

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]

## **in re account of Paul Auerbach**

Claim Number: 218267/TP<sup>1</sup>

Award Amount: 24,610.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Paul Auerbach (the “Account Owner”) at the Zurich branch of 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.

## **Information Provided by the Claimant**

The Claimant submitted a Claim Form to the Tribunal stating that the Account Owner was her first cousin once removed, Paul Auerbach, son of [REDACTED] and [REDACTED]. The Claimant stated that her cousin, a Dutch bachelor (*Privat Gelehrter*), was born on 6 June 1897, lived on Heerengracht in Amsterdam, the Netherlands, and died at an unknown location in 1945. The Claimant further indicated that Paul Auerbach was Jewish and that he perished in the Holocaust. According to the Claimant’s submissions, her cousin was single and had no children.

In support of her claim, the Claimant provided copies of her birth certificate and her parents’ joint will, as well as a short biography of her family and a well-documented family tree.

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

According to the bank records, which include an account opening card, the Account Owner was Paul Auerbach, who resided in Amsterdam, the Netherlands. The bank records show that Paul Auerbach held a custody account, which was closed on 1 October 1937, and a demand deposit account, which was closed on 20 June 1944. The bank records do not indicate the value of the accounts at issue, by whom these accounts were closed, or to whom they were paid.

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<sup>1</sup> The Claimant submitted additional claims to the accounts of Otto Auerbach and Emilie Gertrud Auerbach, which are registered under the claim numbers 218266 and 218268. The Tribunal will treat the claims to these accounts in separate decisions.

## **Tribunal's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her relative's name matches the published name of the Account Owner. Additionally, the Claimant has indicated that her relative lived in Amsterdam, the Netherlands, which matches the Account Owner's unpublished place of residence recorded in the bank documents.

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

The Claimant has plausibly shown that the Account Owner was a Victim of Nazi Persecution. The Claimant has shown that the Account Owner, her cousin, was Jewish and that he perished in the Holocaust. Moreover, the Tribunal notes that the name Paul Auerbach appears in a database containing the names of victims of Nazi persecution. According to the information recorded in this database, Paul Auerbach was born in Amsterdam on 6 June 1897, which matches the information about the Account Owner that was provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

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

The Claimant has plausibly demonstrated that she is the Account Owner's first cousin once removed, that is the daughter of the Account Owner's first cousin, [REDACTED]. The Claimant has provided a copy of her birth certificate and a copy of her parents' joint will, as well as a narrative of her family history and a well-documented family tree. The Claimant has further stated that the Account Owner died unmarried and without children. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning her relationship to the Account Owner.

### The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the accounts were paid to the Account Owner or his heirs, the Tribunal must consider the question of what happened to the funds in this case.

The historical evidence developed by the Independent Committee of Eminent Persons during its investigation of Swiss banks (the "ICEP Investigation") demonstrates that the funds of Nazi victims in Swiss banks were disposed of in various ways. In some cases, the account owners and/or their families withdrew and received the funds. In other cases, Nazi authorities coerced account owners to withdraw the balances in their Swiss accounts and transfer the proceeds to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but account values were consumed by regular and special bank fees and charges, which resulted ultimately in closure without any payment to the account owners. In still other cases, particularly after a period of inactivity or dormancy, the proceeds were paid to bank profits. Thus, since the funds in this case apparently were not paid to the Account Owner or his family, there is a substantial likelihood that these funds went to the Nazis or to the Bank.

With respect to the Account Owner's demand deposit account, although the Tribunal cannot determine with certainty who received the proceeds of this account, the Tribunal concludes that it is plausible that neither the Account Owner nor his heirs received the proceeds.<sup>2</sup> In this regard, the Tribunal notes that the demand deposit account was closed on 20 June 1944, more than four years after the Nazi invasion of the Netherlands, which took place in May 1940. The application of Nazi confiscatory legislation in the Netherlands as described in more detail in footnote 2 below makes it unlikely that the Account Owner would have closed the demand deposit account and received the proceeds himself. The Tribunal's conclusion is also required by Article 34(a) of the Rules Governing the Claims Resolution Process (the "Rules"), which provides that when an account was closed after the date of occupation of the country of residence of the account owner, the Tribunal shall presume that neither the account owner nor his heirs received the proceeds of the claimed account.

With respect to the custody account closed on 1 October 1937, the Tribunal has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or his heirs received the proceeds of that account.

#### Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimant with respect to the demand deposit account. First, the claimed account belonged to a victim of Nazi Persecution. Second, the Claimant has plausibly demonstrated that she is the Account Owner's first cousin once removed, and that relationship justifies an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the demand deposit account.

#### Amount of the Award

Pursuant to Article 35 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 results of the ICEP Investigation, the average value of a demand deposit account in 1945 was 2,140.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 24,610.00 Swiss Francs.

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<sup>2</sup> This conclusion is based in part on research cataloguing various ordinances, decrees and laws issued in the Netherlands by the Nazi Regime that were subsequently used to expropriate Dutch Jewish assets abroad. Germany invaded the Netherlands on 9 May 1940. Ordinance 189/40, which took effect on 22 October 1940, ordered Jews to register all property on 3 February 1941. Based on this ordinance and the information obtained from it, the Nazi Regime proceeded to force repatriation of Jewish assets held abroad which were subsequently confiscated and liquidated by October 1941. On 18 July 1941, the Germans moved to centralize all financial transactions by Jews. To this end, they established a separate branch of the Dutch Jewish bank, Lippmann, Rosenthal & Co. ("LiRo"), and on 8 August 1941, compelled Jews to deposit all financial assets, including those held abroad, in this bank and to run all their financial transactions through it. Forced deposits were quickly followed by confiscation, which was largely complete by late 1942. A listing of the principal laws invoked by the Nazi Regime in specific confiscatory situations appears at the CRT-II website, [www.crt-ii.org](http://www.crt-ii.org).

According to Article 37(3) of the Rules, in cases where the value of an account is based on the presumptions of Article 35 of the Rules, or where the Tribunal has determined that an account may be subject to later competing valid claims, claimants shall receive an initial payment of 35% of the total award amount. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65% of the total award amount. In this case, there is the possibility of other competing claims and the value of the account at issue is based on the Article 35 presumptions. In this instance, 35% of the total award amount is 8,613.50 Swiss Francs.

### Scope of the Award

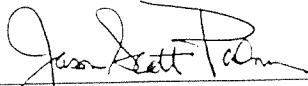
The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

### Certification of the Award

At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a plausible case for entitlement to an award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same account will be forthcoming. Articles 37(3)(a) and (b) of the Rules provide that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, and/or the Tribunal determines that an account may be subject to later competing claims, the initial payment to the claimant shall be 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. Thus, the Rules instruct and require the Tribunal to certify and recommend an initial 35% payment in awards submitted for Court approval in particular cases where either the Tribunal has used the value presumptions of Article 35 or it has determined that the account may be subject to later competing claims, or both.

In this case, the Tribunal has used the value presumptions of Article 35 of the Rules to calculate the account value and is of the opinion that the account/s at issue may be subject to later competing claims. On this basis, the Tribunal certifies this Award for approval by the Court and for payment by the Special Masters in accordance with Article 37(3) of the Rules.

8 May 2002  
Date

  
Jason Scott Palmer  
Resident Claims Judge