

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to Claimant [REDACTED 1],
also acting on behalf of [REDACTED 2], [REDACTED 3], [REDACTED 4],
[REDACTED 5] and [REDACTED 6]
represented by Stephan Hofert

**in re Accounts of Hans Julius Lebenbaum, Account of M.G.¹, and
Account of *Fondation de Famille Silvretta***

Claim Number: 501871/BW

This Certified Denial is based upon the claim of [REDACTED 1] (the “Claimant”) to the published accounts of Hans Julius Lebenbaum. This Denial is to the published accounts of Hans Julius Lebenbaum (“Account Owner Lebenbaum”), the unpublished account of M.G. (“Account Owner M.G.”) over which Account Owner Lebenbaum held power of attorney, and the unpublished account of *Fondation de Famille Silvretta*, a Swiss family foundation, (“Account Owner *F.F.S.*”) (together the “Account Owners”) at the Geneva, Basel and New York branches of the [REDACTED] (the “Bank”).²

All denials 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 owners, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying Account Owner Lebenbaum as his paternal grandfather, Hans Julius Lebenbaum, who was born on 31 March 1867 in Holzminden, Germany, and was married to [REDACTED] (formerly [REDACTED]), née [REDACTED]. The Claimant stated that his grandfather, who was Jewish, resided in Hamburg, Germany at Schauenburgerstrasse 21, Rathausstrasse 29 and Mollerstrasse 12, and was a businessman and

¹ The CRT notes that the Claimant did not identify Account Owner M.G. However, as detailed below and referenced in the Banks’ records, this person was involved with various accounts held by Account Owner Lebenbaum. In order to preserve this person’s identity but also to permit a full description of the activities on the accounts, the CRT will identify this person in this decision through the use of this person’s first and last name initials.

² The CRT notes that the February 2001 published list of accounts determined by the Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”) indicates that Hans Lebenbaum owned two accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence that Hans Lebenbaum actually held five accounts.

the owner of mill companies. The Claimant explained that his grandparents had four children; [REDACTED] (formerly [REDACTED]) (the Claimant's father), [REDACTED], née [REDACTED], [REDACTED] (formerly [REDACTED]), and [REDACTED], née [REDACTED]. The Claimant stated that his grandfather resided with his family in Germany until 1936 when they fled to Saint Moritz, Switzerland, and Geneva, Switzerland, and in 1938 to Copenhagen, Denmark and subsequently to Montevideo, Uruguay, where his grandfather died on 16 July 1941. The Claimant explained that in 1939 his grandfather's German citizenship was revoked and that subsequently his property and pension were confiscated by the Nazis.

The CRT notes that the Claimant did not identify either Account Owner M.G. or Account Owner F.F.S.

In support of his claim, the Claimant submitted copies of documents, including:

- (1) a letter from an insurance company *Nordstern AG*, dated 8 March 1937, to the Foreign Exchange Office (*Devisenstelle*) in Hamburg, indicating that Hans Lebenbaum, formerly of Holzminden, was residing as of mid-1936 in St. Moritz;
- (2) an excerpt from a Nazi decree of 5 May 1939, indicating that the German citizenship of Hans Julius Lebenbaum, who was born on 31 March 1867 in Holzminden, was revoked, and his assets confiscated;
- (3) a letter from the Gestapo's office in Hamburg (*Geheime Staatspolizei, Staatspolizeileitstelle Hamburg*) to *Jonas Söhne & Co.*, a banking house located in Hamburg, dated 6 May 1939, informing the bank that all the domestic assets of the Jewish emigrant Hans Julius Lebenbaum and his wife [REDACTED], née [REDACTED], who were residing in Geneva, including [REDACTED]'s securities worth 69,000.00 Reichsmark ("RM") on deposit with *Jonas Söhne & Co.*, had been seized by the Reich;
- (4) a letter from the Berlin Finance Authorities (*Finanzamt Moabit-West*), dated 26 May 1941, to the *Vita Lebensversicherungs AG* insurance company, indicating that the property of Hans Julius Lebenbaum had been confiscated for the benefit of the Reich;
- (5) his grandmother's death certificate, indicating that [REDACTED], née [REDACTED], died on 22 March 1959 in Berkley, California;
- (6) his grandfather's certificate of inheritance (*Erbschein*) issued by the Hamburg Local Court (*Amtsgericht Hamburg*), dated 28 March 1961, which indicates that Hans Julius Lebenbaum died on 16 July 1941, and that his heirs were [REDACTED] Lebenbaum, née [REDACTED], who died on 22 March 1959 in Berkley; [REDACTED] (formerly [REDACTED]); [REDACTED] (formerly [REDACTED]); [REDACTED], née [REDACTED]; and [REDACTED], née [REDACTED], and which further indicates that the certificate of inheritance was only valid for the deceased's domestic assets;
- (7) his aunt's death certificate, indicating that [REDACTED], née [REDACTED], died on 10 February 1994, that Hans Julius Lebenbaum was her father, and that [REDACTED 2] was her nephew;
- (8) his aunt's death certificate, indicating that [REDACTED] died on 23 January 1998, that H.L. Landers and [REDACTED] were her parents, and that [REDACTED 3] was her son;

- (9) his aunt's last will, indicating that [REDACTED]'s children were [REDACTED 3] and [REDACTED 4];
- (10) a collective certificate of inheritance (*Sammelerbschein*) issued by the Bad Doberan Local Court (*Amtsgericht Bad Doberan*), dated 28 October 1996, which indicates that [REDACTED] died on 8 May 1979, leaving his wife [REDACTED] as his heir, who subsequently died on 14 April 1987, leaving her son [REDACTED] as her heir;
- (11) his cousin's death certificate, indicating that [REDACTED] died on 20 September 2003, and that [REDACTED 5] was his daughter;
- (12) his cousin's last will, indicating that [REDACTED]'s children were [REDACTED 6] and [REDACTED 5];
- (13) his father's death certificate, indicating that [REDACTED] died on 23 December 2003 and that [REDACTED 1] was his son; and
- (14) his father's last will, indicating that [REDACTED]'s children were [REDACTED 2] and [REDACTED 1].

The Claimant indicated that he was born on 26 February 1948 in New York. The Claimant is representing: his brother, [REDACTED 2], who was born on 11 September 1945 in New York; his cousins [REDACTED 3] and [REDACTED 4] (the children of [REDACTED]), who were born on 14 June 1925 and 18 August 1927, respectively, in Kiel, Germany; and his cousin's daughters, [REDACTED 5] and [REDACTED 6] (the grandchildren of [REDACTED]), who were born on 15 February 1954 in Roselyn Heights, New York, and 23 May 1949 in New York, respectively.

Information Available in the Bank's Records

The Bank's records consist of a power of attorney form, an account identification card, a list of accounts frozen pursuant to the United States Trading with the Enemy Act ("1941 Freeze"), an internal Bank memorandum, a letter from the Bank to an attorney regarding the estate of Account Owner Lebenbaum, and printouts from the Bank's database. Additionally, the Bank's records also contain database printouts derived from documents prepared pursuant to the Federal Decree of 20 December 1962 (the "Federal Decree"), in which the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known, or presumed to have been, victims of racial, religious, or political persecution (the "1962 Survey").

According to the Bank's records, described individually in detail below, Account Owner M.G. held one custody account at the Bank's Geneva branch; Account Owner Lebenbaum held one demand deposit account and one custody account numbered 20580, at the Bank's Geneva branch; a demand deposit and a custody account at the Bank's Basel branch; a custody account at the Bank's New York branch; and Account Owner *F.F.S.* held an account, the type of which is not indicated.

Account of Account Owner M.G.

The Bank's record consists of a power of attorney form, and indicates that Account Owner M.G. resided at 6, *rue de Beaumont* in Geneva. This record further indicates that Account Owner M.G. gave power of attorney over her custody account on 13 March 1939 to Hans Lebenbaum (Account Owner Lebenbaum), whose address is also indicated as 6, *rue de Beaumont* in Geneva. According to this record, the power of attorney granted by Account Owner M.G. to Account Owner Lebenbaum was revoked on 28 May 1941. The Bank's record does not indicate the value of this account, nor does this record contain information about the disposition of the account.

Accounts of Account Owner Lebenbaum

Geneva Accounts

The Bank's records consist of an account identification card and printouts from the Bank's database, and indicate that Account Owner Lebenbaum was Hans Julius Lebenbaum of Geneva. These records indicate that Account Owner Lebenbaum held a blocked custody account, numbered 20580, and a demand deposit account. The Bank's records further indicate that the value of the demand deposit account was 1,128.83 Swiss Francs ("SF"), but do not indicate the value of the custody account. These records do not indicate when the demand deposit account was closed, however a notation on the account identification card indicates that the custody account was closed on 3 November 1948.

Basel Accounts

The Bank's records consist of ledger sheet entries, and database printouts pertaining to information submitted by the Bank pursuant to the 1962 Survey. These records indicate that Account Owner Lebenbaum was Hans J. Lebenbaum, and lists addresses for Account Owner Lebenbaum in Hamburg at Schauenburgerstrasse 21, and Mollerstrasse 12-13, and in Montevideo at Boite Postale 158. These records further indicate that Account Owner Lebenbaum held a demand deposit account and a custody account at the Basel branch of the Bank. According to these records, the demand deposit account had a balance of SF 1,600.60, and the custody account contained one tranche of 3¼% *Eidg. Anleihe 1946* bonds with a nominal value of SF 5,000.00, and a market value of SF 4,975.00. Additionally, these records indicate that the value of SF 6,575.60 was reported to the Registration Office for Assets of Missing Foreigners (the "Registration Office") (*Meldestelle für Vermögen verschwundener Ausländer*) on 6 December 1963 as a 'questionable' case (*Zweifelsfall*) pursuant to the 1962 Survey. According to these records, on 5 April 1967, Dr. H. Häberlin was appointed as the custodian of these accounts, as prescribed by the Federal Decree.

Finally, the Bank's records indicate that the custodian found Account Owner Lebenbaum's heirs (*Erben gefunden*), and that the demand deposit account and the custody account were closed on 15 March 1972 and the assets returned to Account Owner Lebenbaum's children: [REDACTED] (formerly [REDACTED], until 31 December 1938), [REDACTED] (formerly [REDACTED], until 16 June 1940), [REDACTED] and [REDACTED]- [REDACTED].

New York Accounts

The Bank's records include a list of foreign owned accounts at the New York branch of the Bank that were frozen in the 1941 Freeze. The Bank's records indicate that Account Owner Lebenbaum's custody account at the New York branch held one tranche of 3¾% *Uruguay Rep. Ext. Readj. SF Dollar* bonds, with a nominal value of 2,000.00 United States Dollars ("US \$"), and 150 shares *Gillette Safety Razor Co.*, for which no value is indicated.

The Bank's records further contain an internal memorandum, prepared by Mr. Wilson of the Bank's New York branch on 6 May 1942, which indicates that in 1938, Account Owner Lebenbaum made a holographic (handwritten) will in Geneva, naming Account Owner M.G. as his sole beneficiary. In addition, the Bank's records indicate that Account Owner Lebenbaum died on 16 July 1941 in Montevideo, leaving an account at the Bank's New York branch in his own name, as well as an account in the name of *Fondation Silvretta* (Account Owner *F.F.S.*), a Swiss family foundation.

According to this memorandum, there was a dispute regarding the estate of Account Owner Lebenbaum, between Account Owner M.G., who is indicated as residing in Montevideo at that time, and Account Owner Lebenbaum's spouse and children. This memorandum indicates that Account Owner M.G. was represented by an attorney named Mr. Jacobi of the office of René Loeb of 52 Wall Street [in New York], and that the Bank had received a letter from another New York-based law firm who purported to represent the spouse and children of Account Owner Lebenbaum, however their representation had not yet been confirmed. The memorandum further indicates that Mr. Wilson was aware that Mr. Jacobi was in the process of acquiring the necessary New York State and federal tax waivers, and had been instructed to inform the attorneys for the spouse and children of Account Owner Lebenbaum once Mr. Jacobi made an official claim, as well as advise Mr. Jacobi of the necessity of acquiring a Treasury Department license [in order to unfreeze the account]. Finally the memorandum indicates that as the acquisition of a Treasury Department license would take some time, Mr. Wilson was confident that there would be sufficient time to settle the conflicting claims of the parties.

There is no indication in the Bank's records of the date on which the account was released from the 1941 Freeze; however the CRT notes that all Swiss assets deposited in the United States were unfrozen after the signature of the Washington Agreement on 25 May 1946.

Account of Account Owner *F.F.S.*

As mentioned above, the internal memorandum prepared by the Bank's New York branch references an account in the name of *Fondation Silvretta* (Account Owner *F.F.S.*), a Swiss family foundation, and implies that Account Owner Lebenbaum held an ownership interest in this account.

Additionally, the Bank's records contain a letter dated 22 November 1943 from the New York branch of the Bank to Paul Saurel, an attorney in New York, regarding the estate of Hans J. Lebenbaum (Account Owner Lebenbaum), which indicates that the Bank had recently received a notice of additional tax and interest owed from the Collector of Internal Revenue (IRS) in the

amount of US \$4,430.21, based on the estate tax return prepared by the Bank. According to this letter, the Bank indicates that they presume the additional sum owed was on account of the Bank's inclusion of the assets of the *Fondation de Famille Silvretta*, which according to the Bank, were included on the estate tax return "for information purposes only." This letter further indicates that the Bank had contacted Mr. René Loeb, the attorney for the *Foundation*, seeking instructions as to whether the tax should be paid. In the event that no instructions were received from René Loeb, the letter inquires of Mr. Saurel whether the Bank should pay the amount under protest, or in the event Mr. Loeb advises the Bank not to pay, what the resulting liability of the Bank would be in regards to the Collector of Internal Revenue.

The Bank's records do not indicate the type or value of this account, nor do these records contain information about the disposition of the account.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Lebenbaum. The Claimant's grandfather's name and city and country of residence match the published name and city and country of residence of the Account Owner. The Claimant identified Account Owner Lebenbaum's additional cities and countries of residence, the date of Account Owner Lebenbaum's death and names of Account Owner Lebenbaum's children, which matches unpublished information about Account Owner Lebenbaum contained in the Bank's records.

The CRT notes that the Claimant did not identify Account Owner *F.F.S.*, but did identify Account Owner Lebenbaum, whom the Bank's records identified as having an implied ownership interest in the account belonging to this foundation.

In support of his claim, the Claimant submitted documents, including a letter from an insurance company, a letter from the Gestapo, an excerpt from a Nazi decree and a letter from the Berlin Finance Authorities, which provide independent verification that the person who is claimed to be Account Owner Lebenbaum had the same name and resided in the same towns recorded in the Bank's records as the name and cities of residence of Account Owner Lebenbaum.

The CRT notes that the Claimant did not identify Account Owner M.G.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owners as a Victim of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Lebenbaum was a Victim of Nazi Persecution. The Claimant stated that Account Owner Lebenbaum was Jewish, that he resided in Nazi Germany until 1936 when he fled to Switzerland, and subsequently to Denmark and ultimately immigrated to Uruguay. Moreover, the Claimant stated that Account Owner Lebenbaum's German citizenship was revoked in 1939 and that subsequently his property and

pension were confiscated by the Nazis. The CRT notes that the Bank's records show that Account Owner Lebenbaum had an ownership interest in the account of Account Owner *F.F.S.*

The Claimant also submitted an excerpt from a Nazi decree, indicating that the German citizenship of Hans Julius Lebenbaum was revoked; a letter from the Gestapo, indicating that Hans Julius Lebenbaum was Jewish and that his and his wife [REDACTED]'s property was seized by the Gestapo; and a letter from the Berlin Finance Authorities, indicating that the property of Hans Julius Lebenbaum was confiscated by the Nazis.

The CRT notes that the Claimant did not identify Account Owner M.G. and provided no information as to whether this individual was a Victim or Target of Nazi Persecution.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to Account Owner Lebenbaum, who also held an ownership interest in the account owned by Account Owner *F.F.S.*, by submitting specific information and documents, demonstrating that Account Owner Lebenbaum was the Claimant's grandfather. These documents include his father's death certificate, indicating that [REDACTED 1] was [REDACTED]'s son, his father's last will indicating that [REDACTED 1] and [REDACTED 2] were [REDACTED]'s sons, and his aunt's death certificate, indicating that Hans Julius Lebenbaum was [REDACTED]'s father and that [REDACTED 2] was her nephew. There is no information to indicate that Account Owner Lebenbaum has other surviving heirs other than the parties whom the Claimant is representing.

As noted above, the CRT did not identify Account Owner M.G. and did not demonstrate that he or the parties he represents is related to this individual.

The Basis for the Denial

Account of Account Owner M.G.

With respect to Account Owner M.G.'s one custody account in Geneva, the CRT notes that the Claimant did not identify Account Owner M.G. as his relative, and that under Swiss law, a power of attorney holder is not considered to be the owner of an account. In this case, the Bank's records indicate that the power of attorney was revoked by Account Owner M.G. on 28 May 1941, and additional records indicate that Account Owner Lebenbaum, who held power of attorney over this account, died on 16 July 1941. Although the Bank's records indicate that in 1938 Account Owner Lebenbaum made a holographic (handwritten) will in Geneva, naming Account Owner M.G. as his sole beneficiary, there is no evidence to indicate that this testamentary relationship was reciprocal, *i.e.*, that Account Owner Lebenbaum was the sole beneficiary of Account Owner M.G. The CRT notes that even if Account Owner M.G. had not revoked the power of attorney granted to Account Owner Lebenbaum, after a power of attorney holder dies, his or her powers in an account no longer exist, and they do not pass to his or her heirs. Therefore, even though the Claimant has identified the power of attorney holder as his relative, the Claimant is not entitled to the account, as there is no evidence in the Bank's records that a familial or appropriate testamentary relationship existed between the Account Owner M.G.

and Account Owner Lebenbaum. The CRT notes that, even if the Claimant had demonstrated that he was entitled to this account (which he has not), the Claimant has not provided any information that demonstrates that Account Owner M.G. was a Victim or Target of Nazi Persecution. The Claimant also did not provide any information about the fate of Account Owner M.G. which would allow an analysis with regard to the ultimate fate of this account.

Accounts of Account Owner Lebenbaum

The CRT notes that, with respect to all of the accounts of Account Owner Lebenbaum, the Bank's records show that Account Owner Lebenbaum remained in contact with the Bank after he fled Germany and after he arrived in Switzerland and, in some case, in Uruguay.

Geneva Accounts

With respect to Account Owner Lebenbaum's one custody account, numbered 20580, and one demand deposit account at the Geneva branch, the account identification card for the custody account indicates that this account was closed in 1948, which the CRT also considers as the closure date of the demand deposit account. Given that in 1942, the New York branch of the Bank was aware of the conflicting claims to Account Owner Lebenbaum's estate, as between Account Owner M.G., and the spouse and children of Account Owner Lebenbaum, and given the fact that Account Owner M.G. also held an account at the Geneva branch of the Bank and would most likely have informed the New York branch of the Bank as to the existence of the Geneva accounts of Account Owner Lebenbaum in furtherance of her claim to the assets of the estate, and given that the account was subsequently closed in 1948, and given, as noted above, that the Bank's records show that Account Owner Lebenbaum resided in Geneva, the CRT concludes that the conflicting claims to the estate were subsequently settled, and Account Owner Lebenbaum's heir(s) received the proceeds of the claimed accounts.

Basel Accounts

With respect to the one custody account and one demand deposit account of Account Owner Lebenbaum in Basel, which were reported in the 1962 Survey, the Bank's records indicate that these accounts were closed on 15 March 1972 and the proceeds paid out to Account Owner Lebenbaum's heirs: [REDACTED] (formerly [REDACTED]), [REDACTED] (formerly [REDACTED]), [REDACTED] and [REDACTED]-Lebenbaum, who are all relatives of the Claimant. Therefore, the CRT concludes that Account Owner Lebenbaum's heirs received the proceeds of the claimed accounts.

New York Accounts

With respect to Account Owner Lebenbaum's custody account frozen pursuant to the 1941 Freeze, although there is no indication in the Bank's records of the date on which the account was released from the 1941 Freeze, the CRT notes that all Swiss assets deposited in the United States were unfrozen after the signature of the Washington Agreement on 25 May 1946. Further, the Bank's records indicate that the New York branch of the Bank was aware of the death of Account Owner Lebenbaum, as well as the competing claims to his estate. Additionally, the

internal memorandum prepared by the Bank's New York branch indicates that the attorney for Account Owner M.G. would be instructed to obtain a Treasury Department waiver to secure the release of the account, upon presenting his claim to the Bank. Given that the Bank was aware of the existence of the account and the competing claims to the estate of Account Owner Lebenbaum, that information in the Bank's records indicates that it was foreseen that a Treasury Department waiver would be acquired to secure the release of the account, and given that ultimately all Swiss assets deposited in the United States were unfrozen after the signature of the Washington Agreement on 25 May 1946, the CRT therefore concludes that Account Owner Lebenbaum's heir(s) received the proceeds of the claimed accounts.

Account of Account Owner F.F.S.

With respect to Account Owner Lebenbaum's interest in an account of unknown type in the name of Account Owner *F.F.S.*, the Bank's records do not specify the exact ownership interest of Account Owner Lebenbaum in the account of Account Owner *F.F.S.* However the CRT concludes that the actions of the Bank corresponding with a representative of Account Owner Lebenbaum's estate regarding the account of Account Owner *F.F.S.* indicates that this banking relationship was known to representatives of Account Owner Lebenbaum's estate, and that they could dispose of Account Owner Lebenbaum's share in this account and receive its proceeds. Therefore, the CRT concludes that no award is appropriate for this account.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the Claimant may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal
17 December 2010