

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]

**in re Account of Otto Kirchberger**

Claim Number: 501030/AB<sup>1</sup>

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Otto Kirchberger (the “Account Owner”) at the Basel branch of 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 the Account Owner as her paternal great-grandmother’s first cousin, Otto Kirchberger, the son of [REDACTED] and [REDACTED], née [REDACTED], who was most likely born after 1860 in Niederlahnstein, Germany. In a telephone conversation with the CRT on 28 December 2004, the Claimant stated that her cousin [REDACTED], née [REDACTED], the great-niece of Otto Kirchberger, provided information to the Yad Vashem Memorial of Israel for inclusion in its central database of victims of Nazi persecution, indicating that Otto Kirchberger, who was Jewish, was arrested and killed by the Nazis in 1939 or 1940 in Niederlahnstein, Germany. In support of her claim, the Claimant submitted a notice dated 25 April 1908 announcing the death of [REDACTED], née [REDACTED], showing that she was to be buried in Niederlahnstein, and that she was survived by several family members, including Otto Kirchberger; an extract from a memoir written by [REDACTED], the Claimant's great-grandfather, indicating that the family resided in Niederlahnstein; an article from an alumni newsletter of a high school in Weilburg, Germany,

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<sup>1</sup> The Claimant submitted an additional claim to an account of [REDACTED], which is registered under the Claim Number 206946. The CRT did not locate an account belonging to the Claimant’s relative, [REDACTED], 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 the Rules Governing the Claims Resolution Process, as amended (the “Rules”). The Claimant should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

about [REDACTED], the Claimant's great-uncle, stating that he was from a Jewish family in Niederlahnstein, and naming, among his relatives, [REDACTED], owner of a brewery in Niederlahnstein; a notice dated 25 August 1909 announcing the birth of [REDACTED], the Claimant's father, showing that his mother was [REDACTED]; and the Claimant's birth certificate. The Claimant indicated that she was born on 18 March 1947 in Meriden, Connecticut, the United States.

The Claimant previously submitted another Claim Form in 2001 as well as three Initial Questionnaires ("IQs") with the Court in 1999, asserting her entitlement to Swiss bank accounts owned by [REDACTED], [REDACTED] and [REDACTED].<sup>2</sup>

### **Information Available in the Bank's Records**

The Bank's records consist of two instruction forms, dated 19 July 1931 and 15 April 1935 respectively, as well as a confirmation of receipt of general terms and conditions applying to custody accounts, dated 19 July 1931, and signed by the Account Owner. According to these records, the Account Owner was Otto Kirchberger, who resided at Emserstrasse 23 in Niederlahnstein, Germany. The Bank's records indicate that the Account Owner held a custody account, numbered 37091, which was opened no later than 19 July 1931. The Bank's records indicate further that the Account Owner ordered the Bank on 19 July 1931 to hold any correspondence, but then instructed the Bank on 15 April 1935 to send the correspondence to Niederlahnstein. The value of the account is not known.

The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's 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. The name and city and country of residence of the Claimant's great-grandfather's cousin match the published name and city and country of residence of the Account Owner.

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<sup>2</sup> As indicated above, the CRT did not locate an account belonging to [REDACTED]. The CRT also did not locate an account belonging to the Claimant's relatives, [REDACTED] or [REDACTED], in the Account History Database prepared pursuant to the ICEP Investigation. The Claimant should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

In support of her claim, the Claimant submitted documents, including the death notice of [REDACTED], née [REDACTED], which indicates that she was to be buried in Niederlahnstein and that she was survived by several family members, including Otto Kirchberger; a memoir written by her great-grandfather, [REDACTED], showing that his family resided in Niederlahnstein; and an article about her great-uncle, [REDACTED], from an alumni newsletter of a high school in Weilburg, Germany, indicating that the [REDACTED] family was a Jewish family that had settled in Niederlahnstein, and that [REDACTED] lived in Niederlahnstein, providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the Bank's records as the name of the Account Owner and that relatives of the Claimant lived in Niederlahnstein.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Otto Kirchberger, and indicates that his date of birth was 1 January 1865 and place of birth was Niederlahnstein, 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 CRT notes that the name Otto Kirchberger appears only once on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP list").

Finally, 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 made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and that he remained in Nazi Germany until he was arrested and killed by the Nazis in 1939 or 1940. As noted above, a person named Otto Kirchberger was included in the CRT's database of victims.

#### The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was the first cousin of the Claimant's paternal great-grandmother.

The CRT notes that the Claimant identified information which matches information contained in the Yad Vashem records. The CRT further notes that the Claimant submitted a copy of a notice announcing the death of the aunt of the Claimant's maternal great-grandmother, [REDACTED], indicating that she was survived by her relatives, including Otto Kirchberger, and that she was to be buried in Niederlahnstein. The CRT finds it plausible that this is a document which most likely only a family member would possess. The Claimant also submitted the memoirs of her great-grandfather, [REDACTED], and an article from the alumni newsletter about her great-uncle, [REDACTED], stating that he was from a Jewish family in Niederlahnstein. These documents provide independent verification that the Claimant's relatives bore the same family name and resided in the same town as the Account Owner. Finally, the CRT notes that the

foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form.

The CRT notes that the Account Owner has a great-niece, [REDACTED], but that it has not received a claim from her.

#### The Issue of Who Received the Proceeds

Given that the Account Owner was arrested and killed by the Nazis in 1939 or 1940; that there is no record of the payment of the Account Owner's account to him nor any record of a date of closure of the account; that the Account Owner and his heirs would not have been able to obtain information about his account 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 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 the Account Owner was her great-grandmother's first cousin, and that relationship justifies an Award. Third, 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

In this case, the Account Owner held one custody account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs ("SF"). The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 162,500.00.

#### **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 her claim 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  
12 January 2005