

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial on Remand

to Claimant [REDACTED]

in re Account of J. Kahn

Claim Number: 751057/MC¹

This Certified Denial is based upon the claim of [REDACTED] (the “Claimant”) to the published account of J. Kahn (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”) and to an account belonging to Hans Kahn.

In a previous decision, the Claimant’s claim to the published account of J. Kahn was denied because the CRT had determined that the Claimant did not plausibly identify the Account Owner as her relative. *See Certified Denial in re Claimed Account Owners Hans Kahn and J. Kahn* (approved on 19 July 2007). In that decision, the CRT noted that the Claimant indicated that her relative, Jacob Kahn, was never married and that he resided in Germany. In contrast, the CRT concluded that the records in the Swiss Federal Archive pertaining to the Account Owner’s account show that the Account Owner was married and that he resided in a different country. In the previous decision, the CRT also noted that it did not locate an account belonging to Hans Kahn in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

The Claimant appealed this decision. With respect to her great-uncle, Jacob Kahn, the Claimant wrote in her appeal:

Jacob Kahn was born in Thaleichweiler, Germany. As far as the family knows, Jacob was never married. I do know that he lived at Hofau #8 Elberfield [sic], Germany. There was a note next to his name on a document that the family had that said “Pfalz, Germany”

¹ [REDACTED] (the “Claimant”) did not submit a CRT Claim Form. However, in 1997 she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-I-80-702-094-345, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 751057.

but the reason for the notation is not known. Jacob began making a living by selling material for making men's clothing and he eventually became a manufacturer of men's clothing. He became a millionaire. During World War II, he was a non-combatant. Nevertheless, Jacob was murdered by the Germans in Elbersfeld, Germany during that war.²

With regard to her father, [REDACTED], the Claimant wrote in her appeal:

The second error refers to my father, [REDACTED]. My father's name appeared in the "New York Times" on a list people [*sic*] who had money in a Swiss Bank. I never saw my father's bankbooks but he had been a semi-professional European soccer player and traveled wherever his team had a game. He played for several years until he and my mother were married. He told me that he had opened a bank account in Switzerland and that when his team was victorious, he would send whatever money he was given to his bank account and he continued making deposits even after his days playing soccer ended.

The CRT notes that in a letter dated 26 August 1997 submitted with her original claim, the Claimant detailed her family's fate during the Second World War. The Claimant stated that she and her parents fled from Leipzig-Gohlis, Germany, to Holland and then to the United States on 24 November 1939. She explained that her family never saw her great-uncle again, and that they learned that he had been murdered by the Germans during the War.

In her appellate decision approved on 2 October 2009, Special Master Helen B. Junz concluded that the CRT erred in its interpretation regarding the records pertaining to the published account of J. Kahn. In her decision, Special Master Junz determined that the records pertaining to this account do not show with certainty that Jacob Kahn, who resided in a country other than Germany, was the actual owner of this particular account. Accordingly, Special Master Junz approved the Claimant's appeal on this basis, and remanded the case to the CRT for further review. With regard to the Claimant's claim to an account belonging to [REDACTED], Special Master Junz noted that the name [REDACTED] was included on a list published in 1997 in the *New York Times* by the World Jewish Congress under the title, "Official Notification by the World Jewish Congress: List of Known Swiss Bank Accounts." The list related to foreign-owned accounts at the New York Agency of the *Swiss Bank Corporation* that had been frozen in 1941 by United States' authorities under the Trading with the Enemy Act (the "1941 Freeze"). Special Master Junz noted that, for the claims resolution process, the relevant published listings of account owners are 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") and the January 2005 List of Account Owners (the "2005 List"), published on 5 February 2001 and 13 January 2005, respectively. Special Master Junz further noted that in matching names cited in claims to the names of account owners

² The CRT notes that this information is identical to the information the Claimant included in her original claim form.

in Swiss banks, the CRT searches not only its published lists, but its entire database of accounts that were possibly or probably owned by victims of Nazi persecution. In her appellate decision, Special Master Junz confirmed that the name “[REDACTED]” was not found in that extensive database. Accordingly, the Claimant’s appeal with regard to that name was dismissed.³

This Denial on Remand addresses the Claimant’s claim and appeal to the published account of J. Kahn. All denials are published, 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 an ATAG Ernst & Young claim form (“ATAG Form”) in 1997 and an appeal letter in 2007, identifying the Account Owner as her great-uncle, Jacob Kahn (one of ten siblings of the Claimant’s paternal grandfather [REDACTED]), who was born in Thaleichwiler, Germany. According to the information provided by the Claimant, Jacob Kahn was a clothing manufacturer, who became a multi-millionaire in Germany before the outbreak of the Second World War. The Claimant indicated that Jacob Kahn, who was Jewish and probably never married, resided at Hofau 8 in Elberfeld, Germany, at the beginning of the War. The Claimant indicated that she and her parents fled Germany, arriving in the United States via the Netherlands in 1939. According to the Claimant, before she and her family fled Europe, Jacob Kahn told the Claimant’s father that he had opened more than one bank account in Switzerland in order to protect his money from the Nazis. Finally, the Claimant indicated that Jacob Kahn was murdered in the Holocaust.

Information Available in the Swiss Federal Archive

By Federal Decree of 20 December 1962 (the “Federal Decree”), the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution (the “1962 Survey”). In the records of the Swiss Federal Archive in Bern,

³ The CRT notes that, generally, in the period following the Second World War, accounts included in the 1941 Freeze were unfrozen and could be reclaimed by account owners. The ICEP auditors considered evidence of Swiss accounts that had been included in the 1941 Freeze, as well as evidence of activity on such accounts initiated by account owners after the War. The ICEP auditors did not include account an account belonging to [REDACTED] among the approximately 36,000 accounts that they identified as probably or possibly belonging to Victims of Nazi Persecution, and therefore the CRT has no records regarding the existence of this account. It may be possible that the person identified on the list of accounts frozen in 1941 was able to access the account after the War and received the proceeds. The CRT has no records regarding the person named [REDACTED] included on the 1997 list published by the World Jewish Congress, and therefore cannot determine whether the person included on that list was the Claimant’s father. However, if the [REDACTED] included on the 1997 published list was indeed the Claimant’s father, the CRT notes that, according to the Claimant, she and her family (including her father), emigrated to the United States on 24 November 1939, and that her father survived the War. Therefore, if he did have an account that was frozen in the 1941 Freeze, he would have been able to access it and reclaim the assets pursuant to regulations in place at that time.

Switzerland, there are documents concerning the assets of J. Kahn, numbered 700. These records include the report, dated 28 February 1964, filed by the Bank with the Registration Office for Assets of Missing Foreign or Stateless Persons (the “Registration Office”) (*Meldestelle für Vermögen verschwundener Ausländer oder Staatenloser*) regarding the assets of a person named J. Kahn. In its report, the Bank noted that “Jacob Kahn” had a joint account with his wife, [REDACTED], but that the Bank did not know whether Jacob Kahn was identical to “J. Kahn.”⁴ Further, the report noted that if the assets belonged to “Jacob Kahn,” then his last known address was London.⁵ The Bank’s report further noted that on 1 July 1935, “Jacob Kahn” was in Zurich, where he signed a joint account agreement at the Bank. The code word “Eva” was established for this account. On 22 June 1936, “J. Kahn” received a payment of 500.00 Swiss Francs (“SF”) from a Mr. Rieser of Winterthur, Switzerland; this payment constituted the assets which the Bank then registered pursuant to the 1962 Survey.⁶ The Bank registered these assets as being held in a demand deposit account that had a balance of SF 485.00 as of 1 September 1963. The Bank’s report notes that, but for the usual bank fees, no change in the amount of the assets is to be reported. The Bank reserved the right to make further reductions for fees.⁷

According to the records from the Swiss Federal Archive, on 1 December 1966, the Guardianship Authority of the City of Zurich (*Vormundschaftsbehörde der Stadt Zürich*) appointed Dr. H. Haberlin as a custodian of this account, as prescribed by the Federal Decree. These records do not contain any information about the disposition of this account. There is no evidence in the records from the Swiss Federal Archive that the Account Owner or the Account Owner’s heirs closed the account and received the proceeds themselves.

The CRT notes that this account was included in a list of account owners reported in the 1962 Survey (the “1962 Survey List”), which was published by the Swiss Government in 1962 and again on 19 January 1999. The account information appears as follows on the 1962 Survey List: “*Kahn, J., London (event.), Grossbritannien [...] Kahn, Gretchen, London (event.), Grossbritannien.*”⁸

⁴ “*Jacob Kahn, von welchem die Bank nicht weiss, ob er identisch mit J. Kahn ist, hatte ein Gemeinsamkonto mit seiner Ehefrau Gretchen Kahn. Weitere Angaben fehlen.*”

⁵ “*Falls es sich um Jacob Kahn handeln sollte,*” the “*letzter bekannter Wohnsitz bzw. Aufenthaltsort*” was London.

⁶ “*Jacob Kahn hielt sich am 1.7.1935 in Zürich auf, wo er bei unserer Bank eine Gemeinschaftskonto-Erklärung unterschrieb. Für das Konto Jacob Kahn wurde das Kennwort “Eva” vereinbart. J. Kahn erhielt am 22.6.1936 eine Zahlung von Fr 500.— von Herrn Rieser, Winterthur, welcher hiermit angemeldet wird.*” [Emphasis included in the original.]

⁷ “*Ausser den Banküblichen Spesenabzüge für die Kontoführung sind keine Mutationen zu melden. Wir behalten uns vor, weitere Spesenbelastungen vorzunehmen.*”

⁸ The German abbreviation “*event.*” stands for “*eventuell,*” which means “possibly” or “perhaps.”

The CRT's Analysis

Identification of the Account Owner

In the CRT's original denial decision to the Claimant, the CRT determined that the Claimant did not identify the Account Owner as her relative. In reaching that determination, the CRT considered that, in its report filed with Swiss authorities pursuant to the 1962 Survey, the Bank provided detailed information about one of its clients named Jacob Kahn. The CRT further considered that, in the list of account owners reported in the 1962 Survey and published twice by the Swiss government, the Account Owner's name was published with reference to his possible pre-War residence in London and in conjunction with the name "[REDACTED]." Based upon this information, and in consideration of the strict confidentiality with which account owner names are treated by Swiss banks, the CRT concluded that the Bank would not have revealed such information if it were not highly plausible that the assets belonged to the account owner Jacob Kahn identified in the Bank's report. In contrast, the Claimant's great-uncle, also named Jacob Kahn, never married and resided in Germany, not the United Kingdom, before the War. Accordingly, the CRT determined that the Account Owner and the Claimant's great-uncle were not the same person.

Upon consideration of the Claimant's appeal in this case, Special Master Junz concluded that, since the Bank itself was unsure of the Account Owner's identity, the CRT's conclusion that the Account Owner was Jacob Kahn of London was in error. According to Special Master Junz, since the Bank indicated in its report that it was unsure of the Account Owner's identity, the only information known about the Account Owner is his/her first initial and last name.⁹ The CRT does note, however, that, in its report, the Bank noted that Account Owner J. Kahn received a payment of SF 500.00 from a Mr. Rieser of Winterthur, Switzerland, on 22 June 1936, and that this sum constituted the assets that were being reported.

Based upon Special Master Junz' determination, the CRT notes that Claimant's great-uncle's first name initial and last name match the first name initial and last name of the Account Owner. As detailed above, the records from the Swiss Federal Archive contain no further information about the Account Owner other than his/her first name initial and last name. Taking all of these factors into consideration, the CRT determines that the Claimant has plausibly identified the Account Owner.

The CRT notes that, in light of Special Master Junz's determination about this account on appeal, a number of additional claims to this account submitted by unrelated claimants also plausibly match this account. Matches between names contained in these claim forms and the Account Owner's name were previously disconfirmed based upon the CRT's conclusion that the Account Owner was Jacob Kahn of London. According to Special Master Junz' appellate determination, the information about the Account Owner available to be used to match to

⁹ The CRT notes that, in its report, the Bank noted that Account Owner J. Kahn received a payment of SF 500.00 from a Mr. Rieser of Winterthur, Switzerland, on 22 June 1936, and that this sum constituted the assets that were being reported. None of the claimants who identified relatives with the same first name initial and last name of the Account Owner identified Mr. Rieser of Winterthur or a connection between his/her relative and any person in Winterthur.

information about claimants' relatives is limited to the Account Owner's first name initial and last name, namely, "J. Kahn." Accordingly, the CRT has revisited previous determinations concerning approximately 75 claims which match to this account. In 22 of these claims, unrelated claimants specifically asserted their entitlement to an account held by a person whose surname is "Kahn" and whose first name starts with the letter "J."¹⁰

In reviewing these matches, the CRT has treated this account like similar accounts for which little information about the account owner is known. Usually, in determining whether a claimant has identified an account owner as his or her relative, the CRT considers such factors as an account owner's city or country of residence, profession, nationality, and/or names of family members or other persons with a documented interest in the account. Since in this case no such information about the account owner is available, the CRT considers here, as in other cases in which little or no information about an owner of account is available, other, more detailed and nuanced factors. Such factors include, but are not limited to, whether a claimant identified an exact spelling of the account owner's name; whether the claimant was able to provide documentation linking his or her surname to that of the account owner, thereby demonstrating a familial relationship to a person with the same name as the account owner; whether a claimant identified the account owner's name prior to its publication, or despite the fact that the name was never published; and/or whether the claimant's relative's fate is consistent with the disposition, if known, of the claimed account. Based upon these considerations, the number of matches to this account, and others like it, have been reduced, as less plausible claims were disconfirmed.

In this case, however, even after these disconfirmations, the limited information about this Account Owner matched to information provided by more than five unrelated claimants about their relatives. The information contained in the bank records about the owner of this account is too limited to make a definitive determination as to whether the Account Owner was, in fact, the Claimant's relative, or merely shared the same or similar name or first name initial and last name. The CRT notes that, in its report, the Bank noted that Account Owner J. Kahn received a payment of SF 500.00 from a Mr. Rieser of Winterthur, Switzerland, on 22 June 1936, and that this sum constituted the assets that were being reported. None of the claimants who identified relatives with the same first name initial and last name of the Account Owner, including the Claimant in this case, identified Mr. Rieser of Winterthur or a connection between his/her relative and any person in Winterthur.

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, who was Jewish and resided in Germany before the Second World War, was murdered in the Holocaust.

¹⁰ Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes approximately 650 entries referring to persons whose surname is Kahn and whose first name starts with the letter "J."

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner. As mentioned above, the Claimant submitted an ATAG Form identifying her relationship to the Account Owner eight years before the Account Owner's first initial and last name appeared on the 2005 List.

The Issue of Who Received the Proceeds

The Swiss Federal Archive records indicate that this account was transferred to the Guardianship Authority of the City of Zurich in 1966. Accordingly, the CRT determines that the account proceeds were not paid to either the Account Owner or the Account Owner's heirs.

Entitlement to the Account

In this case, and based upon Special Master Junz' determination upon appeal, the CRT has identified more than five claimants who have plausibly identified the Account Owner as his/her relative. As described above, those claimants' relatives' first name initial and last name match the first initial and last name of the Account Owner.

This case is similar to numerous other cases in which more than one claimant or group of claimants has plausibly identified the account owner as their relative. In such cases, the CRT has generally noted that the claimants' relatives are not the same person. However, given that the claimants have identified all published information about the Account Owner that is available in the Bank's records; that there is no additional information in these records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that there are no other equally plausible claims to this account, the CRT has found that the Claimants have each plausibly identified the Account Owner. Such cases are referred to as accounts with "Multiple Plausible Matches," or "MPM" cases.

In MPM cases awarded to date, the CRT has relied upon Article 26 of the Rules, which specifies that in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under the Rules.

To date, the CRT has recommended, and the Court has approved, payment of MPM cases only if five or fewer unrelated claimants or group of claimants have identified the account owner.¹¹ Although this number is not specifically set forth in the Rules, the CRT has recommended, and the Court has agreed, that this was a reasonable limit to the number of claimants among which an MPM award was to be divided. The CRT notes that, as the number of unrelated claimants or groups of claimants increases, the probability that any one of those claimants' relatives is the actual account owner is reduced. Thus, at the MPM upper limit of five equally plausible

¹¹ One case awarded to date included six unrelated claimants or group of claimants. This was an exceptional case that was the result of an administrative error.

unrelated claimants or groups of claimants, the probability that any one of the five claimed account owners is the account owner of record is 20 percent. Furthermore, the CRT notes that, as the number of unrelated claimants or group of claimants increases, the amount that each claimant or group of claimants ultimately receives, based upon the pro rata share of the full amount in the account, obviously is reduced.

In this case, given that there are over five other claims from unrelated claimants or groups of claimants whose relatives' first name initial and last name match that of the Account Owner's; and given the considerations outlined above, the CRT concludes that the pro rata division of this account is not appropriate.

In place of an award to the specific account addressed in this case, the CRT recommends that this claim, and all other claims that match to accounts with more than five plausible matches to unrelated claimants or groups of claimants, be considered for Plausible Undocumented Awards ("PUAs").¹² In its 17 February 2006 Memorandum and Order approving the first set of PUAs, the Court referred to the destruction of records by Swiss banks that eliminated the records for nearly 2.8 million Holocaust-era accounts. The Memorandum and Order set forth the various measures the Court has adopted to attempt to compensate for the burdens imposed upon claimants due to the massive destruction of documents and for the restrictions placed upon the CRT's access to the remaining records. The Court noted that for many thousands of claimants, however, there are no existing documents that would prove that they or their family members owned Holocaust-era Swiss bank accounts. The Court therefore directed the CRT to analyze all the Deposited Assets claims to determine whether an award should be recommended even in the absence of bank records or other documentation proving the existence of an account. The total number of PUAs issued to date is 12,433 less 261 full and partial deductions.¹³ The total amount is \$60,917,251.13.

Similarly, the lack of information about the Account Owner in the bank records in this case, as well as other such MPM accounts, also results from the destruction of records by the Swiss banks. Although in these cases the name, or first initial and last name (and in a few cases, the city or country of residence), of the Account Owner has survived, the bank records do not contain any additional information that would make it possible to reach a meaningful determination regarding the entitlement of so many competing claimants to the proceeds of the same account. The CRT therefore is unable to recommend that the Court issue an award for this account.

One option to treat this and other such accounts would be to deny all claimants whose relatives' names matched to the names of the account owners and recommend no payment on the basis of these accounts. However, the CRT considers this option to be unfair, as the impossibility of making an identity determination is due entirely to the destruction of account owner information

¹² See Memorandum and Order Approving 105 Plausible Undocumented Awards Certified by the Claims Resolution Tribunal (Swiss Deposited Assets Program), February 17, 2006, available at http://www.swissbankclaims.com/Documents/Doc_70_PUA.pdf.

¹³ Full and partial deductions are made based upon payments made to documented awards. Thus, if a claimant is determined to be eligible for a payment based upon a documented award, and has already received a payment for a PUA, the amount of the previous PUA payment is deducted from the documented award amount.

in the bank records. Therefore, the CRT recommends that this claim, and other such claims, should be reviewed according to the criteria established for the issuance of a PUA. The PUA review process will be conducted in New York by the Swiss Deposited Assets Program (“SDAP”), which, like the CRT, operates under the Court’s supervision. The CRT notes that claimants are eligible to receive only one PUA, regardless of the number of claims submitted, and that other restrictions, including restrictions regarding the degree of relationship between the claimant and the claimed account owner, apply. In this case, the CRT notes that the Claimant has already received a PUA. Therefore, she will not be eligible for another PUA payment.

Certification of the Denial

The CRT certifies this Denial for approval by the Court

Claims Resolution Tribunal
12 November 2009