

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Denial**

to Claimant [REDACTED 1]

and to the Estate of Claimant [REDACTED 2]<sup>1</sup>

## **in re Accounts of Alexander Stein**

Claim Number: 778214/BW<sup>2</sup>

This Certified Denial is based on the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published accounts of Alexander Stein (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All denials are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

## **Information Provided by the Claimants**

The Claimants submitted an Initial Questionnaire (“IQ”), identifying the Account Owner as their paternal grandfather’s brother, Alexander Stein, who was born in 1848 in Bratislava, Czechoslovakia (now, Slovakia), and who resided in Bratislava throughout his life. According to the Claimants, Alexander Stein was married, but did not have any children. The Claimants indicated that Alexander Stein died in July 1939 of old age, and that the Claimants were the heirs of his residual estate.

The Claimants stated that their great-uncle, who was Jewish, owned a custody account numbered 66449 at the Zurich branch of the Bank.

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<sup>1</sup> Claimant [REDACTED 2]’s widow submitted Claimant [REDACTED 2]’s certificate of death, indicating that Peter Gabriel Stein died on 29 May 2004.

<sup>2</sup> Claimant [REDACTED 2] and Claimant [REDACTED 1] did not submit a Claim Form to the Claims Resolution Tribunal. However, in 1999 they jointly submitted an Initial Questionnaire (“IQ”), numbered ENG 0317-040, 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 IQs 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 778214. The IQ contained information about both Claimants and was signed by them both. Although the Claimants did not specifically say so, it appears from the information they provided that they are brothers.

The Claimants explained that they resided in Bratislava prior to the Second World War, and that they survived the Holocaust by going into hiding in Bratislava. In 1948, they left Czechoslovakia and settled temporarily in Switzerland. The Claimants stated that they contacted the Bank at that time, and that the Bank, after validating the Claimants' inheritance rights over the assets belonging to Alexander Stein, delivered all the assets that Alexander Stein had held at the Bank to the Claimants.

The Claimants stated that during the Second World War, the Bank, having received no correspondence from Alexander Stein or having learned of his death, reinvested funds stemming from matured securities from Alexander Stein's custody account by purchasing new German bonds. According to the Claimants, some of the issuers from which the Bank purchased the new German bonds later became parts of the German Democratic Republic or of Poland. Consequently, the Claimants argued, they were unable to recover any value for those bonds after 1948. In a letter accompanying their claim, the Claimants stated that they "realize that the [Bank] was acting in good faith [in reinvesting the matured funds in new bonds], but in the last resort we suffered a loss which is equivalent to these assets having been looted."

In support of their claim, Claimant [REDACTED 2]'s widow submitted copies of a large number of German Reichsmark ("RM") denominated bond certificates and related coupons, which she stated were the bonds that the Bank had purchased on Alexander Stein's behalf during the Second World War, and which the Claimants unsuccessfully attempted to redeem after the Second World War. The Claimants also indicated in their claim form that they had received correspondence from the Bank in 1948 relating to the Account Owner's accounts, but this correspondence was not submitted to the CRT.

Claimant [REDACTED 2] indicated that he was born on 3 July 1920 in Bratislava, and Claimant [REDACTED 1] indicated that he was born on 23 February 1925 in Bratislava.

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

The Bank's records consist of forms listing the assets held by Alexander Stein of Bratislava, Czechoslovakia, which were frozen by the Bank in the 1945 freeze of assets held in Switzerland by the citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze").

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 lists of account owners, correspondence between the Bank and the Swiss Compensation Office (*Schweizerische Verrechnungstelle*), and an internal Bank memorandum.

According to these records, the Account Owner was Alexander Stein of Bratislava, Czechoslovakia. The records indicate that the Account Owner held three demand deposit accounts, one of which was denominated in United States Dollars, one of which was

denominated in Swiss Francs, and one of which was denominated in *Handelssperrmark*. The records further indicate that the Account Owner also held a special custody account numbered 66449, which contained, in 1945, a significant number of German bonds, as well as two varieties of German stock, one type of Argentinean bond, and one type of Italian bond.

The records include a 23 June 1948 letter from the Swiss Compensation Office to the Bank, indicating that the identification material for [REDACTED 2] and [REDACTED 1], both formerly of Bratislava, and now of Ascona, Switzerland, had been reviewed, and that it was determined that the assets belonging to Alexander Stein could be unfrozen in accordance with the terms of the 1 April 1947 Swiss federal law regarding financial dealings with Czechoslovakia. The letter indicates that the Bank subsequently released to [REDACTED 2] and [REDACTED 1] the securities held in custody account 66449, as well as 73,214.38 Swiss Francs (“SF”) representing the proceeds of Alexander Stein’s three demand deposit accounts.

The records contain undated lists of account owners and customer cards, indicating that the owner of account 66449 was changed from Alexander Stein to [REDACTED 1] and [REDACTED 2] on an unknown date. The records further contain a bank statement indicating that on 1 September 1948, the Bank paid out SF 73,214.38 to Paul and [REDACTED 2], who were residing on that date in Ascona, Switzerland.

## **The CRT’s Analysis**

### Admissibility of the Claim

The CRT has determined that the claim is admissible according to Article 18 of the Rules.

### Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants’ great-uncle’s name matches the published name of the Account Owner. The Claimants identified the Account Owner’s city and country of residence, the number of one of his bank accounts and the bank at which it was held, as well as the names of his two main heirs, all of which matches unpublished information about the Account Owner contained in the Bank’s records.

The CRT notes that the Claimants filed an IQ with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Alexander Stein, prior to the publication in 2005 of the List of Account Owners Published in 2005 (the “2005 List”). This indicates that the Claimants have based their present claim not simply on the fact that an individual identified on the 2005 List as owning a Swiss bank account bears the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the 2005 List. It also indicates that the Claimants had reason to believe that their relative owned Swiss bank accounts prior to the publication of the 2005 List. This supports the credibility of the information provided by the Claimants.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different city of residence than the city of residence of the Account Owner, or did not provide the account number and names of the Account Owner's two heirs, as the Claimants did.

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

The Claimants stated that the Account Owner was Jewish, and that he died of old age in July 1939, over one year prior to the occupation of Slovakia by Nazi forces in November 1940. The CRT notes that while the Account Owner was therefore not a Victim of Nazi Persecution himself, the Account Owner's two main heirs, namely the Claimants, were Victims of Nazi Persecution. The Claimants stated that they are Jewish, and that they survived the Holocaust in hiding in Bratislava.

#### The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information, demonstrating that the Account Owner was the Claimants' great-uncle. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT further notes that the Claimants identified unpublished information about the Account Owner as contained in the Bank's records, and that the Claimants filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and the Claimants, prior to the publication of the 2005 List.

#### The Issue of Who Received the Proceeds

The Bank's records indicate that the Bank released the proceeds of the Account Owner's three demand deposit accounts and the assets held in the custody account to the Claimants in 1948. Likewise, the Claimants indicated that in 1948, they contacted the Bank regarding the assets of Alexander Stein, and stated that "[a]ll assets (some dollar bonds, some German Government and Provincial Bonds, some stock) were turned over to us and we subsequently obtained the cash proceeds from the sale of these securities." Additionally, Claimant [REDACTED 2]'s widow submitted to the CRT copies of some of the securities certificates and related coupons that the Bank released to the Claimants in 1948. Therefore, the CRT concludes that the Claimants received the proceeds of the accounts of the Account Owner in 1948 from the Bank.

The Claimants are seeking compensation, however, for the nominal value of certain bonds acquired for the Account Owner's account after his death in 1939. According to correspondence received by the Claimants upon receipt of the contents of the Account Owner's accounts in 1948, the proceeds of certain bonds held in the Account Owner's custody account that matured in 1943 and 1944 were reinvested by the Bank in certain RM-denominated German Provincial bonds, which subsequently became part of the German Democratic Republic, or Poland. The Claimants indicate they were unable to obtain any financial satisfaction for these bonds.

The CRT notes, that during the years leading up to the Second World War, foreign currency controls were enacted by the Reich which resulted in the creation of a number of specific categories of blocked Reichsmark (“blocked-RM”), which traded at a substantial discount to the official RM exchange rate, were not freely exchangeable, and could only be used for certain defined purposes. Categorized among these particular kinds of blocked-RM were blocked-RM balances resulting from the sale of securities (*Effektenspermark*, *Aktienspermark* and *Wertpapierspermark*) as well as blocked-RM balances resulting from the yield of matured securities (*Tilgungsspermark*).<sup>3</sup> On 1 January 1939, these categories of blocked-RM were consolidated into preferential blocked-RM (*Vorzugsspermark*) and commercial blocked-RM (*Handelsspermark*).<sup>4</sup> Blocked-RM balances in the possession of the original owner, originating from the repayment of securities that were held by the original owner prior to 15 April 1932, became preferential blocked-RM, whereas blocked-RM balances not in the possession of the original owner, or received from the repayment of securities that were not held by the original owner, became commercial blocked-RM.<sup>5</sup>

According to the information contained in historical financial sources, a maturing RM-denominated German-issued security that was held for an account owner by a bank in Switzerland generally received the principal amount repaid in blocked-RM known as *Tilgungsspermark*. These blocked-RM balances could have only been reinvested in other RM-denominated German-issued securities, without taking a substantial capital loss due to the severely discounted blocked-RM exchange rate as compared to the official RM rate, which in 1939 averaged about 10%. Any non-invested *Tilgungsspermark* would have become *Handelsspermark* after the consolidation of the blocked-RM categories in January 1939. Indeed, the Bank records in this case indicate that one of the demand deposit accounts held by the Account Owner was denominated in *Handelsspermark*. Given these considerations, and the fact that the Bank had not heard from the Account Owner nor learned of his death at the time the securities matured, it cannot be considered unreasonable that the Bank undertook to reinvest the blocked-RM proceeds of the Account Owner into other RM-denominated securities.

In addition, the CRT notes that, in order for the Bank to have purchased additional securities after securities in the account had matured, it must have had permission from the Account Owner to manage the account and the securities in it. In delegating this responsibility to the Bank, the Account Owner assumed the risk that certain of the choices made by the Bank may not have resulted in the most profitable returns. In any case, however, it is not clear, given the currency restrictions that were in place at the time, as outlined above, that the Account Owner would have opted to purchase other securities than the ones purchased by the Bank. If he had done so, he or his heirs would not have been entitled to compensation from the Settlement Fund for the result of his (in hindsight) poor investment choices. The same is true for the Bank, who acted on behalf of the Account Owner and with the Account Owner’s permission. The Claimants have not alleged mismanagement on the part of the Bank. In fact, as detailed above, they admit that the Bank acted in good faith on behalf of their relative. Given that the Bank acted in good faith on

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<sup>3</sup> League of Nations Economic Intelligence Service. *Money and Banking*, 84. League of Nations (1939).

<sup>4</sup> *League of Nations Yearbook for 1938-1939*, 224. League of Nations (1939).

<sup>5</sup> *Id.*

behalf of the Account Owner and with the Account Owner's permission, its investment choices must be interpreted as if they were those of the Account Owner.

The CRT notes that, even if there were evidence (which there is not) that the Bank mismanaged the Account Owner's account in purchasing the bonds that, in hindsight, proved to be worthless or of little value, no award is appropriate. Nor is an award appropriate to compensate for the (in hindsight) poor investment choices made either by the Account Owner or by his lawful representative, in this case, the Bank. Generally, the Settlement Fund provides restitution for assets of Victims or Targets of Nazi persecution that were transferred to the Reich by Swiss banks during the Relevant Period, which is defined by the Rules as the period from 1933 to 1945, and/or for assets that remained with the Swiss banks after the War and were not returned to account owners or their rightful heirs. The Settlement Fund was not designed to compensate account owners either for alleged mismanagement of their funds by Swiss banks or for loss of principle due to investment choices that subsequently proved to be undesirable. In other words, the fact that the securities purchased by the Bank on the Account Owner's behalf later became worthless or of little value has nothing to do with the circumstances that gave rise to the *In re Holocaust Victim Assets Litigation* or the Settlement Agreement that proceeded from it. Rather, these securities were among any number of securities held by account owners in Swiss banks that lost their value as a result of the historical events that took place following the Second World War.

Finally, the CRT notes that the Claimants stated they were not able to realize any financial satisfaction for their remaining RM-denominated securities after receipt of the Account Owner's accounts in 1948. However, in the decades following the Second World War, various restitution programs were enacted to facilitate the exchange of RM-denominated Reich-issued securities into contemporary German bonds. The exchange of domestic RM-denominated securities issued from institutions or geographical government-bodies of the Reich that lay within the boundaries of what became the Federal Republic of Germany after the Second World War ("West Germany") and held by persons or institutions residing within West Germany were addressed by the Securities Settlement Law of 1949 (*Wertpapierbereinigungsgesetz*).<sup>6</sup> The settlement of external securities from Reich-issued institutions or geographical government bodies within the boundaries of West Germany and held by persons or institutions residing outside of West Germany were addressed by the Agreement on German external debts in 1953.<sup>7</sup> Finally, after the reunification of West Germany with the former German Democratic Republic ("East Germany") in 1994, securities issued from institutions or geographical government-bodies of the Reich that lay outside West Germany were addressed by the Compensation and Settlement Law of 1994 (*Entschädigungs- und Ausgleichsgesetz von 1994*).<sup>8</sup> Thus, the Claimants did have the opportunity to redeem these securities to recoup at least a portion of their capital investment.

Given that the Claimants admit that the Bank "was acting in good faith" when it reinvested the proceeds of the matured bonds in the Account Owner's custody account into other bonds, that

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<sup>6</sup> *Gesetz zur Bereinigung des Wertpapierwesens vom 19. August 1949* (WiGBI. S. 295).

<sup>7</sup> United Nations. "Agreement on German external debts (With annexes and subsidiary agreements). I-4764. 27 February 1953. Available at: <http://treaties.un.org/doc/Publication/UNTS/Volume%20333/volume-333-I-4764-English.pdf>.

<sup>8</sup> *Entschädigungs- und Ausgleichsleistungsgesetz vom 27. September 1994* (BGBl. I S. 2624; 1995 I S. 110).

the matured bonds likely resulted in *Handelssperrmark* that could only be reinvested in other RM-denominated securities without taking a substantial capital loss to the Account Owner, and that a number of compensation programs implemented in the post-Second World War period provided the Claimants with an opportunity to recoup some value from the bonds, and given the considerations outlined above, the CRT concludes that no award is appropriate in this case.

#### Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimants 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 Claimants 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