

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED 1],

to Claimant [REDACTED 2],

and to Claimant [REDACTED 3]

## **in re Accounts of Elisabeth Spitzer**

Claim Numbers: 001413/MBC;<sup>1</sup> 220123/MBC; 789634/MBC<sup>2</sup>

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the published accounts of Elisabeth Spitzer, the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) to his own account,<sup>3</sup> and the claim of [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the account of Hans Spitzer.<sup>4</sup> This Award is to the published accounts of Elisabeth Spitzer (the “Account Owner”) 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.

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<sup>1</sup> Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) submitted one additional claim, which is registered under the Claim Number 001412. In a separate decision, the CRT awarded the account of Herman Steiner to Claimant [REDACTED 1]. See *In re Account of Herman Steiner* (approved on 13 May 2005).

<sup>2</sup> Claimant [REDACTED 3] (“Claimant [REDACTED 3]”) did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered ENG 0822 099, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 789634.

<sup>3</sup> In a separate decision, the CRT treated the claim of Claimant [REDACTED 2] (“Claimant [REDACTED 2]”) to the accounts of Felix Haas, Siegmund Schick and Marianne Haas (approved on 24 April 2007).

<sup>4</sup> In a separate decision, the CRT treated the claim of Claimant [REDACTED 3] to the accounts of Hans Spitzer (approved on 4 August 2008).

## Information Provided by the Claimants

### Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as his mother's cousin, Elisabeth (Betty) Spitzer, who was married to [REDACTED]. Claimant [REDACTED 1] stated that his relative, who was Jewish, resided in Vienna, Austria until she was deported by the Nazis, and that she and her husband perished during the Second World War. According to Claimant [REDACTED 1], his relative did not have any children. Claimant [REDACTED 1] indicated that he was born on 27 March 1930 in Plovdiv, Bulgaria.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire ("IQ") to the Court in 1999, asserting his entitlement to a Swiss bank account owned by Betty Spitzer, Ignatz Spitzer, Eugenie Steiner and Hermann Steiner.<sup>5</sup>

### Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as his maternal aunt, Elizabeth Spitzer, née Schick. In a telephone conversation with the CRT, Claimant [REDACTED 1] stated that his aunt was born in approximately 1900 in Vienna, and was married to [REDACTED] in Vienna. Claimant [REDACTED 2] explained that his aunt and uncle, who were Jewish, fled Vienna to England sometime shortly after the incorporation of Austria into the German Reich in March 1938 (the "Anschluss"). Claimant [REDACTED 2] stated that in 1940 his aunt emigrated from England to the United States, where she later died. According to Claimant [REDACTED 2], his aunt's sister and brother-in-law, [REDACTED], née [REDACTED], and [REDACTED] (Claimant [REDACTED 2]'s parents) and her mother (Claimant [REDACTED 2]'s maternal grandmother) perished during the Second World War. Claimant [REDACTED 2] indicated that he was born on 20 April 1921 in Vienna.

### Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted an IQ identifying the Account Owner as his mother, Elisabeth Spitzer, who was married to his father, [REDACTED]. Claimant [REDACTED 3] indicated that his parents, who were Jewish, resided in Vienna. Claimant [REDACTED 3] further indicated that, in 1938, his father was deported to Dachau, where he was forced to perform slave labor until 1939, and that after his release, his parents emigrated to Detroit, Michigan, in September of that same year. According to Claimant [REDACTED 3], his great-grandmother, grandfather and aunt all perished during the Second World War. Claimant [REDACTED 3] indicated that he was born on 14 March 1951.

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<sup>5</sup> With respect to Ignatz Spitzer and Eugenie Steiner, the CRT did not locate an account belonging to either of them 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 in the Rules Governing the Claims Resolution Process, as amended (the "Rules"). As noted above, the CRT awarded the account of Herman Steiner to Claimant [REDACTED 1]. See *In re Account of Herman Steiner* (approved on 13 May 2005).

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

The Bank's record consists of a customer card. According to this record, the Account Owner was *Frau* (Mrs.) Elisabeth Spitzer, who resided in Vienna, Austria.

The Bank's record indicates that the Account Owner held a demand deposit account and a custody account, numbered L53842. The Bank's record further indicates that the demand deposit account was opened on 30 April 1934 and closed on 20 May 1938, and that custody account L53842 was closed on 19 May 1938. The amounts in the accounts on the dates of their closure are unknown. There is no evidence in the Bank's record that the Account Owner or her heirs closed the accounts and received the proceeds themselves.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of an identification card and valuation cards and indicate that custody account L53842 contained 4.5% *Austrian guaranteed Conversion Loan 1934/59 Englische Tranche* bonds with a nominal value of 1,000.00 British Pounds ("£"), which were transferred on 14 May 1938 to another custody account, numbered 60327. The Bank's records do not indicate any further information regarding custody account 60327.

## **The CRT's Analysis**

### Joinder of Claims

According to Article 37(1) of 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 Claimants in one proceeding.

### Identification of the Account Owner

Claimant [REDACTED 1]'s mother's cousin's name and country of residence, Claimant [REDACTED 2]'s aunt's name<sup>6</sup> and country of residence and Claimant [REDACTED 3]'s mother's name and country of residence match the published name and country of residence of the Account Owner. The Claimants each identified the Account Owner's city of residence and married name, which matches unpublished information about the Account Owner contained in the Bank's record.

The CRT further notes that Claimant [REDACTED 1] filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Betty Spitzer, and that Claimant [REDACTED 3] filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Hans Spitzer, prior to the publication in February 2001 of the published list of

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<sup>6</sup> The CRT notes that Elizabeth is a spelling variation of the name Elisabeth.

accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of victims of Nazi persecution (“ICEP” or the “ICEP List”). This indicates that Claimant [REDACTED 1] and Claimant [REDACTED 3] have based their present claims not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name or family name as their relatives, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that Claimant [REDACTED 1] and Claimant [REDACTED 3] had reason to believe that their relatives owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 1] and Claimant [REDACTED 3].

Finally, the CRT notes that Claimant [REDACTED 1]’s relative, Claimant [REDACTED 2]’s relative and Claimant [REDACTED 3]’s relative are not the same person. However, given that the Claimants have identified all published and unpublished information about the Account Owner that is available in the Bank’s record; that the information provided by each claimant supports and in no way contradicts any information available in the Bank’s record; that there is no additional information in the Bank’s record which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that the other claim to this account was disconfirmed because that claimant provided a different married name than the married name of the Account Owner, the CRT finds that Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 3] have each plausibly identified the Account Owner.

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

Claimant [REDACTED 1] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner was Jewish, that she was deported from Vienna, Austria, and that she and her husband perished during the Second World War.

Claimant [REDACTED 2] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 2] stated that the Account Owner was Jewish, that she fled from Vienna shortly after the *Anschluss*, and that her sister, brother-in-law and mother all perished during the Second World War.

Claimant [REDACTED 3] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 3] stated that the Account Owner was Jewish, that she and her husband resided in Vienna until 1939, that her husband was deported to Dachau, where he was forced to perform slave labor, and that her son’s great-grandmother, grandfather and aunt all perished during the Second World War.

#### The Claimants’ Relationship to the Account Owner

##### *Claimant [REDACTED 1]*

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was his

mother's cousin. The CRT further notes that Claimant [REDACTED 1] identified unpublished information about the Account Owner as contained in the Bank's record, and that Claimant [REDACTED 1] filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 1], prior to the publication in February 2001 of the ICEP List. 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 Claimant [REDACTED 1] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 1] is related to the Account Owner, as he has asserted in his Claim Form. There is no information to indicate that the Account Owner has other surviving heirs.

*Claimant [REDACTED 2]*

Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was Claimant [REDACTED]'s aunt. The CRT further notes that Claimant [REDACTED 2] identified unpublished information about the Account Owner as contained in the Bank's record. 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 Claimant [REDACTED 2] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 2] is related to the Account Owner, as he has asserted in his Claim Form. There is no information to indicate that the Account Owner has other surviving heirs.

*Claimant [REDACTED 3]*

Claimant [REDACTED 3] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was Claimant [REDACTED 3]'s mother. The CRT further notes that Claimant Spitzer identified unpublished information about the Account Owner as contained in the Bank's record, and that Claimant [REDACTED 3] filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 3], prior to the publication in February 2001 of the ICEP List. 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 Claimant [REDACTED 3] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 3] is related to the Account Owner, as he has asserted in his Claim Form. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The Bank's records indicate that the demand deposit account was closed on 20 May 1938 and custody account L53842 was closed on 19 May 1938, both after the *Anschluss*. The records also indicate that the *4.5% Austrian guaranteed Conversion Loan 1934/59 Englische Tranche* bonds with a nominal value of £ 1,000.00 contained in the account were transferred on 14 May 1938 to another custody account, numbered 60327. The CRT notes that the Bank's records do not indicate who owned the account numbered 60327, into which these securities were transferred. Even if this account were owned by the Account Owners, the records do not indicate when this

account was closed, or the disposition of the securities contained within. Accordingly, the CRT concludes that the Account Owners did not receive these securities or their proceeds.

With regard to both the demand deposit and custody accounts, given that according to Claimant [REDACTED 1], the Account Owner was deported from Vienna, and that she and her husband perished during the Second World War, and that according to Claimant [REDACTED 2], the Account Owner and her husband fled from Vienna shortly after the *Anschluss*; that there is no record of the payment of the Account Owner's accounts to her; that the Account Owner and her heirs would not have been able to obtain information about her accounts 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 (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her 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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was his mother's cousin, Claimant [REDACTED 2] has plausibly demonstrated that the Account Owner was his aunt, and Claimant [REDACTED 3] has plausibly demonstrated that the Account Owner was his mother, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

#### Amount of the Award

In this case, the Account Owner held one demand deposit account and one custody account. With respect to the demand deposit 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 investigation carried out pursuant to the instructions of ICEP (the "ICEP Investigation"), in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs ("SF").

With respect to custody account L53842, according to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal value on the date the account owner is deemed to have lost control over the account. It is presumed that the account owner, if able to decide freely, could have opted to hold the bond to maturity to avoid a capital loss. However, if a bond is in default, the award valuation shall be the market value on or as close as possible to the relevant date.

According to the additional information from the Bank, the Account Owner held a custody account with *4.5% Austrian guaranteed Conversion Loan 1934/59 Englische Tranche* bonds, with a face value of £ 1,000.00. These bonds were in default and trading at 36% when transferred on 14 May 1938. Therefore, these bonds shall be valued at their market value of £ 360.00, which at the time was equivalent to SF 7,693.20.<sup>7</sup> According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00.

Therefore, the combined Article 29 value for the two accounts at issue is SF 15,140.00. The current value of this amount is determined 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 189,250.00.

### Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each Claimant has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] is entitled to one-third of the Award amount, Claimant [REDACTED 2] is entitled to one-third of the Award amount, and Claimant [REDACTED 3] is entitled to one-third of the Award amount.

### **Scope of the Award**

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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  
16 April 2010

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<sup>7</sup> The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938. The CRT uses official exchange rates when making currency conversions.