

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1]

and [REDACTED 2]

in re Account of *Handel-Maatschappij H. Albert de Bary & Co.*

Claim Numbers: 205734/AV; 222429/AV; 500352/AV; 500353/AV; 500354/AV; 500347/AV

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 2], formerly Aboucaya (“Claimant [REDACTED 2]”) to the accounts of Léon Aboucaya, Edwine Aboucaya, Irène Kahn, and Colette Emden, and the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) (together the “Claimants”) to the accounts of Colette Emden.^{1,2} This Award is to the unpublished account of *Handel-Maatschappij H. Albert de Bary & Co.* (“Account Owner de Bary”), which contained assets owned by Léon Aboucaya (“Account Owner Léon Aboucaya”), Edwine Aboucaya (“Account Owner Edwine Aboucaya”), Irène Kahn (“Account Owner Kahn”), and Colette Emden (“Account Owner Emden”) at the Zurich branch of the [REDACTED] (the “Bank”).³

All awards are published, but where a claimant has 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.

¹ The CRT awarded the accounts of Léon Aboucaya, Edwine Aboucaya, Irène Kahn, and Colette Emden to the Claimants in a separate decision. See *In re Accounts of Léon Aboucaya, Edwine Aboucaya, Irène Kahn, and Colette Emden* (approved on 28 May 2004).

² In his claims, Claimant [REDACTED 2] also claimed accounts of Alice Aboucaya and Samuel Aboucaya. The claims to these accounts will be treated in separate determinations.

³ 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”), Léon Aboucaya, Edwine Aboucaya, and Colette Emden are each indicated as having five accounts, and Irène Kahn is indicated as having six accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence that Irène Kahn’s sixth account was in fact owned by *Handel-Maatschappij H. Albert de Bary & Co.* The CRT notes that the five accounts owned by Léon Aboucaya, Edwine Aboucaya, Irène Kahn, and Colette Emden have been treated in the previous Award to the Claimants. See *In re Accounts of Léon Aboucaya, Edwine Aboucaya, Irène Kahn, and Colette Emden* (approved on 28 May 2004).

Information Provided by the Claimants

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted Claim Forms identifying Account Owner Léon Aboucaya as his great-uncle, Léon Aboucaya, who was born in 1860 in Algeria. Claimant [REDACTED 2] further identified Account Owner Edwine Aboucaya as Léon Aboucaya's spouse, Edwine Aboucaya, née Dreyfus, who was born in 1865 in Seine et Oise, France. Claimant [REDACTED 2] stated that Léon Aboucaya and Edwine Aboucaya were married in Paris, France. In addition, Claimant [REDACTED 2] identified Account Owner Kahn and Account Owner Emden as Léon Aboucaya's and Edwine Aboucaya's daughters, Irène Kahn, née Aboucaya, and Colette Emden, née Aboucaya, who were born in Paris in 1891 and 1896, respectively. Claimant [REDACTED 2] stated that Irène Kahn was married to [REDACTED] in Paris, and that Colette Emden was married to [REDACTED] in Paris.

Claimant [REDACTED 2] stated that Léon Aboucaya was a businessman, and that he jointly owned a factory, located at 137 Avenue Felix Favre in Paris, with his brother, Samuel Aboucaya, who was Claimant [REDACTED 2]'s grandfather. Claimant [REDACTED 2] further stated that Léon Aboucaya, Edwine Aboucaya, Irène Aboucaya, and Colette Aboucaya, who were all Jewish, resided at 40 rue de Monceau in Paris VIII. According to Claimant [REDACTED 2], Léon Aboucaya and Edwine Aboucaya went into hiding, but Claimant [REDACTED 2] stated that he was not aware of their whereabouts after the Second World War, nor was he aware of the fates of Irène Kahn and Colette Emden.

Claimant [REDACTED 2] submitted an extract from the records of the French Consulate in Hamburg, Germany, regarding the marriage of Claimant [REDACTED 2]'s grandparents. This document identifies Léon Aboucaya as the brother of Samuel Aboucaya, and indicates that Léon Aboucaya was a manufacturer and that he resided at 40 rue de Monceau in Paris. Claimant [REDACTED 2] further stated that his grandparents remained in France in hiding, first in Lyons and then in Nice from 1940 until the liberation, after which they returned to Paris. According to Claimant [REDACTED 2], he fled France with his parents in 1940 through Portugal and Casablanca to Cuba and Mexico and, finally, the United States in 1945. Claimant [REDACTED 2] submitted his father's marriage certificate, identifying [REDACTED] as the son of Samuel Aboucaya and Alice Stephanie Aboucaya, née Emden; and an order from the City Court of New York, dated 23 April 1945, identifying Claimant [REDACTED 2] as the son of [REDACTED] and certifying the family's name change from Aboucaya to Aubry. Finally, Claimant [REDACTED 2] submitted a family photograph, the back of which contains notations by Claimant [REDACTED 2]'s father, indicating that the photograph was taken in 1909 in Poissy, France, and that "Colette Aboucaya," "Léon A.," and "Irène A." were pictured, among other family members. Claimant [REDACTED 2] indicated that he was born on 9 May 1935 in Neuilly sur Seine, France.

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying Account Owner Emden as his great-aunt, Alice Colette Aboucaya, née Emden, who was born approximately in 1884 in

Hamburg, and was married to Samuel Aboucaya. Claimant [REDACTED 1] stated that Alice Aboucaya and his paternal grandfather, [REDACTED], were siblings. Claimant [REDACTED 1] further stated that Alice and Samuel Aboucaya, who were Jewish, lived in Paris during the city's occupation by the Nazis; that the couple hid in Portugal and Spain; that Samuel Aboucaya died during the Second World War; and that Alice Aboucaya passed away in 1968 in Paris. Claimant [REDACTED 1] indicated that he was born on 3 April 1947 in Santiago, Chile.

Information Available in the Bank's Records

The Bank's record submitted to the CRT 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") consists of a printout from the Bank's database. Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about the account ("Voluntary Assistance"). The Bank provided the CRT with additional documents consisting of correspondence between Account Owner de Bary, the Bank, and the *Schweizerische Verrechnungsstelle, Abteilung für die Liquidation deutscher Vermögenswerte* ("Swiss Clearing Office, Division for the Liquidation of German Assets").

According to these records, Account Owner de Bary was *Handel-Maatschappij H. Albert de Bary & Co.*, a bank in Amsterdam, the Netherlands.⁴ The Bank's records indicate that Account Owner de Bary held a custody account, which contained, among other assets, securities owned by Léon Aboucaya, *Frau* (Mrs.) Edwine Aboucaya, Irène Kahn, and Colette Emden, all of whom were French citizens and resided in the eighth district of Paris, France. The Bank's records further indicate that the custody account was blocked in the 1945 freeze of assets held in Switzerland by nationals of Germany and the territories incorporated into the Third Reich (the "1945 Freeze")

The records include a letter from Account Owner de Bary's subsidiary, *de Bary & Co's Administratie-Maatschappij Comm. Vennootschap*, to the Bank, dated 13 May 1947, providing a list of frozen securities held in Account Owner de Bary's custody account at the Bank, and the names of the individuals who owned these securities as of 15 February 1945. This list of owners of securities includes Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden, and indicates that they owned the following securities held in Account Owner de Bary's custody account at the Bank:

- 10 shares of *Nestlé and Anglo Swiss Holding Company*;

⁴ Further research conducted by the CRT into the nature of Account Owner de Bary revealed that *Handel-Maatschappij H. Albert de Bary & Co.* was a subsidiary of *Deutsche Bank*, Berlin, Germany. In 1936, the bank tried to disguise this subsidiary as a Dutch company by transferring stock to Dutch nominees, but repurchased these shares after the German invasion of the Netherlands. See Lothar Gall *et al. The Deutsche Bank 1870-1995*, Weidenfels & Nicholson, London 1995, p. 329. The bank, together with a few other banks with tight German links, was prominently involved in the financing of the aryanization process in Holland and also held the accounts of Nazi organizations such as that of the *Dienststelle Mühlmann*. Mühlmann had been put in charge of organizing the looting of Dutch art collections after having done so successfully in Poland. See Gerard Aalders, *Roof*, Sdu Uitgevers, den Haag, 1999, pp. 83, 137.

- *SFr 157,50 Dividendenscheine Nr.9 von St.10 dergl. Akt. zahlbar am 1.5.47* (“157.50 Swiss Francs (“SF”) worth of dividend certificates no. 9 of ten shares of Nestlé and Anglo Swiss Holding Company, payable on 1 May 1947”);
- *\$15.- Dividendenscheine Nr.4 von St.10 Unilac Inc. Akt à \$12.- zahlbar am 30.4.47* (“15.00 United States Dollars (“US \$”) worth of dividend certificates no. 4 of 10 shares of *Unilac Inc.* at US \$12.00 a share, payable on 30 April 1947”).

The letter requests that the Bank apply for the unfreezing of the securities.

The records further include a letter from Account Owner de Bary to the Bank, dated 16 May 1947, in which Account Owner de Bary, referring to the previous letter from its subsidiary, further requests the Bank to contact the Swiss Clearing Office with regard to the unfreezing of the account and, upon release of the securities, to transfer them to an unblocked custody account of Account Owner de Bary at the Bank. In the letter, Account Owner de Bary further requested that the Bank redeem the SF 157.50 worth of dividend certificates no. 9 of ten shares of *Nestlé and Anglo Swiss Holding Company*, payable on 1 May 1947, and the US \$15.00 worth of dividend certificates no. 4 of 10 shares of *Unilac Inc.*, payable on 30 April 1947, and deposit the proceeds into Account Owner de Bary’s unblocked demand deposit account at the Bank. The letter is stamped by the Bank “*Erledigt durch: Bankbuchh.*” (completed by bookkeeping) and initialed under the stamp “*Gebucht*” (booked). A note in the margin indicates that only the SF 157.50 worth of dividend certificates no. 9 of ten shares of *Nestlé and Anglo Swiss Holding Company*, payable on 1 May 1947, were redeemable.

In addition, the records include a letter, dated 20 May 1947, from the Bank to the Swiss Clearing Office, forwarding the information provided by Account Owner de Bary and the request to unfreeze, among other assets, the securities held by Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden. The records include a response letter from the Swiss Clearing Office, dated 29 May 1947, indicating that in order to unfreeze the securities, the Swiss Clearing Office required notarized records from the Bank, certifying that Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden owned the securities, as well as official documentation of their nationality. This information was forwarded to Account Owner de Bary by the Bank in a letter dated 31 May 1947.

Finally, the records include a letter from the Bank to the Swiss Clearing Office, dated 17 June 1947, providing the required documents for one of the individuals on Account Owner de Bary’s list of owners of securities. This letter mentions Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden, and indicates that the required documents to unfreeze their securities would be provided at a later date.

The Bank’s records do not show when the account at issue was closed. The auditors who carried out the ICEP Investigation did not find this account in the Bank’s system of open accounts, and they therefore presumed that it was closed. There is no evidence in the Bank’s records that Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, or Account Owner Emden or their heirs received either the assets held in the account or their proceeds.

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 six claims of the Claimants in one proceeding.

Identification of the Account Owners

Claimant [REDACTED 2] has plausibly identified Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden. His relatives' names match the published names of Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden. Claimant [REDACTED 2] identified his relatives' district of residence in Paris, France, which matches unpublished information about Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden contained in the Bank's records. In support of his claim, Claimant [REDACTED 2] submitted an extract from the records of the French Consulate in Hamburg, containing the name of Léon Aboucaya and indicating that he resided at 40 rue de Monceau in Paris; providing independent verification that the person who is claimed to be Account Owner Léon Aboucaya had the same name and resided in the same city district recorded in the Bank's records as the name and city district of residence of Account Owner Léon Aboucaya.

The CRT notes that Claimant [REDACTED 1] mistakenly identified Account Owner Emden as his great-aunt, Alice Aboucaya, née Emden. The CRT notes, however, that a comparison of the Claim Forms submitted by both Claimants reveals consistent information regarding family relations, occupations, and places of residence. That information indicates that Claimant [REDACTED 1]'s great-aunt was Claimant [REDACTED 2]'s grandmother, Alice Aboucaya, née Emden, who was married to Samuel Aboucaya, the brother of Account Owner Léon Aboucaya. In contrast, according to information provided by Claimant [REDACTED 2], Account Owner Emden was married to [REDACTED].

The CRT notes that there are no other claims to these accounts. The CRT further notes that the Claimants have not identified Account Owner de Bary.

Status of the Account Owners as Victims of Nazi Persecution

Claimant [REDACTED 2] has made a plausible showing that Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden were Victims of Nazi Persecution. The Claimants stated that Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden were Jewish, and that they were forced to go into hiding during the Second World War.

The Claimants' Relationships to the Account Owners

The Claimants have plausibly demonstrated that they are related to Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden, by submitting specific information and documents, demonstrating that Account Owner Léon Aboucaya was Claimant [REDACTED 2]'s great-uncle and Claimant [REDACTED 1]'s great-aunt's brother-in-law, that Account Owner Edwine Aboucaya was Claimant [REDACTED 2]'s great-aunt and Claimant [REDACTED 1]'s great-aunt's sister-in-law, and that Account Owner Kahn, and Account Owner Emden were Claimant [REDACTED 2]'s cousins and Claimant [REDACTED 1]'s great-aunt's spouse's nieces. These documents include an extract from the records of the French Consulate in Hamburg, identifying Samuel Aboucaya as the brother of Account Owner Léon Aboucaya; the Claimant's father's marriage certificate, identifying [REDACTED] as the son of Samuel Aboucaya; and an order from the City Court of New York, identifying Claimant [REDACTED 2] as the son of [REDACTED] and certifying the family's name change from Aboucaya to Aubry. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

Given that Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden went into hiding during the Second World War; that the securities owned by Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden that were held in Account Owner de Bary's custody account were frozen in the 1945 Freeze; that there is no indication in the Bank's records that Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden were aware of Account Owner de Bary's correspondence with the Bank and the Swiss Clearinghouse Office; that there is no record of the payment of the securities owned by Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden to them nor any record of a date of closure of Account Owner de Bary's custody account; that Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden and their heirs would not have been able to obtain information about Account Owner de Bary's account or about their securities 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 (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 Claimant [REDACTED 2]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that Account Owner Léon Aboucaya was Claimant [REDACTED 2]'s great-uncle and Claimant [REDACTED 1]'s great-aunt's

brother-in-law, that Account Owner Edwine Aboucaya was Claimant [REDACTED 2]'s great-aunt and Claimant [REDACTED 1]'s great-aunt's sister-in-law, and that Account Owner Kahn, and Account Owner Emden were Claimant [REDACTED 2]'s cousins and Claimant [REDACTED 1]'s great-aunt's spouse's nieces, and those relationships justify an Award. Moreover, the CRT notes that the Bank's records indicate that Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden held ownership rights to securities held in Account Owner de Bary's custody account. Third, the CRT has determined that it is plausible that neither Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden, nor their heirs received the proceeds of the securities in the claimed custody account of Account Owner de Bary. Further, the CRT notes that Claimant [REDACTED 2], as a descendant of Account Owner Léon Aboucaya's parents, has a better entitlement to the account than Claimant [REDACTED 1], who is related to Account Owner Léon Aboucaya and his family by marriage.

Amount of the Award

In this case, the Award is for securities owned by Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden, which were held in a custody account owner by Account Owner de Bary. The Bank's records indicate that Account Owner Léon Aboucaya, Account Owner Edwine Aboucaya, Account Owner Kahn, and Account Owner Emden owned the following securities: ten shares of stock in *Nestlé and Anglo Swiss Holding Company*, which had a market value of SF 8,800.00 on 30 December 1944;⁵ SF 157.50 worth of dividend certificates no. 9 of ten shares of *Nestlé and Anglo Swiss Holding Company*, payable on 1 May 1947; and US \$15.00, or SF 64.35,⁶ worth of dividend certificates no. 4 of 10 shares of *Unilac Inc.*, payable on 30 April 1947. Consequently, the total historic value of the securities was SF 9,021.85. According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 162,500.00.

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, in equal shares by representation. In this case, Claimant [REDACTED 2] is a descendant of Account Owner Léon Aboucaya's parents. Moreover, Claimant [REDACTED 2] is Account Owner Edwine Aboucaya's great-nephew and Account Owner Kahn's and Account Owner Emden's cousin. Thus, Claimant [REDACTED 2] has a better entitlement to the account than Claimant [REDACTED 1], who is related to Account Owner Léon Aboucaya, Account Owner Edwine

⁵ When possible, the CRT uses market values as published in the *Kursblatt der Zürcher Effektenbörse* for securities that were publicly traded in Switzerland. The market value of these shares is taken from the 30 December 1944 issue of the *Kursblatt der Zürcher Effektenbörse*.

⁶ The CRT uses official exchange rates when converting the amounts in foreign currencies into Swiss Francs.

Aboucaya, Account Owner Kahn, and Account Owner Emden by marriage. Accordingly, Claimant [REDACTED 2] is entitled to the entire 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 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
28 June 2006