

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant John Cosla Kaufman
also acting on behalf of Claudia Cosla, George Kaufman, Jean Kaufman

in re Accounts of Dr. O. Kauffmann-Cosla and Rose O. Kauffmann-Cosla

Claim Numbers: 212529/ES; 212569/ES

Award Amount: 94,800.00 Swiss Francs

This Certified Award is based upon the claim of John Cosla Kaufman (the “Claimant”) to the accounts of Dr. O. Kauffmann-Cosla and Rose O. Kauffmann-Cosla (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 Claimants

The Claimant submitted a Claim Form identifying the Account Owners as his paternal uncle, Osias Kauffmann-Cosla, who was born on 23 May 1894 in Piatra-Neamt, Romania, and his uncle’s wife, Rose Kauffmann-Cosla, née Oppenheimer, who was born on 2 February 1882 in San Francisco, California, the United States. The Claimant stated that his uncle was married on 27 November 1926 in Strasbourg, France. The Claimant stated that his uncle was a medical doctor and a college professor on the medical faculty in Bucharest, Romania; he was also the head of the nutrition clinics and medical laboratories at the *Dr. Cantacuzino* hospital. The Claimant stated that his aunt worked as a clerk at the Chilean Embassy in Bucharest, and his uncle and aunt resided at Calea Mosilo in Bucharest. During the Second World War, the Claimant’s uncle was fired from the hospital and the medical faculty and was not allowed to practice his profession. The Claimant also stated that his uncle had to report to forced labor, and his aunt was also fired from her job.

The Claimant’s uncle and aunt tried to leave Romania and go to the United States, because Rose Kauffmann-Cosla was an American citizen. When they arrived in the United States in 1947, immigration authorities changed the Claimant’s uncle’s name to Oscar K. Cosla. The Claimant stated that between 1938 and 1941, his aunt and uncle used the Swiss Embassy in Bucharest as a liaison to obtain the American passports, and they had money transferred from American banks and deposited in bank accounts at the Bank. The Claimant indicated that his uncle and aunt died on 16 January 1975 and on 4 December 1973, respectively, in New York, New York, the United

States. The Claimant submitted documents, including his uncle's birth certificate, his uncle and aunt's marriage certificate, his uncle's death certificate, his aunt's death certificate, a letter dated 11 October 1949 evidencing the change of name of the Claimant's uncle, a letter dated 10 April 1941 from his aunt to the "American Legation" in Bucharest, and his uncle's will.

The Claimant indicated that he was born on 18 December 1936 in Bucharest. The Claimant is representing his sister Claudia Cosla, née Kaufman, who was born on 14 September 1931 in Bucharest, his cousin George Cosla Kaufman (the son of Bernard Kaufman, who was the brother of the Claimant's father Isac Kaufman and Osias Cosla Kaufmann), who was born on 5 March 1932, and his cousin Jean Kaufman (George Kaufman's brother) who was born on 23 February 1927 in Piatra Neamt.

Information Available in the Bank Records

The bank records consist of a joint account opening form dated 23 November 1936 and printouts from the Bank's database. According to these records, the Account Owners were Dr. O. Kauffmann-Cosla and Mrs. Rose O. Kauffmann-Cosla, who resided at Calea Mosilo 131 Bucharest, Romania. The bank records indicate that the Account Owners held two accounts of an unknown type.

The bank records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (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 two claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. His relatives' names match the published names of the Account Owners. The Claimant identified his relatives' street address, which matches unpublished information about the Account Owners contained in the bank records. Finally, the Claimant stated that his uncle held the title "Dr." and that the account was

held at the Bank, which match unpublished information about the Account Owners contained in the bank records.

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, that they lost their jobs in Romania because they were Jewish, and that Account Owner Dr. O. Kauffmann-Cosla had to perform forced labor.

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 the Account Owners are his uncle and aunt. There is no information to indicate that the Account Owners have surviving heirs other than the Claimant, his sister, and his cousins, whom he is representing.

The Issue of Who Received the Proceeds

It is possible that the proceeds of the Swiss accounts of the Account Owners, who were Romanian nationals, were paid by Switzerland to Romania, as part of an arrangement between the two countries concluded in 1951. Swiss banks froze Romanian assets in 1948 pursuant to a Decree of the Swiss Federal Council. Romanian accounts were unfrozen in October 1950 and approximately one year later, in August 1951, Switzerland and Romania entered into an agreement whereby unclaimed assets held by Romanian citizens in Swiss banks were to be transferred to the Romanian Government in return for compensation for Swiss property that had been nationalized by Romania's communist regime. The Account Owners' accounts, which were closed in 1949, could have been held for use in this arrangement.

Moreover, given the persecution of Jews in Romania and the confiscation of Jewish assets during the War, the Communist dictatorial regime after the War, and the application of Presumptions (h), (i), and (j) contained in Appendix A,¹ 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 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 uncle and aunt, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

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

Amount of the Award

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 an account of unknown type was 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount for the two accounts of unknown type of 94,800.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister and two cousins in these proceedings. The Claimant's father, Isac Kaufman, was the brother of Bernard Kaufman, the Claimant's cousins' father. According to Article 29 of the Rules, the Claimant's sister and cousins are each entitled to receive one-quarter of any payment made to the Claimant.

Initial Payment

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 65% of the Certified Award, and the Claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, represented party Jean Kaufman is age 75 and is therefore entitled to receive 100% of the total award amount. The initial payment amount in this case is therefore 69,915.00 Swiss Francs, comprised of 100% of Jean Kaufman's portion of the total award amount (23,700.00 Swiss Francs) and 65% of the other parties' shares of the total award amount (46,215.00 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

November 26, 2002

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).