

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Ruth Gottlieb Braun Kaczka
represented by Daniel and Karola Kaczka Gottlieb

in re Account of Max Safier

Claim Number: 206480/GH¹

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of Ruth Gottlieb Braun de Kaczka (the “Claimant”) to the account of Max Safier (the “Account Owner”) at 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 two Claim Forms and an Initial Questionnaire identifying the Account Owner as Max Safier, her maternal aunt’s husband, who was born in Germany in 1890 and was married to Fanny Safier, née Braun, with whom he lived at Grüner Weg, Gartenstrasse 108, and at Stresemannstrasse (formerly known as: Königgrätzerstrasse) 114/15, in Berlin, Germany, where they were wholesalers of clothes and were wealthy. The Claimant stated that Max and Fanny Safier had no children, and that they regularly traveled to Switzerland to deposit assets and to visit friends. The Claimant further stated that Max and Fanny Safier were deported to Auschwitz, where they perished in 1942.

The Claimant submitted a family tree, her birth certificate, her parents’ marriage certificate, her mother’s identity card, her mother’s death certificate, excerpts from the Jewish address books for Greater Berlin 1929/30 and 1931, the obituary of her grandmother’s death in 1919 (her grandmother’s name was Sali Braun, née Fruchthändler), a letter from the Province of Berlin Passport and Registration office dated August 1997, as well as a copy of a letter written to the World Zionist Organization in New York, dated 10 March 1997. On the family tree, the

¹ The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 206480 and 208151. The CRT has determined that these claims are duplicate claims and is treating them under the Consolidated Claim Number 206480/GH.

Claimant indicated that her grandmother Sali Braun, née Fruchthändler, had two daughters, Berta Gottlieb, née Braun, the Claimant's mother, and Fanny Safier, née Braun, the Account Owner's wife. The Claimant was born on 8 October 1917 in Berlin. The Claimant is being represented by Daniel and Karola Kaczka Gottlieb. The Claimant previously submitted an Initial Questionnaire with the Court in 1999 as well as an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Max Safier and Fanny Braun.

Information Available in the Bank Records

The bank records consist of an account opening card as well as three copies from the bank's internal listings of dormant accounts in the 1930s. According to this account opening card, the Account Owner was Max Safier who resided in Berlin, Germany. The bank records indicate that the Account Owner held a demand deposit account, which was opened on 31 September 1930. Furthermore, they indicate that on 30 June 1937, the amount in the account was 1,096.00 Swiss Francs. The account was closed on 15 August 1938. The bank records do not show to whom it was paid, nor do these records indicate the value of this account on the date of its closure.

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") determined that the amount in the account had been paid to the Nazi authorities. There is no evidence in the bank records that the Account Owner or his 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. Her aunt's husband's name matches the published name of the Account Owner. The Claimant identified her aunt's husband's city of residence, which matches unpublished information about the Account Owner contained in the bank records. In support of her claim, the Claimant submitted various documents, including her parents' marriage certificate on which her grandmother's name is listed, and a family tree that indicates that Sali Braun, née Fruchthändler, had two daughters, Berta Gottlieb, née Braun, the Claimant's mother, and Fanny Safier, née Braun, the Account Owner's wife.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999 as well as an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Max Safier, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant. The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has plausibly shown that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and perished in Auschwitz.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Max Safier, 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 Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that her mother and the Account Owner's wife were sisters. Although the Claimant is only related to the Account Owner through marriage and not by blood, Article 29 (1)(g) of the Rules Governing the Claims Resolution Process (the "Rules") provides that when no blood relative submits a claim to an account, an award may be made to relatives through marriage who did submit a claim. In this case, there is no information to indicate that the Account Owner has other surviving heirs, and there are no other claims to the account at issue.

The Issue of Who Received the Proceeds

Given that the account at issue was closed on 15 August 1938, and the application of Presumptions (a), (h) and (j) contained in Appendix A², the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner 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.

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 was her aunt's husband, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

The bank records indicate that the value of the demand deposit account as of 30 June 1937 was 1,096.00 Swiss Francs. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount in this case is 25,680.00 Swiss Francs.

² An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive payment of 100% of the total award amount.

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 her claims 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).

Certification of the Award

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

Claims Resolution Tribunal

January 28, 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).