

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Marc Heymann

**in re Account of Max Schay Jr. and Mathilde Schay**

Claim Number: 501111/AK

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of Marc Heymann (the "Claimant") to the published account of Max Schay Jr. ("Account Owner Max Schay") and Mathilde Schay ("Account Owner Mathilde Schay") (together "the Account Owners") at the Basel branch of the [REDACTED] (the "Bank").<sup>1</sup>

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 a Claim Form identifying Account Owner Max Schay as his great-uncle Max (Moses) Schay, and Account Owner Mathilde Schay as his great-aunt, Mathilde Schay, née Heymann. The Claimant stated that Mathilde Schay was the sister of his grandfather, Jacques Rodolphe Heymann, and that she was born on 21 August 1862 in Diez an der Lahn, Germany. The Claimant stated that Max Schay was born on 27 June 1864 in Alpen, Germany, and that his great-aunt married Max Schay on 21 July 1882 in Mannheim, Germany. The Claimant further stated that Mathilde and Max Schay, who were Jewish, lived in Cologne, Germany, and that they had a daughter, Ella Schay, who was born on 6 June 1893 in Cologne. The Claimant indicated that Ella Schay married Dagobert Simon in 1919 in Cologne. According to the Claimant, Mathilde Schay's daughter, Ella Simon, had a son, Kurt Simon, who was born in 1922 in Lüdenscheid, Germany, and who currently lives in Philadelphia, Pennsylvania, the United States. The Claimant stated that Max Schay died on 28 August 1931 in Cologne, and that Mathilde Schay fled Cologne in 1939 to stay with her brother, the Claimant's grandfather, Jacques Rodolphe Heymann, who at that time resided in Lausanne, Switzerland. The Claimant finally

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<sup>1</sup> 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"), Mathilde Schay and Max Schay are indicated as having two accounts. Upon careful review, the CRT has concluded that the Bank's records evidence the existence of only one account.

stated that Mathilde Schay moved to Geneva, Switzerland, where she lived with the Claimant's family, and where she died on 16 February 1953.

In a telephone conversation with the CRT on 16 June 2005, the Claimant stated that he had contacted Max and Mathilde Schay's grandson, Kurt Simon, and that he had offered to represent him in the proceedings before the CRT. According to the Claimant, Kurt Simon did not wish to be represented by the Claimant.

The Claimant submitted a detailed family tree and Mathilde Schay's death certificate, indicating that she was born in Diez an der Lahn on 21 August 1862, that her maiden name was Heymann, that she was married to Moses Schay, and that she died in Geneva on 16 February 1953.

The Claimant indicated that he was born on 14 December 1936 in Neuilly sur Seine, France.

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

The Bank's records submitted 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") consist of two customer cards. According to these records, the Account Owners were Max Schay Jr., and Mathilde Schay, née Heymann, who resided at Deutscher Ring 66 in Cologne, Germany. The Bank's records indicate that the Account Owners were married and that they jointly held a custody account, numbered 2476. One of the customer cards indicates that the account was closed, but does not indicate the date of closure.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). On 9 June 2005, the Bank provided the CRT with additional documents. These documents consist of an account opening contract and an excerpt of an internal register of accounts. These records contain signature samples of the Account Owners and indicate that the Account Owners signed the account opening contract on 8 February 1913.

The Bank's records do not show when the account at issue was closed nor do these records indicate the value of this account. There is no evidence in the Bank's records that the Account Owners or their heirs closed the account and received the proceeds themselves.

### **The CRT's Analysis**

#### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's great-uncle's and great-aunt's names and their city and country of residence match the published names and city and country of residence of the Account Owners. The Claimant identified the fact that the Account Owners were married, which matches unpublished information about the Account

Owners contained in the Bank's records. In support of his claim, the Claimant submitted documents, including his great-aunt's death certificate, indicating that her name was Mathilde Schay, née Heymann, that she was married to Moses Schay, and that she was born in Germany, providing independent verification that the persons who are claimed to be the Account Owners had the same names and resided in the same country recorded in the Bank's records as the names and country of residence of the Account Owners.

The CRT notes that the names Max Schay and Mathilde Schay appear only once each 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"). The CRT further notes that there are no other claims to this account.

#### Status of the Account Owners as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Mathilde Schay was a Victim of Nazi Persecution. The Claimant stated that Account Owner Mathilde Schay was Jewish, and that she fled Germany in 1939 to escape Nazi persecution. The CRT notes that Account Owner Max Schay died in 1931 and was not a Victim of Nazi Persecution.

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

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information, demonstrating that Account Owner Mathilde Schay was his great-aunt, and that Account Owner Max Schay was his great-uncle. The CRT notes that the Claimant identified unpublished information about the Account Owners as contained in the Bank's records. The CRT notes that the Claimant submitted a copy of Account Owner Mathilde Schay's death certificate. The CRT further notes that it is plausible that this document is a document which most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owners were well known to the Claimant as family members, and all of this information supports the plausibility that the Claimant is related to the Account Owners, as he has asserted in his Claim Form.

The CRT notes that the Account Owner's grandson, Kurt Simon, did not submit a claim to the CRT and has indicated that he does not wish to be represented by the Claimant.

#### The Issue of Who Received the Proceeds

Given that Account Owner Max Schay died in 1931 and that Account Owner Mathilde Schay fled Germany because of Nazi persecution; that there is no record of the payment of the Account Owners' account to them nor any record of a date of closure of the account; that Account Owner Mathilde Schay and her heirs would not have been able to obtain information about her 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 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 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 Max Schay was his great-uncle and that Account Owner Mathilde Schay was his great-aunt, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

#### Amount of the Award

In this case, the Account Owners held a 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 SF 13,000.00. 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 his claim to determine whether there are additional Swiss bank accounts to which he 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  
31 August 2005

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