

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Henrietta Hardy

**in re Account of Richard Sonnenfeld**

Claim Number: 203138/HM

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of Henrietta Hardy (the “Claimant”) to the account of Richard Sonnenfeld (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

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 the Account Owner as her maternal uncle, Richard Sonnenfeld, who was born on 10 September 1900 in Vienna, Austria, and was never married and had no children. The Claimant identified her uncle as an office worker who lived at Gärtnergasse 8 in Vienna III. The Claimant stated that her uncle was arrested in November 1938 during the Night of Broken Glass pogrom (“*Kristallnacht*”) and sent to Dachau concentration camp from which he was released in 1939. After his release, he fled to Venezuela. The Claimant stated that her uncle was not allowed to take any of his assets with him. In 1965, the Claimant’s uncle returned to Austria, where he died in 1987. Further, the Claimant stated that her uncle’s mother, Karoline Sonnenfeld, the Claimant’s maternal grandmother, also lived at Gärtnergasse 8 in Vienna III. Karoline Sonnenfeld was deported to Lodz, Poland on 23 October 1941 where she perished. The Claimant submitted a receipt of payment (“*Reichsfluchtsteuerbescheid*”) of taxes imposed by the Nazi authorities on Jews who wanted to leave Austria. This receipt documented payment by her grandmother and uncle in connection with her uncle’s flight from Austria. The Claimant also provided a declaration by her uncle’s mother, dated July 1938 and numbered 42013, made pursuant to the Austrian census of Austrian Jews’ assets. This declaration contains the reference number 42011 to a separate declaration of her uncle made pursuant to the same census.

The Claimant stated that she is the only niece of her uncle and his sole living heir. The Claimant stated that she was born to Dr. Jakob Strauss and Elsa Strauss, née Sonnenfeld, on 21 April 1920

at Gärtnergasse 8 in Vienna III. In support of her claim, the Claimant submitted her birth certificate.

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

The bank records consist of a power of attorney form and printouts from the Bank's database. According to these records, the Account Owner was Richard Sonnenfeld and the Power of Attorney Holder was Karoline Sonnenfeld, who resided at Gärtnergasse 8 in Vienna III, Austria. The bank records indicate that the Account Owner held a custody account.<sup>1</sup> The bank records do not show when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. 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 records that the Account Owner, the Power of Attorney Holder, or their heirs closed the 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 Richard Sonnenfeld. These records include an Austrian census form for Richard Sonnenfeld, numbered 42011, dated 14 July 1938. These records indicate that Richard Sonnenfeld was Jewish, that he was born on 10 September 1900, and that he was not married. The records show that Richard Sonnenfeld resided at Gärtnergasse 8 Vienna III, Austria and worked as a salaried employee (*Privatbeamter*). The records also show that Richard Sonnenfeld owned  $\frac{3}{4}$  of real estate at Langegasse 2 in Vienna VIII, worth approximately 58,000.00 Reichsmarks (1938 value), as well as other assets. The Austrian census records also contain documents that show that Richard Sonnenfeld was compensated under the 1961 Austrian Compensation Fund Act (*Fonds zur Abgeltung von Vermögensverlusten politisch Verfolgter, "Abgeltungsfonds"*). These records make no mention of assets held in a Swiss bank account.

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<sup>1</sup> The bank records contain a power of attorney form that references a "Titeldepot," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. The CRT concludes that it is plausible that the Account Owner held such an account.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant has identified her uncle's street address in Vienna, Austria before the Second World War, which matches the unpublished address contained in the bank documents. Additionally, the documents submitted by the Claimant show that Karoline Sonnenfeld lived at the same address as the Account Owner. Finally, the Claimant submitted signature samples of both the Account Owner and the Power of Attorney Holder, which match the signatures contained in the bank records.

### 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 lived in Austria until he fled to Venezuela in 1939.

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

The Claimant has plausibly demonstrated that the Account Owner is her maternal uncle. There is no information to indicate that the Account Owner has other surviving heirs.

### The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. The CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis. Furthermore, the facts of this case are similar to other cases that have come before the CRT in which account owners are interned in the Dachau concentration camp for a relatively short time, and then, near the time of their release, Swiss accounts held by the account owners are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and given the application of Presumption of (h) and (j) as provided by Article 28 of the Rules Governing the Claims Resolution Process (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder 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 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 proceeds of the claimed account.

#### Amount of the Award

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 present 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. 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 156,000.00 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 21, 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).