

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant the Estate of [REDACTED]¹
also acting on behalf of the Estate of [REDACTED]²
and on behalf of [REDACTED]
represented by [REDACTED]

**in re Accounts of Albert Gerngross, Paul Gerngross, Martha Gerngross,
and A. Gerngross A.G.**

Claim Number: 222432/PY; 222434/PY; 222435/PY³

Award Amount: 858,895.32 Swiss Francs

This Certified Award is based upon the claim of the Estate of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Albert Gerngross, Paul Gerngross, and Martha Gerngross. This Award is to the accounts of Albert Gerngross (“Account Owner Albert Gerngross”), Paul Gerngross (“Account Owner Paul Gerngross”), Martha Gerngross, née [REDACTED] (“Account Owner Martha Gerngross”), and A. Gerngross A.G. (Account Owner “A. Gerngross A.G.”) (together the “Account Owners”) at the [REDACTED] (the “Bank”).

All awards are published, but 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 a Claim Form identifying Account Owner Albert Gerngross as [REDACTED]’s maternal uncle, who was born on 27 April 1874, was unmarried and was a merchant. The Claimant added that [REDACTED]’s uncle, who was Jewish, held a Swiss citizenship and resided at Mauerbachstrasse 34, in Vienna, Austria, until 1939 when he fled to Switzerland. The Claimant further stated that [REDACTED]’s uncle died in Zollikon,

¹ [REDACTED] passed away on 23 February 1996. This claim is made in the name of her Estate, the executor of which is [REDACTED], of [REDACTED], who represents the Estate of [REDACTED], the Claimant, in these proceedings, and who submitted three Claim Forms.

² [REDACTED] passed away on 26 June 2001. This claim is made in the name of his Estate, the executor of which is his widow, [REDACTED]. [REDACTED] also represents the Estate of [REDACTED] in these proceedings.

³ The Claimant submitted an additional claim to her own account, which is registered under the Claim Number 222433. The CRT will treat the claim to this account in a separate decision.

Switzerland in 1969. The Claimant submitted a copy of the Austrian census form that Albert Gerngross filled out in 1938.

The Claimant submitted two Claim Forms identifying Account Owner Paul Gerngross and Account Owner Martha Gerngross as [REDACTED] maternal uncle and aunt. The Claimant stated that Paul Gerngross, a merchant, was born on 12 February 1880 in Vienna, and that Martha Gerngross, a housewife, was born on 17 November 1885. The Claimant added that [REDACTED] uncle and aunt were married on 22 August 1909, were Jewish, and resided at Billrothstrasse 59, in Vienna until 1939. The Claimant stated that the couple had three children, [REDACTED], née [REDACTED]; [REDACTED], née [REDACTED]; and [REDACTED], née [REDACTED]. According to the Claimant, Paul and Martha Gerngross fled Austria in 1939 for England, and later went to Uruguay, where they remained until returning to Austria after the end of the Second World War. Finally, the Claimant stated that Paul Gerngross died in Vienna on 9 December 1954. The Claimant could not provide Martha Gerngross's date of death. The Claimant submitted copies of the Austrian census forms which Paul and Martha Gerngross filled out in 1938.

The Claimant also identified Account Owner *A. Gerngross A.G.* as a company in which Account Owner Albert Gerngross and Account Owner Paul Gerngross held substantial shares in and were members of its Board of Directors.

The Claimant indicated that [REDACTED] was born on 23 August 1902 in Vienna. The Claimant is representing the Estate of [REDACTED], [REDACTED]'s cousin, who was born on 8 August 1935 in Vienna, died on 26 June 2001 and was the child of [REDACTED], née [REDACTED]. The Claimant is also representing [REDACTED], née [REDACTED], [REDACTED]'s cousin, who was born on 24 December 1918 in Vienna.

Information Available in the Bank Records

The bank records consist of three customer cards; an internal Bank notice dated 17 March 1938, describing how it would soon complete a list of over 1,000 custody accounts belonging to Austrian citizens; a copy of the Swiss Foreign Assets Law pertaining to Austria as of 23 March 1938; a list of custody accounts belonging to customers residing in Austria which were transferred to Austrian or German banks in 1938; and printouts from the Bank's database.

According to these records, Account Owner Albert Gerngross resided at Mariahilferstrasse 38-48 in Vienna VII and held a custody account and a demand deposit account, both numbered 17246. The Power of Attorney Holders were *Rechtsanwalt* (lawyer) Dr. Josef Stein, who resided at Schottenring 25 in Vienna; Hugo Gerngross and Robert Gerngross, who both resided at Mariahilferstrasse 38-48 in Vienna; Dr. Richard Schlesinger, who resided in Schottengasse 10, Vienna; and Paul Gerngross who resided at Mariahilferstrasse 38-48 and Billrothstrasse 59 in Vienna XIX. The records indicate that the custody account was transferred on 14 April 1938 to the *Oesterreichische Creditanstalt-Wiener Bankverein* in Vienna. The amount in the account on the date of its transfer was 47,000.00 Swiss Francs. The records indicate that the account was subsequently closed on 30 April 1938. The auditors who carried out the investigation of this

bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) determined that the amount in the custody account had been paid to the Nazi authorities. The auditors did not find the demand deposit in the Bank’s system of open accounts, and they therefore presumed that it was closed. The auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the bank records that the Account Owners, the Power of Attorney Holders, or their heirs closed this demand deposit account and received the proceeds themselves.

The bank records indicate that Account Owner Paul Gerngross held a custody account numbered 19195 and Account Owner Martha Gerngross held a custody account numbered 32527, and that both of these accounts were transferred to the *Länderbank Wien A.G.* in Vienna on 16 August 1938. The records indicate that the amounts in the accounts on the date of their transfer were 16,500.00 Swiss Francs and 1,900.00 Swiss Francs, respectively. The records further indicate that the accounts were both closed on 6 September 1939. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the ICEP determined that the amounts in these accounts had been paid to the Nazi authorities.

The bank records also indicate that Account Owner *A. Gerngross A.G.*, located at Vienna VII at Mariahilferstrasse 38/48, Kirchengasse 2-4, and Lindengasse 17, held an account of an unknown type. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of ICEP did not find this account in the Bank’s system of open accounts, and they therefore presumed that it was closed. The 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, the Power of Attorney Holders, or their heirs closed this account and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Account Owner Albert Gerngross. These records include an Austrian census form for Albert Gerngross numbered 30424, which is dated 29 June 1938, a copy of which was also submitted by the Claimant. These records indicate that Albert Gerngross was born on 27 April 1874, and that he was unmarried, Jewish and self-employed. The records show that Albert Gerngross resided at Mauerbachstrasse 34 in Hadersdorf-Weidlingau. The records also show that Albert Gerngross owned real estate worth approximately 300,000.00 Reichsmarks (1938 value); a large number of stocks and bonds, including those in several foreign companies, worth approximately 180,000.00 Reichsmarks (1938 value); and savings and bank assets in various Austrian banks worth approximately 175,000.00 Reichsmarks (1938 value). The records further show that Albert Gerngross owned jewelry worth approximately 13,000.00 Reichsmarks (1938 value) which the authorities had permitted him to send to Zurich, Switzerland. Finally, the records show that Albert Gerngross fled Austria to Switzerland in 1939.

In the records of the Austrian State Archives, there are also documents concerning the assets of Account Owners Paul and Martha Gerngross. These records include Austrian census forms for Paul Gerngross, numbered 4306, and Martha Gerngross, numbered 19556, both dated 29 June 1938, copies of which were submitted by the Claimant. These records indicate that Paul Gerngross was self-employed, Jewish, born on 12 February 1880, and married to Martha Gerngross, née [REDACTED], who was born on 17 June 1885. The records show that Paul and Martha Gerngross resided at Billrothstrasse 59 in Vienna XIX. The records also show that Paul and Martha Gerngross owned real estate worth approximately 325,000.00 Reichsmarks (1938 value), as well as a considerable number of stocks and bonds, including those in foreign companies, worth approximately 42,000.00 Reichsmarks (1938 value). The records also show that Paul and Martha Gerngross had savings and bank assets worth approximately 270,000.00 Reichsmarks (1938 value), including 84.61 Swiss Francs held by Paul Gerngross in a demand deposit account at the Bank. The records indicate further that Paul and Martha Gerngross were directed to pay a *Judenvermögensabgabe* (“Jewish Assets Tax”) of 740,999.00 Reichsmarks (1938 value), of which 152,875.00 Reichsmarks were earmarked for payment of *Reichsfluchtsteuer* (“flight tax”).

The above records also show that Account Owners Albert, Paul and Martha Gerngross were all shareholders of *A. Gerngross A.G.*

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 three claims of the Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Albert Gerngross. [REDACTED] uncle’s name and city of residence match the published name and city of residence of Account Owner Albert Gerngross. The Claimant has also plausibly identified Account Owners Paul and Martha Gerngross. [REDACTED] uncle’s and aunt’s names and city of residence match the published names and city of residence of Account Owners Paul Gerngross and Martha Gerngross. Paul Gerngross’ name also matches the name of one of the Power of Attorney Holders to the accounts of Account Owner Albert Gerngross. The Claimant also identified her uncle’s and aunt’s street address in Vienna, which matches unpublished information about Account Owners Paul and Martha Gerngross contained in the bank records. The CRT notes that the Claimant submitted Austrian census forms for all of the Account Owners which indicate that they were all shareholders of *A. Gerngross A.G.* As such, the Claimant has also identified Account Owner *A. Gerngross A.G.* The CRT notes that other claims to these accounts have been disconfirmed due to inconsistent domicile, name and other information submitted by the other claimants to these accounts.

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 Albert, Paul and Martha Gerngross were Jewish, and that they were living in Austria after the annexation of Austria by Germany in 1938 (the “*Anschluss*”) and they all fled Austria in 1939.

The Claimant’s Relationship to the Account Owners

The Claimant has plausibly demonstrated that [REDACTED] was the niece of Account Owners Albert, Paul and Martha Gerngross, by submitting a family tree.

The Issue of Who Received the Proceeds

With respect to the three custody accounts held by Account Owners Albert Gerngross, Paul Gerngross and Martha Gerngross, and the demand deposit account held by Account Owner Paul Gerngross at the Bank indicated in his Austrian census form, the Bank records indicate that these accounts were paid to the Nazi authorities.

With respect to Account Owner Albert Gerngross' demand deposit account and Account Owner *A. Gerngross A.G.*'s account of an unknown type, given that the other accounts, as stated above, were paid to the Nazi authorities and given the application of Presumptions (f), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”)(see Appendix A), 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that [REDACTED] and her cousin, [REDACTED], whom the Claimant represents, have plausibly demonstrated that the Account Owners were their uncles and aunt and that *A. Gerngross A.G.* was owned by these same relatives, and these relationships justify and award. The Claimant has also plausibly demonstrated that [REDACTED]'s cousin, [REDACTED], whom the Claimant represents, has plausibly demonstrated that the Account Owner Albert Gerngross was her uncle and Account Owners Paula and Martha Gerngross were her parents, and those relationships justify an Award.

Finally, the CRT has determined that, with respect to the custody accounts numbered 17246, 19195, and 32527, as well as the account held by Account Owner Paul Gerngross indicated in his Austrian census form, neither the Account Owners, the Power of Attorney Holders nor their heirs received the proceeds of the claimed accounts. With regard to the demand deposit account held by Account Owner Albert Gerngross and the account of an unknown type held by Account

Owner *A. Gerngross A.G.*, the CRT has determined that it is plausible that neither of these Account Holders, the Power of Attorney Holders nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, Account Owner Albert Gerngross held one custody account and one demand deposit account; Account Owner Paul Gerngross held one custody account and one demand deposit account as indicated in his Austrian census form; Account Owner Martha Gerngross held one custody account; and Account Owner *A. Gerngross A.G.* held one account of an unknown type.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here with the demand deposit account held by Account Owner Albert Gerngross and the account of unknown type held by Account Owner *A. Gerngross A.G.*, 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 investigation carried out pursuant to the instructions of the ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs and the average value of an account of unknown type was 3,950.00 Swiss Francs, producing a total of 6,090.00 Swiss Francs for these two accounts. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an award amount of 73,080.00 Swiss Francs for these accounts.

The bank records indicate that the value of the custody account numbered 17246 held by Account Owner Albert Gerngross as of 14 April 1938 was 47,000.00 Swiss Francs, and the values of the custody accounts numbered 19195 and 32527 owned by Account Owners Paul and Martha Gerngross, as of 16 August 1938, were 16,500.00 Swiss Francs and 1,900.00 Swiss Francs, respectively. The total value of the three accounts was 65,400.00 Swiss Francs. The present value of this amount is determined by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an award amount of 1,546,800.00 Swiss Francs for these accounts.

The Austrian census records indicate that Account Owner Paul Gerngross held a demand deposit account not identified in the bank records with a value of 84.61 Swiss Francs as of 29 June 1938, the date that he signed the Austrian census form. The present value of this amount is determined by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an award amount of 1,015.32 Swiss Francs for this account.

Accordingly, the total award amount is 858,895.32 Swiss Francs.

Division of the Award

According to Article 23 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 of representation.

The total value of Account Owner Albert Gerngross's accounts (the custody account and demand deposit account both numbered 17246) is 589,680.00 Swiss Francs. In this case, [REDACTED] and the represented parties, [REDACTED] and [REDACTED], are all descendants of Account Owner Albert Gerngross's parents. Accordingly, they are each entitled to receive one-third of the value of Account Owner Albert Gerngross' accounts, which amounts to 196,560.00 Swiss Francs each.

The total value of Account Owners Paul and Martha Gerngross' accounts (the custody accounts numbered 19195 and 32527, and the demand deposit account indicated in the Austrian census form for Paul Gerngross) is 221,815.32 Swiss Francs. In this case, [REDACTED] is a direct descendant of Account Owners Paul and Martha Gerngross, and she is therefore entitled to the total award amount for their accounts.

The value of Account Owner *A. Gerngross A.G.*'s account of an unknown type is 47,400.00 Swiss Francs. According to the Austrian State Archives, Paul, Martha, and Albert Gerngross were all shareholders of *A. Gerngross A.G.* Therefore, the Estate of [REDACTED], the Estate of [REDACTED] and [REDACTED] are each entitled to one-third of Account Owner Albert Gerngross' 15,800 Swiss Francs share of the account, which amounts to 5,266.66 each. As stated above, [REDACTED] is a direct descendant of Account Owners Paul and Martha Gerngross and she is, therefore, entitled to their shares of this account which amounts to 31,600 Swiss Francs.

With regard to the total award amount, the Estate of [REDACTED] and the Estate of [REDACTED] are each entitled to 201,826.70 Swiss Francs, and [REDACTED] is entitled to 455,242.02 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on its claims to determine whether there are additional Swiss bank accounts to which it 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
April 4, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).