

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]
both represented by Jean-Pierre Franken

in re Accounts of Max Kahn and Cornélie Thérèse Kahn

Claim Numbers: 500786/MBC; 500787/MBC; 500788/MBC; 500789/MBC

Award Amount: 1,074,538.26 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published accounts of Max Kahn (“Account Owner Kahn”) and Cornélie Thérèse Kahn, née Pouzol (“Account Owner Pouzol”) (together the “Account Owners”) at the Basel and Lausanne branches of the [REDACTED] (the “Bank”).¹

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

Information Provided by the Claimants

The Claimants, who are sisters, submitted four Claim Forms identifying the Account Owners as their maternal great-aunt, Cornélie Thérèse Kahn, née Pouzol, and her husband, Max Kahn, who were born on 24 June 1870 and 22 April 1857, respectively, and who were married on 2 December 1901 in Paris, France. According to the Claimants, their great-uncle, who was Jewish, was born in Mannheim, Germany, and he and their great-aunt, who was born in Carpentras, France, originally resided in Paris and in the 1930s returned to Germany, where they resided at rue Adolf Hitler 6 in Auerbach. The Claimant further indicated that their relatives fled Germany to France to avoid Nazi persecution, and that they resided on Petrarque Avenue in Carpentras,

¹ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Max Kahn is indicated as having two accounts, and Cornélie Thérèse Kahn, née Pouzol, is indicated as having three accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of eight accounts that were jointly held by the Account Owners.

where their great-uncle, who was a painter,² died on 23 February 1939. The Claimant indicated that their great-aunt resided in Carpentras until her death on 10 August 1951.

According to information provided by the Claimants, their great-aunt was the daughter of [REDACTED] and [REDACTED], née [REDACTED], and she had three siblings, including [REDACTED], who was the father of [REDACTED], née [REDACTED], the Claimants' mother.

In support of their claims the Claimants submitted documents including: (1) a copy of an inheritance document indicating that *M.* (Mr.) Max Kahn, who was an artist, was a German citizen who resided at rue Adolf Hitler 6 in Auerbach, Germany; that he was married to Cornélie Thérèse Pouzol, that he died on 23 February 1939 in Carpentras, that he did not have children, that he left two written testaments dated 2 October 1935 and 30 January 1936, which were approved by the Bensheim cantonal court in Germany on 15 March 1939, and that Cornélie Thérèse Pouzol was his sole heir; (2) a copy of an inheritance document indicating that *Mad.* (Mrs.) Cornélie Thérèse Pouzol, who was born on 24 June 1870 in Carpentras and died on 10 August 1951 in Carpentras, was the widow of Max Kahn, that she had no children, that she left her residual estate to her niece and her niece's husband, [REDACTED] and [REDACTED], who had two daughters, [REDACTED 2] and [REDACTED 1]; (3) a document dated 4 December 2002, issued by a French genealogical society, indicating that Cornélie Thérèse Pouzol was the widow of Max Kahn, that she was born in Carpentras, that her heirs were her niece, [REDACTED] and her niece's husband, [REDACTED], and that their heirs were their daughters, [REDACTED 2] and [REDACTED 1]; (4) and a copy of a court order, issued in Carpentras on 6 May 1981, appointing [REDACTED 2] to be the legal guardian of her sister, [REDACTED 1], who was born on 29 June 1933 in Carpentras.

Claimant [REDACTED 2] indicated that she was born on 12 April 1928, and Claimant [REDACTED 1] indicated that she was born on 29 June 1933, both in Carpentras.

Information Available in the Bank's Records

The Bank's records submitted by 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") consist of an account opening contract, documentation related to the survey of assets held in Switzerland by foreigners or stateless persons who were or who were believed to have been victims of racial, religious or political persecution, conducted by Swiss banks pursuant to a Federal decree of 1962 (the "1962 Survey"), and printouts from the Bank's database. Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about the Account Owners' assets ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These

² According to research conducted by the CRT, two of Max Kahn's most well-known works are *Munich: Rundturm (Scheibling) und Fischerturm am Roßschwemmbach auf dem Gelände des Heutigen Viktualienmarkts* and *Interieur einer hessischen Wohnstube*.

documents include customer cards, registry cards, excerpts from the Bank's ledgers, account statements, and internal memoranda.

According to these records, the Account Owners were *Monsieur* (Mr.) Max Kahn and his wife, *Madame* (Mrs.) Cornélie Thérèse Kahn, née Pouzol, who originally resided at 85 rue Ampère in Paris, France, and later at 32 Ave. Pétrarque in Carpentras, France. The Bank's records indicate that the Account Owners also used hotel addresses in Fribourg and in Lausanne, Switzerland. According to the Bank's records, Account Owner Kahn died on 23 February 1939. These records also contain signature samples for the Account Owners.

The Bank's records indicate that the Account Owners jointly held a custody account and three demand deposit accounts, one in Swiss Francs ("SF"), one in United States Dollars ("US \$"), and one in Reichsmark ("RM") (later in German Marks ("DM")), all under account number 1464 at the Basel branch of the Bank. According to the Bank's records, the accounts were opened on 1 November 1910. The Bank's records indicate that on 8 June 1911, the accounts were transferred to the sole ownership of Account Owner Kahn with a reservation that they would be transferred to Account Owner Pouzol after Account Owner Kahn's death. The Bank's records further indicate that the accounts were transferred to Account Owner Pouzol some time after 23 February 1939. The Bank's records also indicate that the Bank considered the accounts for registration in the 1962 Survey, but that they were not registered. These records indicate that as of 1 September 1963, the demand deposit account held in Swiss Francs had a balance of SF 17,990.77, the demand deposit account in German Marks had a balance of DM 1,527.85, which was equivalent to SF 1,656.20, and that the custody account contained the following securities:

- shares in *Holzmann AG - Philipp* with a market value of SF 24,146.10, and
- shares in *Royal Dutch* with a market value of SF 16,240.00.

The Bank's records do not show when the demand deposit account in United States Dollars was closed, nor do these records indicate the value of this account. The Bank's records indicate that the other three accounts were closed on 20 May 1964. There is no evidence in the Bank's record that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The Bank's records further indicate that the Account Owners held a custody account and three demand deposit accounts, all held under account number 2828, at the Lausanne branch of the Bank. According to these records, the accounts were opened on 5 January 1923 and were closed on 9 November 1938. The amounts in the accounts on the date of their closure are unknown. There is no evidence in the Bank's record that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

These records also indicate that Account Owner Pouzol held a safe deposit box, numbered 1239, that was opened on 18 September 1929 at the Lausanne branch of the Bank. According to these records, in 1951 ownership of this safe was transferred to Account Owner Pouzol's heirs with a new safe deposit box number 94, and in 1954 the heirs signed a new rental contract regarding this safe in Lausanne. While these records indicate that the heirs accessed Account Owner Pouzol's safe deposit box at the Lausanne branch after her death, they contain no references to Account Owner Pouzol's accounts that remained open at the Basel branch of the Bank.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the four claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The Claimants' great-uncle's and great-aunt's name, city and country of residence match the published name, city and country of residence of the Account Owners. The Claimant identified the street where their great-uncle and great-aunt resided, which matches unpublished information contained in the Bank's records. In addition, the Claimants indicated that their great-uncle died on 23 February 1939, which matches unpublished information about Account Owner Kahn's date of death contained in the Bank's records.

In support of their claims, the Claimants submitted documents, including (1) a copy of Max Kahn's inheritance document; (2) a copy of Cornélie Thérèse Pouzol's inheritance document; and (3) a document issued by a French genealogical society, which provide independent verification that the persons who are claimed to be the Account Owners had the same names and resided on the same street in the same city as recorded in the Bank's records as the names, street and city of residence of the Account Owners. The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided different cities or countries of residence and different spouse's names, than the city and country of residence and spouse's names of the Account Owners.

Status of Account Owner Kahn as Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that Account Owner Kahn was Jewish and that he fled Nazi Germany in 1939 to avoid persecution. The CRT notes that Account Owner Pouzol was not Jewish, but, under the Nazis' Nuremberg racial laws, would have been targeted for persecution because her husband was Jewish.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were the Claimants' great-uncle and great-aunt. These documents include (1) a copy of an inheritance document indicating that *M.* (Mr.) Max Kahn was married to Cornélie Thérèse Pouzol, and that Cornélie Thérèse Pouzol was his sole heir; (2) a copy of an inheritance document indicating that *Mad.* (Mrs.) Cornélie Thérèse Pouzol left her residual estate to her niece and her niece's husband, [REDACTED] and [REDACTED], who had two daughters, [REDACTED 2] and

[REDACTED 1]; and (3) a document issued by a French genealogical society, indicating that the heirs of Cornélie Thérèse Pouzol, the widow of Max Kahn, were her niece, [REDACTED] and her niece's husband, [REDACTED], and that their heirs were their daughters, [REDACTED 2] and [REDACTED 1].

The CRT notes that according to information provided by the Claimants, the Account Owners may have other surviving heirs, but that no other heirs have submitted claims to the CRT, nor are they represented in the Claimants' claims, and their potential entitlement to the Account Owners' accounts will not be considered in this decision.

The Issue of Who Received the Proceeds

With respect to the safe deposit box held by Account Owner Pouzol at the Lausanne branch of the Bank, the records show that her heirs assumed ownership of the safe and its contents in 1952, following the death of Account Owner Pouzol. Accordingly, the CRT concludes that Account Owner Pouzol's heirs received the proceeds of this account.

With respect to the custody account and three demand deposit accounts that were held under account number 2828 at the Lausanne branch of the Bank, the CRT notes that the Bank's records indicate that the accounts were closed on 9 November 1938, and that the Claimants stated that the Account Owners returned to Germany at some unspecified point in the 1930s. Accordingly, the Account Owners may have been outside Nazi-dominated territory at the time the accounts were closed. However, given that the Bank's records do not indicate to whom the accounts were closed; that the Account Owners later fled their country of residence due to Nazi persecution; that the accounts were closed on *Kristallnacht* (the "Night of Broken Glass"); that Account Owner Kahn may have had relatives 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 the Account Owners did reside in Germany in 1939, when they fled to France to avoid persecution; that the Account Owners and their heirs would not have been able to obtain information about their accounts 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 (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners or their heirs.

With respect to the custody account and three demand deposit accounts, which were held under account number 1464 at the Basel branch of the Bank, the CRT notes that the accounts were considered for registration in the 1962 Survey, but ultimately were not registered; that three of the four accounts were closed on 20 May 1964, and that no closing date is available for one of the demand deposit accounts. The CRT further notes that, after Account Owner Pouzol's death in 1951, her heirs accessed her safe deposit box at the Lausanne branch of the Bank and received the proceeds of that account. However, there is no evidence that the heirs accessed or were even aware of Account Owner Pouzol's accounts that remained open at the Basel branch of the Bank. These accounts were considered for registration in the 1962 Survey, which demonstrates that as of 1 September 1963 (the date on the preliminary registration papers), the accounts had remained

dormant since 1945. Furthermore, despite the extensive records regarding the heirs' post-War activity with regard to the safe deposit box at the Lausanne branch of the Bank, there is no reference whatsoever in those records regarding the existence of other accounts in Account Owner Pouzol's name at the Basel branch, nor do the records contain any evidence that Account Owner Pouzol's heirs were made aware of these accounts and received the proceeds of the accounts. Given these facts, and given that the Account Owners resided in Nazi Germany and Nazi-occupied France during the Second World War; that there is no record of the payment of the Account Owners' accounts to them, nor any record of a date of closure of the demand deposit account held in United States Dollars; that the Account Owners died in 1939 and 1951; that the accounts were considered for registration in the 1962 Survey and closed shortly thereafter; that there is no reference to these accounts in the extensive documentation about the heirs post-War contact with the Lausanne branch of the Bank; that the Account Owners and their heirs would not have been able to obtain information about their 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 because of the banks' concern regarding double liability; and given the application of Presumptions (b), (h), and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process ("the Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners or their 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.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owners were their great-uncle and great-aunt, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owners held two custody accounts and six demand deposit accounts.

With respect to the custody account and three demand deposit accounts held under account number 2828, and the demand deposit account in United States Dollars held under account number 1464, 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 a custody account was SF 13,000.00, and the average value of a demand deposit account was SF 2,140.00. Thus, the total 1945 average value of one custody account and four demand deposit accounts is SF 21,560.00. 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 269,500.00 for these five accounts.

With respect to the demand deposit account held in German Marks under account number 1464, the Bank's records indicate that the balance of the account as of 1 September 1963 was DM 1,527.85, which at the time was equivalent to SF 1,656.19. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 1,235.00, which reflects numbered account fees and standardized bank fees charged to the demand deposit account between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 2,891.19. The current value of this amount of the award is determined by multiplying the balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 36,139.88 for this account.

With respect to the custody account and the demand deposit account held in Swiss Francs under account number 1464, the Bank's records indicate that, as of 1 September 1963, the market value of the shares held in the custody account was SF 40,386.10,³ and that the value of the demand deposit account held in Swiss Francs was SF 17,990.77. In accordance with Article 31(1) of the Rules, these amounts are increased by an adjustment of SF 1,900.00 to the custody account and SF 1,235.00 to the demand deposit account, which reflects numbered account fees and standardized bank fees charged to the accounts between 1945 and 1963, for an adjusted balance of SF 42,286.10 for the custody account and SF 19,225.77 for the demand deposit account, or a combined balance of SF 61,511.87. The current value of this amount is determined by multiplying the total balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 768,898.38 for these two accounts.

Accordingly, the total award amount is SF 1,074,538.26.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, the Claimants, who are sisters, are great-nieces of the Account Owners. Accordingly, Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to one-half of the total award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to

³ The CRT awards stocks at market value when the market value is available. The CRT notes that the shares' value is dated from 1 September 1963. However, given that the Bank's records do not indicate the number of shares, nor do they indicate whether these same shares were in the account in 1945, the CRT has used this value in determining the award amount.

which they 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
26 November 2008