owner Nissim Alcalay were her uncles, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither Account Owner Isidor Alcalay, Account Owner Nissim Alcalay, nor their heirs received the proceeds of the claimed accounts belonging to Account Owner Fortunato Alcalay or Account Owner Nissim Alcalay.

Amount of the Award

With respect to the demand deposit account held by Account Owner Isidor Alcalay, the Bank's records indicate that the value of the account as of 14 June 1941, when the account was frozen, was US \$14,994.50, which was equivalent to 64,626.30 Swiss Francs ("SF").³ The current value of the amount of the award is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 807,828.75 for this account.

With respect to the account of unknown type held by Account Owner Nissim Alcalay, the Bank's records do not indicate the value of the account. 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 current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of an account of unknown type was SF 3,950.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 49,375.00 for this account.

Consequently, the total award amount is SF 857,203.75.

³ When converting currencies, the CRT uses official exchange rates prevalent at the time.

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) at banks other than the Bank.

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
28 June 2006