

# CLAIMS RESOLUTION TRIBUNAL

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Claims Resolution Tribunal

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

## **Certified Award**

to Claimant [REDACTED]

**in re Account of Isaak Donner**

Claim Number: 217526/HM

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the "Claimant") to the account of Isaak Donner (the "Account Owner") at the Zürich 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 indicating that Isaak Donner was his father, born on 29 September 1904 in Belz, Poland, who was married to [REDACTED], née [REDACTED], in Vienna, Austria on 5 April 1936. The Claimant stated that he and his sister are his father's sole living heirs.

The Claimant has provided substantial biographical information about his father. The Claimant identified his father as living in Vienna, Austria. His father was a co-owner of the firm *Brüder Donner* until he was removed from his position because he was Jewish, and was forced to continue his work under a Nazi manager. The Claimant stated that his father fled to Switzerland on 25 December 1938. Further, the Claimant stated that while in Switzerland, his father was supported by his family in the U.S.A. until March 1939, when his wife joined him and they immigrated to the United Kingdom, where his father died in 2000.

With his Claim Form, the Claimant submitted copies of a passport issued in Vienna on 27 October 1938, stamped "J", demonstrating that his father was an Austrian Jew who lived in Vienna after the annexation of Austria by Nazi Germany. The passport also contains a Swiss entry visa valid through 25 December 1938. The Claimant also provided his father's

*Heimatschein*, or certificate of citizenship, issued in Vienna on 25 November 1925, and his father's marriage certificate.

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

The bank records consist of a registration card and printouts from the Bank's database. According to the bank records, the Account Owner was Isaak Donner, who used the address Vienna, Austria. The bank records show that the Account Owner held a demand deposit account, opened on 30 November 1936 and closed on 10 April 1938. The registration card does not indicate the value of the account. Additionally, it does not show to whom the account was paid.

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

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Isaak Donner. These documents, numbered 21529, indicate that Isaak Donner was born on 29 September 1904, that he was married to [REDACTED] née [REDACTED], that he was a businessman, and that he resided at Nedergasse 14, in Vienna XIX, Austria. According to these documents, Isaak Donner registered with the Nazi authorities that he owned: an apartment in Vienna VII; an underwear manufacturing company, his part worth 32,403.85 Reichsmarks; a capital claim worth about 9,000.00 Reichsmarks; other valuables worth about 2,400 Reichsmarks; and a debt worth 2,285.00 Reichsmarks.

### **The CRT's Analysis**

#### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner as his father. His father's name matches the name of the Account Owner in the bank documents. In support of his claim, the Claimant submitted copies of his father's passport, showing that his father's place of residence was Vienna, Austria, which matches the unpublished information contained in the bank documents. Furthermore, the name of the Account Owner's spouse as provided by the Claimant matches the name recorded in the records of the Austrian State Archives.

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

The Claimant has provided plausible evidence that the Account Owner, his father, was a Victim of Nazi Persecution. The Claimant has shown that the Account Owner was Jewish and was the target of Nazi persecution while living in Austria because he was removed from his position and forced to continue working in his own company under a Nazi manager. The Account Owner managed to flee to Switzerland in December 1938.

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

The Claimant has plausibly shown that the Account Owner is his father through the information provided in his Claim Form and the supporting documents, including the Account Owner's death certificate and will.

In his Claim Form and the Account Owner's will, submitted by the Claimant, the Claimant identifies his sister as an additional heir of the Account Owner. As the Claimant's sister has not submitted a claim to the account, the Claimant is entitled to receive the entire Award under Article 29 of the Rules Governing the Claims Resolution Process (the "Rules").

### The Issue of Who Received the Proceeds

Given the application of Presumptions (a) and (j) contained in Appendix A,<sup>1</sup> the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that the Account Owner was his father and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed 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 ICEP Investigation, in 1945 the average value of a demand deposit account was 2,140.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 25,680.00 Swiss Francs.

According to Article 37(3) of the Rules, in cases where the amount in the account is not known, claimants shall receive an initial payment of 65% 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 35% of the total award amount. In this instance, 65% of the total award amount for the account is 16,692.00 Swiss Francs.

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<sup>1</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

**Scope of the Award**

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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

November 26, 2002

## APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:<sup>2</sup>

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;<sup>3</sup>

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<sup>2</sup> See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); see also Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

<sup>3</sup> See Bergier Final Report at 443-44, 446-49; see also ICEP Report at 81-83.

- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.<sup>4</sup>

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<sup>4</sup> As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, *see Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, *see* Bergier Final Report at 450 -51, and possibly Romania as well, *see* Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. *See* Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." *Id.* at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. *See In re Holocaust Victim Asset Litig.*, 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).