

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Denial**

to Claimant [REDACTED]  
represented by Walter Friedrich

## **in re Accounts of Erwin Rubin and Marcel Rubin**

Claim Numbers: 501772/HS; 501773/HS

This Certified Denial is based upon the claims of [REDACTED] (the “Claimant”) to the published accounts of Erwin Rubin (“Account Owner Erwin Rubin”) and Marcel Rubin (“Account Owner Marcel Rubin”) (together the “Account Owners”), over which Olga Maria Rubin (“Power of Attorney Holder Olga Rubin”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”); and the published account of Account Owner Erwin Rubin, over which Marcel Rubin and Power of Attorney Holder Olga Rubin held power of attorney, at the Bank.

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 Claim Forms identifying himself as the legal heir of Account Owner Marcel Rubin. The Claimant stated that Erwin Rubin was Marcel Rubin’s father, and that Olga Rubin was Marcel Rubin’s sister.

The Claimant stated that Erwin Rubin, who was Jewish and a finance official, was born on 6 February 1869 in Tarnow, Poland, and that prior to the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), he resided at Mariahilferstrasse 31 in Vienna, Austria. The Claimant stated that some time in 1938, Erwin Rubin fled Austria for Neuilly sur Seine, France, and later Mexico. According to the Claimant, Erwin Rubin was married to [REDACTED], née [REDACTED], and the couple had two children: Marcel Rubin, who was born on 7 July 1905 in Vienna, and Olga Maria Rubin, who was born on 8 April 1907, also in Vienna.

The Claimant stated that Marcel Rubin, who was Jewish, and was a well-known musical composer. The Claimant explained that Marcel Rubin fled Austria to France some time in 1938, and that some time before 1942, he was interned for approximately one year in the Damigny concentration camp in France. According to the Claimant, in 1942 Marcel Rubin fled France for

Mexico, where he married [REDACTED] in 1945. The Claimant stated that Marcel and [REDACTED] Rubin did not have any children.

The Claimant stated that Erwin Rubin died on 2 May 1947 in Paris, that Marcel Rubin died on 12 May 1995 in Vienna, and that Marcel Rubin bequeathed his estate to the Claimant.

According to the Claimant, Marcel Rubin's sister, Olga Maria Rubin was married to [REDACTED]. The Claimant stated that Olga and [REDACTED] had one son, [REDACTED].

In support of his claims, the Claimant submitted copies of:

- (1) The last will of Marcel Rubin, dated 22 December 1986, indicating that upon his wife's death, his heir would be Prof. Dr. [REDACTED] of Vienna (the Claimant).
- (2) An addendum to the last will of Marcel Rubin, dated 20 May 1993, indicating that a collection of musical scores was to be inherited by his nephew, [REDACTED], of France.
- (3) An inheritance certificate, indicating that the estate of Prof. Dr. Marcel Rubin was inherited entirely by Prof. Dr. [REDACTED], who was born on 15 October 1944, and resided in Vienna.
- (4) The declaration of death of Prof. Dr. Marcel Rubin, indicating that he was born on 7 July 1905 in Vienna; that he was widowed as of the date of his death, namely 12 May 1995; that he had no children; that his sister was Olga [REDACTED], who resided in France; and that his sole heir was Prof. Dr. [REDACTED], who was born on 15 October 1944.
- (5) The death certificate of Dr. iur. (doctor of law) Marcel Rubin, indicating that he was born on 7 July 1905 in Vienna, that he was Jewish, that he held a law degree, and that he died on 12 May 1995 in Vienna.
- (6) A Vienna newspaper article from 12 February 1947 regarding Marcel Rubin, indicating that following nine years away from the city, the composer had returned to Vienna. The article indicates that Marcel Rubin fled Austria in March 1938 because of his well-known anti-fascist beliefs, and that he was in France until 1942, where he was also detained in concentration camps for approximately one year. The article also states that from France, Marcel Rubin fled to Mexico, where he worked as a conductor, composer, and instructor. The article further indicates that Marcel Rubin, who had studied music in Paris, wrote numerous symphonies, chamber music compositions, and songs, as well as an opera named *Prinzessa Brambilla*.
- (7) A report, dated 27 December 1938, by a lawyer representing *Hofrat* Dr. Erwin Rubin, and addressed to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or "VVSt."), and which is further described below.

The Claimant indicated that he was born on 15 October 1944 in Vienna.

## **Additional Information Concerning Marcel Rubin**

The *Lexikon verfolgter Musiker und Musikerinnen der NS-Zeit* (“*Encyclopedia of Musicians Persecuted during the Nazi Era*”), which is available on the website of the University of Hamburg, includes an entry, apparently written at least in part by the Claimant, regarding Marcel Rubin.<sup>1</sup> According to the biography on that website, the composer Marcel Rubin, who was Jewish, was born to a high-level finance administrator on 7 July 1905 in Vienna. The entry states that Marcel Rubin’s mother died in 1910, that his father remarried, and that Marcel Rubin was educated as a lawyer. According to this entry, on 13 March 1938 Marcel Rubin fled Austria to France, where his sister, the artist Olga [REDACTED], née Rubin, resided with her husband, the musician [REDACTED]. The article states that Marcel Rubin’s father and stepmother joined the rest of the family in France some months later.

The article states that in early September 1939, Marcel Rubin was detained as an enemy foreigner in a football stadium in France, then from mid-September 1939 in the internment camp Meslay-du-Maine, and subsequently in February 1940 in the camp Damigny near Rennes in Brittany, France, where he set the song “*Dachau-Lied*” to music. According to the article, the prisoners of Damigny were freed in mid-June 1940, and Marcel Rubin returned to Paris and then in the autumn of 1940, travelled to Marseille, France, where his family had already arrived. According to the biography, in spring 1942, Marcel Rubin fled with his father and stepmother to Mexico.

The article states that Marcel Rubin composed ten symphonies, as well as many other musical compositions, and held prestigious musical positions in his native Austria following his return to the country in 1947.

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

The Bank's records consist of an extract from a list of closed numbered accounts and a customer card.

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 a power of attorney form, a custody account opening form, a joint account opening form, lists of numbered accounts, and a safe deposit box account card.

The records indicate that Dr. Erwin Rubin, who resided at Mariahilferstrasse 31 in Vienna, Austria, held a safe deposit box numbered 1543, over which Dr. Marcel Rubin and *Fräulein* (Miss) Olga Maria Rubin, both of whom resided at Mariahilferstrasse 31 in Vienna in 1934, held power of attorney. The records indicate that that safe deposit box was opened on 3 April 1934. These records indicate that Power of Attorney Holder Olga Rubin closed the safe deposit box in

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<sup>1</sup> See [www.lexm.uni-hamburg.de/object/lexm\\_lexmperson\\_00002649](http://www.lexm.uni-hamburg.de/object/lexm_lexmperson_00002649). The CRT notes that [REDACTED]’s name appears below the entry, which was originally dated 2007 and updated on 27 May 2010.

person on 21 April 1938. Power of Attorney Holder Olga Rubin's signature appears beneath the closure date on the safe deposit box account card.

The Bank's records also indicate that Dr. Erwin Rubin and Dr. Marcel Rubin, both of whom resided at Mariahilferstrasse 31 in Vienna, opened a joint custody account and a joint demand deposit account, both numbered 32834, on 29 June 1931. These records indicate that *Fräulein* Olga Maria Rubin was granted power of attorney over the accounts on 3 May 1937, and that by this date, she resided in Paris, France. The records show that Olga Rubin was authorized to access and withdraw funds from those accounts for her own benefit. The records also indicate that the Account Owners gave instructions that all correspondence regarding the custody and demand deposit accounts should be retained at the Bank. Finally, the records indicate that the accounts were closed on 22 April 1938.

The Bank's records do not indicate the value of these accounts.

### **Information Available from the Austrian State Archive**

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Erwin Rubin, numbered 64534.

These records do not contain a copy of Erwin Rubin's 1938 Census asset registration form. The records contain a letter to the VVSt. from Erwin Rubin's lawyer, Dr. Gustav Schwab, which states that as of 27 December 1938, retired *Hofrat* (court counselor) Dr. Erwin Rubin, who had formerly resided at Mariahilferstrasse 31 in Vienna, was residing in Neuilly sur Seine, France. The report also states that Erwin Rubin's assets had been greatly diminished since their original valuation date (27 April 1938), and were not sufficient to cover the atonement tax which had been assessed against him.

These records make no mention of assets held in a Swiss bank account.

### **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 two claims of the Claimant in one proceeding.

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's benefactor's name and city and country of residence match the published name and city and country of residence of Account Owner Marcel Rubin; and the Claimant's benefactor's father's name and city and country of residence match the published name and city and country of residence of Account Owner Erwin Rubin. The Claimant also identified the unpublished street address of the Account Owners, the unpublished city and country of residence of Power of Attorney Holder Olga Rubin, and the unpublished professional titles of the Account Owners, all of which matches information about the Account Owners and Power of Attorney Holder Olga Rubin contained in the Bank's records.

In support of his claims, the Claimant submitted documents, including the last will and addendum to the will of Marcel Rubin, an inheritance certificate regarding the estate of Marcel Rubin, the declaration of death and the death certificate of Marcel Rubin, a Vienna newspaper article regarding Marcel Rubin, and a report from 1938 concerning the assets of Erwin Rubin, providing independent verification that the persons who are claimed to be the Account Owners had the same names, professional titles, and street address as those recorded in the Bank's records.

The Claimant also submitted samples of his benefactor's signature, which match the signature samples of Account Owner Marcel Rubin contained in the Bank's records.

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

### Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that the Account Owners fled Austria after the *Anschluss*, first to France and then to Mexico.

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

The Claimant has plausibly demonstrated that he is the legal heir of Account Owner Marcel Rubin by submitting specific information and documents, demonstrating that the Claimant is the heir of Account Owner Marcel Rubin. These documents include Marcel Rubin's last will and an inheritance certificate regarding the estate of Marcel Rubin. There is no information to indicate that Account Owner Marcel Rubin has any other surviving legal heirs, as his last will designated the Claimant as his sole heir. The Claimant has also plausibly demonstrated that Account Owner Erwin Rubin was the father of his benefactor, although he specifically indicated that he is not related by blood or marriage to either of the Account Owners, including Account Owner Marcel Rubin.

### The Issue of Who Received the Proceeds

The Bank's records indicate that safe deposit box 1543, owned by Account Owner Erwin Rubin and over which Marcel Rubin and Power of Attorney Holder Olga Rubin held power of attorney, was closed by Power of Attorney Holder Olga Rubin in person on 21 April 1938. The CRT also notes that the Bank's records show that Olga Rubin resided in France as of May 1937, and that France was not occupied by Nazi forces until May 1940, more than two years after the date on which Olga Rubin closed the safe deposit box. Accordingly, the CRT concludes that Power of Attorney Holder Olga Rubin received the proceeds of safe deposit box 1543. The CRT notes that the Claimant has stated that he is the sole heir of Account Owner Marcel Rubin, but has admitted that he is not related by blood or by marriage to either of the Account Owners. The Claimant also has not provided any documents showing that he is the legal heir of Erwin Rubin. Thus, even if this account had not been closed properly (which was not the case), the Claimant has not established that he would have been entitled to this account.

The Bank's records also indicate that the Account Owners' joint custody and demand deposit accounts, both numbered 32834, were recorded as closed on 22 April 1938, the day after Power of Attorney Holder Olga Rubin closed safe deposit box 1543. Given that the custody account and the demand deposit account were recorded as closed one day after Power of Attorney Holder Olga Rubin closed the safe deposit box; that Power of Attorney Holder Olga Rubin was specifically entitled to access and withdraw funds for her own benefit from the custody and demand deposit accounts, the CRT concludes that Power of Attorney Holder Olga Rubin also closed the custody and demand deposit accounts and received the proceeds herself.

### Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of 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 September 2010