

# 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 Markus Silberstein**

Claim Number: 601295/AA<sup>1</sup>

Award Amount: 64,218.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Markus Silberstein (the “Account Owner”) at the [REDACTED] (the (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 an Initial Questionnaire and a Holocaust Claims Processing Office (“HCPO”) Claim identifying the Account Owner as her maternal uncle, Markus Silberstein, who was Jewish and was born on 20 September 1904 in Lemberg, Poland, to [REDACTED] and [REDACTED] née [REDACTED]. The Account Owner never married and did not have any children. The Account Owner also went by the names Maryk and Marcus. The Account Owner was known to have made several trips to Switzerland, where he deposited assets into a safe deposit box. The Account Owner was deported to Gross Rosen, where he was killed on 20 January 1942. The Claimant is the daughter of the Account Owner's sister, [REDACTED] née [REDACTED], who was married to [REDACTED]. The Claimant indicated that she was born on 26 July 1939 in London, England. In support of her claim, the Claimant has supplied birth and death certificates.

After the Second World War, the Bank issued a Protocole, dated 14 April 1946, that listed the contents of the safe and that verified that Markus Silberstein owned two safe deposit boxes, which were numbered 114 and 169, and a current account numbered 1079. Throughout the early 1960s the Claimant's mother corresponded with the Swiss government in an attempt to uncover

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<sup>1</sup> The Claimant submitted a claim, numbered B-00974, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned claim number 601295/AA.

information about the Account Owner's assets. In September 1967, the State of St. Gallen compensated the Claimant's mother, the Account Owner's sister, 5,441.00 Swiss Francs in cash, 710.00 Swiss Francs in gold, and 45.00 Swiss Francs for personal property, for a total payment of 6,196.00 Swiss Francs. It is unclear what assets this payment covered.

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

The bank records provided by the HCPO consist of correspondence between the Bank and the HCPO in New York, an inventory of the safe deposit box issued by the Bank in 1946, a 1955 receipt for the sale of gold coins and letters from the Bank to the Claimant's mother. According to these records, the Account Owner was Markus Silberstein. The bank records indicate that the Account Owner held two safe deposit boxes, numbered 114 and 169, and current account number 1079. These records indicate that the boxes were rented on 6 July and 23 August 1939. There is no indication when the current account was opened.

On 5 March 1946, employees of the St. Gallen branch of the Bank opened the Account Owner's safe deposit boxes for inventory, and an employee from St. Margrethen resealed them. According to the 1946 records, the safe deposit boxes held several items of personal property, including jewelry, cameras and cutlery. In addition, there is an indication that the Account Owner had 229.00 Swiss Francs in cash in the safe deposit boxes, which was credited to his current account. The 1946 inventory also lists one gold bar with serial number 3552 SBS, weighing 1,000 grams, twenty-three gold coins of twenty Swiss Francs, four gold coins of twenty French Francs, and four gold coins of twenty-five Austrian Schillings. The 1946 record also contains a handwritten note referencing the contents of receipt 3257, dated 16 June 1955. The receipt indicates that 13 Vreneli gold coins, 5 Helvetia gold coins, 4 Napoleon gold coins, and 4 gold Austrian Schilling coins, which were valued at 710.00 Swiss Francs, were sold and the sale amount was credited to account 1079 in the name of the estate of the Account Owner.

In a letter dated 30 March 1965, the Swiss government informs the Claimant's mother that several thousand Swiss Francs and other assets were being held in the Account Owner's name. The Claimant's mother is charged 95.00 Swiss Francs for the search and told that she must provide evidence that she is an heir to the Account Owner in order to proceed with a claim for the property.

On 8 September 1967, the Claimant's mother visited the Bank in person and received a payment in 1967 for some of the items in the safe deposit boxes. Specifically, the Claimant's mother received 5,441.00 Swiss Francs in cash, 45.00 Swiss Francs worth of personal property, and 710.00 Swiss Francs in gold. There is no indication in the records explaining for which property the 5,441.00 Swiss Francs were compensated, nor do the records show what personal property was valued at 45.00 Swiss Francs. According to the 1955 receipt, 13 Swiss Franc gold coins, four French Franc gold coins, and four Austrian Schilling gold coins were valued at 710.00 Swiss Francs. In a letter dated that same day, the bank declares the matter closed. The CRT notes that the total amount paid to the Claimant's mother was in partial payment for the closure of the accounts.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her uncle's name matches the unpublished name of the Account Owner.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Markus Silberstein and indicates that his date of birth was 20 September 1904 and place of birth was Lemberg, Poland, 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 Claimant filed an Initial Questionnaire with the Court in 1999 and an HCPO claim in May 1998 asserting her entitlement to a Swiss bank account owned by Markus Silberstein, prior to the publication in February 2001 of the 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"). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather in a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

### 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 was killed by the Nazis in Gross Rosen on 20 January 1942. As noted above, a person named Markus Silberstein is listed in the CRT database of victims of Nazi persecution.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that she is his niece. There is no information to indicate that the Account Owner has other surviving heirs.

### The Issue of Who Received the Proceeds

Given the Account Owner's death in the Holocaust, the fact that the bank records evidence the existence of his safe deposit accounts after World War II and the application of Presumptions (b) 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 uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the entire proceeds of the claimed accounts.

### Amount of the Award

The bank records indicate that as of 1946, the safe deposit boxes held several items of personal property, 229.00 Swiss Francs in cash, a gold bar, and thirty-one gold coins. In 1967, the Claimant's mother received a payment for some of these items, which included eighteen gold coins of twenty Swiss-Francs, four gold coins of twenty French Francs, and four gold coins of twenty-five Austrian Schillings. Thus, the CRT finds it plausible that the Claimant was not compensated for the 229.00 Swiss Francs in cash, the 1,000 gram gold bar and five of the Swiss gold coins.

According to information available from the Swiss National Bank, the average value of fine gold per kilogram in 1945 was 4,970.00 Swiss Francs, and the average value of a gold coin of twenty Swiss Francs was 30.50 Swiss Francs. The bank records indicate that the Account Owner held a gold bar weighing 1,000 grams, which is equal to one kilogram. Therefore, the Account Owner's gold bar was worth 4,970.00 Swiss Francs. The bank records also show that the Claimant's mother was paid for only eighteen of the twenty-three Swiss gold coins which the Account Owner held, leaving five Swiss gold coins for which no compensation has been paid. In 1945, those five Swiss gold coins were worth 30.50 Swiss Francs each, or a total value of 152.50 Swiss Francs. Thus, the total value of the account for which there has not yet been compensation paid is 5,351.50 Swiss Francs, including 229.00 Swiss Francs in cash, the gold bar worth 4,970.00 Swiss Francs, and the five Swiss gold coins worth 152.50 Swiss Francs. 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 a total award amount of 64,218.00 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 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  
April 1, 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:<sup>1</sup>

- 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;<sup>2</sup>
- 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.<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> See Bergier Final Report at 443-44, 446-49; see also ICEP Report at 81-83.

<sup>3</sup> 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).