

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1],
also acting on behalf of [REDACTED 2], [REDACTED 3],
and [REDACTED 4]

in re Accounts of Arthur Albers

Claim Number: 500966/HS/MBC

Award Amount: 418,171.88 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (the “Claimant”) to the published accounts of Arthur Albers at the Zurich branches of the [REDACTED] (“Bank I”) and the [REDACTED] (“Bank II”) (together the “Banks”).¹

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 banks have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as her maternal great-grandfather, Arthur Albers, who was born in Czechoslovakia, was married to [REDACTED], and had two children: the Claimant’s grandmother, [REDACTED], née [REDACTED], who was born in 1911 in Vienna, Austria, and [REDACTED] (formerly [REDACTED]), née [REDACTED]. The Claimant stated that her great-grandfather, who was Jewish, resided in Vienna, where he owned a large timber company. The Claimant indicated that after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), her great-grandfather was arrested and imprisoned in the Buchenwald concentration camp until he forfeited his entire fortune.

The Claimant submitted a written statement from Arthur Albers’ daughter, [REDACTED], indicating that she witnessed the Gestapo raid her parents’ apartment in Vienna. According to this statement, in the course of the raid, the Gestapo confiscated numerous books and papers

¹ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Arthur Albers is indicated as having seven accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only five accounts.

belonging to Arthur Albers, and two SS men knocked Arthur Albers and his bookkeeper down a flight of stairs before arresting them. The Claimant also submitted an excerpt from the book, *Men Crucified*, by Bruno Heilig, in which the author describes his fellow prisoners at Buchenwald, including Arthur Albers, “one of the biggest Viennese timber merchants,” whose release from the camp was conditioned upon “the surrender of his great business” to the Nazis.²

The Claimant indicated that her great-grandfather fled to the United States via London, the United Kingdom, in 1939. The Claimant added that her great-grandfather established another timber business in the United States, with the help of the company *Masonite*, with which he had previously done business in Vienna. Further, the Claimant indicated that in 1946 her great-grandfather won a court judgment in the United States against Bank I relating to Bank I’s transfer of his assets to the Germans while he was imprisoned at Buchenwald (discussed in detail in the next section of this Award). The Claimant stated that her great-grandfather died in 1962 in New York, the United States. The Claimant indicated that her grandmother, [REDACTED], died on 31 August 2001 in Melbourne, Australia. In a telephone conversation with the CRT on 5 January 2005, the Claimant stated that her great-grandmother, [REDACTED], and her grandmother’s sister, [REDACTED], both died in Los Angeles, California, the United States, but that she was unsure of the exact dates. The Claimant further indicated that [REDACTED] had a daughter, [REDACTED], née [REDACTED], whose descendants she has been unable to locate.

In support of her claim, the Claimant submitted documents, including: Arthur Albers’ will, dated 21 September 1961 in Queens, New York, the United States, creating a trust for his wife, [REDACTED], and dividing his residuary estate between his daughters, [REDACTED] and [REDACTED] (three-tenths each); and his granddaughters, [REDACTED 2], née [REDACTED], and [REDACTED] (one-fifth each). The Claimant also submitted the will of [REDACTED] (formerly [REDACTED]), dated 10 April 1996, as well as two codicils, dated 7 November 1997 and 29 August 2001, naming as equal heirs her three grandchildren: [REDACTED 1] (the Claimant), [REDACTED 4], and [REDACTED 3].

The Claimant indicated that she was born on 7 May 1961 in Melbourne. The Claimant is representing her mother, [REDACTED 2], and her siblings, [REDACTED 3] and [REDACTED 4].

The 1946 Judgment Against Bank I

In 1946 the City Court of the City of New York found Bank I liable for transferring Arthur Albers’ custody account to the bank *Österreichische Creditanstalt* in Nazi-controlled Austria (the “*Creditanstalt*”), since Bank I knew at the time of the transfer that the Account Owner was imprisoned in Germany (the “1946 Judgment”).³ According to this Judgment, in June 1938

² Bruno Heilig, *MEN CRUCIFIED* 162, 218 (Eyre & Spottiswoode, London 1941).

³ *Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S. 2d 239 (N.Y. City Ct. 1946) (the “1946 Judgment”). This case is cited in the Holocaust Victim Assets Litigation. See, e.g., *In re Holocaust Victim Assets Litigation*, 319 F.Supp.2d 301, 308 (E.D.N.Y. June 1, 2004) (NO. CV-96-4849 ERK MDG, CV-99-5161, CV-97-461); *In re Holocaust Victim Assets Litigation*, 302 F.Supp.2d 59, 66 (E.D.N.Y. Feb. 19, 2004) (NO. CV-96-4849); and Rules

Bank I was informed (via Dr. Fleischmann, a Zurich resident, who had received the news from a relative of Arthur Albers) that the bonds in Arthur Albers' custody account at Bank I should be delivered only to Arthur Albers in person, since he was imprisoned by the Nazis, his business had been confiscated, and he had been forced to forfeit the remainder of his property in order to secure his release. The 1946 Judgment indicates that Bank I made a notation in its records that the account should be blocked, and that any attempt to close the account should be submitted first to Dr. Koellreuter, a Bank I employee in communication with Dr. Fleischmann.

According to the 1946 Judgment, Arthur Albers was imprisoned in Buchenwald from September 1938 until April 1939. During the period of his imprisonment, the 1946 Judgment continues, he was forced to sign various papers, including a letter in which he directed Bank I to transfer bonds from his account to the account of the *Creditanstalt*. According to the 1946 Judgment, Arthur Albers "signed the letter in question without knowing its contents and without being permitted to read it."⁴ According to the 1946 Judgment, Bank I, on 14 January 1939, received a letter typed on Arthur Albers' business letterhead and bearing his signature, directing Bank I to sell the "\$10,000 Yugoslav bonds" [sic] in his account and to transfer the proceeds to the *Creditanstalt*. Further, according to the 1946 Judgment, Arthur Albers' custody account at Bank I held only five bonds, or half the number of bonds referred to in the 14 January 1939 letter and the letter Arthur Albers had signed, bearing dates in September 1938 and January 1939, was in fact sent to Bank I by the *Creditanstalt*.

According to the 1946 Judgment, Bank I made the transfer to the *Creditanstalt*, after Dr. Koellreuter communicated with Dr. Fleischmann but failed to receive any instructions regarding the account. After the transfer, Bank I reportedly wrote a letter to Arthur Albers confirming the execution of the transfer order, which Bank I did not send to Arthur Albers, but kept in its own files.

In reaching its decision, the Court considered Bank I's discharge of duties to its depositor. The Court wrote that the test of Arthur Albers' right to recover and of Bank I's liability was whether Bank I acted prudently and in good faith with relation to the securities entrusted to it for safekeeping. "For there is no doubt that when [Bank I] received the bonds for safekeeping and for compensation it became a bailee and its liability is to be determined by reference to the manner in which it discharged the obligations which it assumed as bailee."⁵

The Court concurred with the plaintiff's argument that Bank I acted in disregard of its obligations to him, and that it "assumed an attitude of complacency in the face of specific information which it had concerning the plaintiff's circumstances and of general information which it shared with banking institutions in Europe for a number of years preceding the outbreak of War."⁶ The Court wrote that the letter purporting to authorize the transfer that Arthur Albers had signed was void:

Governing the Claims Resolution Process, as amended (the "Rules"), Article 28(j), note 5, appearing in Appendix A to this Award.

⁴ 1946 Judgment, at 231.

⁵ *Id.*, at 232.

⁶ *Id.*, at 233.

The plaintiff's letter authorizing the transfer was, of course, void considering the circumstances in which it was signed. But if that were all before the defendant it could act upon the letter with impunity; it would be putting too strict an obligation upon it, too onerous a burden, to ask it to go behind every letter of authorization that it received. But if it knew the circumstances in which the letter was written it could not rely upon it without being remiss in the duty it owed the plaintiff; and it did know those circumstances. It knew the general state of affairs in Germany and in the adjacent countries that had been forcibly seized by the German Government. It knew of the destruction of life, of the torture and the confiscation of property visited upon numberless people for no reason other than their religion. It knew that the plaintiff was one of those persons. The letter which it had received in June of 1938 through an intermediary of the plaintiff informed it precisely of the plaintiff's status. It had no communication from the plaintiff, or from anyone acting in his behalf, from June, 1938 until it received the letter of January, 1939. ... The fact that it [the defendant] made no inquiry concerning his whereabouts or his existence is an indication of its intention to rely only upon the formalism of the letter and to ignore all other circumstances.⁷

The Court focused on the fact that Bank I wrote a letter to Arthur Albers confirming the execution of the transfer order, but did not send it to him, and instead kept it in its own files, pursuant to the client's instructions to hold mail.

[Bank I] cannot escape the implication of its conduct - that it knew [Arthur Albers] was one of those persons who was not free to communicate with it, who was not free to use the mails for the conduct of his personal affairs or business affairs, and that it was useless for it to attempt to communicate with him. And above all it knew that [Arthur Albers] was not likely of his free will to transfer property of his located in Switzerland to a bank in German territory controlled by the German Government.⁸

The Court in the 1946 Judgment wrote that Bank I could argue that its actions contributed to Arthur Albers' release from Buchenwald (which was arguably not the case, the Court noted, considering trial testimony that banks in two other countries noncontiguous with Germany had refused similar requests during this period to transfer Arthur Albers' assets to the *Creditanstalt*). However, the Court noted that, ultimately, there was no means of knowing why Arthur Albers was permitted to leave Germany: "The pattern that emerges from the facts in this respect is too obscure and does not prevent the application of the basic rule of law."⁹ The Court concluded that Bank I had violated its duties of prudence and good faith as the steward of Arthur Albers' assets: "The bank was the steward of the plaintiff's property. Its stewardship required it to act in a prudent manner and in good faith. The evidence satisfies me that it did neither, that it relied only

⁷ *Id.*, at 233.

⁸ *Id.*, at 234.

⁹ *Id.*, at 235.

upon the terms of the letter in reckless disregard of everything it knew bearing on the circumstances of the letter. It was not free to do so.”¹⁰

Accordingly, the Court awarded Arthur Albers the previously agreed-upon sum of 1,150.00 United States Dollars (“US \$”).

Information Available in the Banks’ Records

Bank I

Bank I’s records consist of a customer card, printouts from Bank I’s database, internal memoranda and minutes from meetings of Bank I’s legal department, dated in April 1942 and January 1944 in Zurich. According to these records, the Account Owner was Arthur Albers, a *Kommerzialrat* (an honorary title bestowed on prominent businessmen and financiers), who resided in Vienna, Austria.

These records indicate that the Account Owner opened a custody account, numbered L59626, on 29 December 1937, in which he deposited 7% Yugoslavian Government 1962 bonds with a nominal value of \$5,000.00. According to a partially illegible notation on the account card, the custody account was closed sometime between 20 and 29 January 1939. This account card also indicates that the Account Owner held an additional demand deposit account, the opening date of which is not indicated, which was closed on 31 January 1940.

The memoranda and minutes from Bank I’s legal department reiterate the basic facts of the 1946 Judgment, while noting, however, that the Account Owner’s bonds were transferred before either Dr. Koellreuter or Dr. Fleischmann had been consulted, and that the proceeds of the sale of the Account Owner’s bonds were credited to the *Creditanstalt*’s account at *Chase City Bank* in New York, New York, the United States. The memoranda, while noting that Dr. Fleischmann did not hold power of attorney over the account, assert that he approved the transfer after the fact (“*nachträgliche Zustimmung*”). At a later date, however, Dr. Fleischmann denied having given his approval, according to the memoranda.

According to Bank I’s memoranda, in October 1939, ten months after executing the order from the *Creditanstalt*, Bank I received a letter from the Account Owner informing Bank I of his new address in London and instructing Bank I to sell the bonds in his custody account. In response to this letter, Bank I informed the Account Owner that the bonds had already been sold for the benefit of the *Creditanstalt*, according to the memoranda. On 16 December 1939, the Account Owner, who was reportedly astonished to learn that his account had been closed, demanded compensation from Bank I, and ordered his remaining account there, a demand deposit account, to be closed immediately and the proceeds, approximately 1,000.00 Swiss Francs (“SF”), to be transferred to Dr. Fleischmann of Zurich. Bank I’s records indicate that Bank I complied with this order. Bank I’s records also indicate that the Account Owner commenced suit against Bank

¹⁰ *Id.*, at 235.

I in 1941 in New York, initially demanding US \$2,500.00 compensation for the unlawful transfer.

Bank II

Bank II's records consist of customer cards, account statements, printouts from Bank II's database, documents pertaining to the 1945 freeze of assets held in Switzerland by nationals of Germany and the territories incorporated into the Third Reich (the "1945 Freeze"), and documents related to an internal survey of dormant accounts conducted in 1959. Additionally, Bank II's records contain documents related to the survey of dormant accounts ordered by the Swiss Federal Decree of 20 December 1962 (the "1962 Survey"), which required the registration of assets belonging to foreigners or stateless persons who had been or were presumed to have been victims of racial, religious, or political persecution.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of Bank II to obtain additional information about the Account Owner's assets ("Voluntary Assistance"). On 20 July 2005, Bank II provided the CRT with additional documents. These documents consist of customer cards and a list of accounts, dated 29 September 1980.

According to these records, the Account Owner was *Kommerzialrat* Arthur Albers, who resided in Vienna XII and Vienna VII. These records indicate that Bank II's last contact with the Account Owner was sometime before 31 August 1939.

These records also indicate that the Account Owner held three accounts at Bank II: two custody accounts, numbered 617 and 41973; and a demand deposit account, numbered 265,211. According to Bank II's records, custody account 617 was closed on 7 May 1938, and custody account 41973 was opened on 9 May 1938 and was closed on 16 February 1939. The value of the custody accounts on the date of their closure is not known.

Regarding the Account Owner's demand deposit account, according to a list of account owners prepared for the 1962 Survey, the account was opened on 8 August 1938. Bank II's records further indicate that the demand deposit account was frozen in the 1945 Freeze, at which time it had a balance of SF 987.50. The records indicate that the account was unfrozen in June 1955, with a balance of SF 954.50, and that on 7 September 1959 its balance was SF 911.00. According to these records, the demand deposit account was considered for the 1962 Survey but ultimately was not registered. The records do not indicate why the account was not registered. The most recent balance for the demand deposit account in Bank II's records is SF 801.00 on 12 December 1963. Bank II's records indicate that the account was closed in 1982. The amount in the account on the date of its closure is not known.

There is no evidence in Bank II's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

Information Available in the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Arthur Albers, numbered 46301. According to these records, Arthur Albers, who was born on 10 October 1883 and was married to [REDACTED], was a timber merchant with a business located at Rollergasse 20 in Vienna XII.

These records indicate that Arthur Albers was arrested by the Gestapo on 21 April 1938 and imprisoned in a camp on 29 April 1938.¹¹ Arthur Albers’ registration of assets is dated 8 August 1938 and signed by Felix Kozar, a Nazi-appointed *kommissarischer Verwalter* (asset manager). These records indicate that Arthur Albers’ assets were seized by the Gestapo and that his business was to be liquidated. According to the asset manager, before Arthur Albers’ imprisonment, he owned real estate worth 228,670.00 Reichsmark (“RM”), business interests worth RM 522,566.39, and miscellaneous assets, including accounts and securities at banks in Vienna, Paris, and Zurich, worth RM 82,503.90.

According to these records, Arthur Albers held a custody account at Bank I and a custody account at Bank II, each containing 7% Yugoslavian Government bonds with a nominal value of US \$5,000.00, the bonds at each bank carrying a market value of RM 5,779.00 as of 27 April 1938 and RM 5,833.00 as of 31 December 1938. These records also indicate that on 21 November 1938, flight tax (*Reichsfluchtsteuer*) of RM 218,464.00 was assessed against Arthur Albers. According to a notation in these records, by 31 December 1938 all of Arthur Albers’ known foreign securities, except for the above-mentioned Yugoslavian bonds at Bank I and Bank II, had been transferred to the *Creditanstalt*.

Finally, these records contain a letter from the Vienna Finance Ministry to another Nazi official, dated 4 May 1939, stating that the Finance Ministry did not object to the emigration of Arthur Albers, his wife, and grandchildren, since Albers’ entire fortune had been confiscated as of 25 October 1938 (“*das gesamte Vermögen des Arthur Albers mit Wirksamkeit vom 25. Oktober 1938 zu Gunsten des Landes Österreich eingezogen worden ist*”).

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s great-grandfather’s name and country of residence match the published name of the Account Owner. Furthermore, the Claimant provided extensive information which matches unpublished information about the Account Owner contained in the Banks’ records, as well as information in the Account Owner’s 1938 Census records and the 1946 Judgment, including: the Account Owner’s city of residence, his spouse’s name, the nature of his business interests, and his imprisonment in Buchenwald.

¹¹ The camp is identified as Buchenwald in 1938 Census documents dated as early as 5 December 1938.

Furthermore, in support of her claim, the Claimant submitted documents, including an excerpt from *Man Crucified* and Arthur Albers' will, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city as the name and city of residence of the Account Owner. The CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The documents provided by the Claimant, the records of Bank I, the Account Owner's 1938 Census records, and the 1946 Judgment indicate that the Account Owner, who was Jewish, was imprisoned in Buchenwald, and that his assets were confiscated by the Nazis.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she and the parties she represents are related to the Account Owner and that they are his heirs, by submitting specific information and the wills of the Account Owner and his daughter, [REDACTED]. These documents demonstrate that the Claimant and the represented parties are heirs to the Account Owner's residuary estate, that [REDACTED 2] is the grandchild of the Account Owner, and that the Claimant, [REDACTED 3], and [REDACTED 4] are his great-grandchildren.

The CRT notes that the Claimant stated that the Account Owner may have other surviving heirs, whom she has been unable to locate. There is no information to indicate that any other heirs of the Account Owner have submitted a claim. Under Article 24 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the rights of individuals to an account who have not submitted claims to the CRT will, as a general rule, not be considered.

The Issue of Who Received the Proceeds

The CRT notes that at the time of the Account Owner's arrest, the Gestapo reportedly took numerous books and papers from his apartment, and that his Yugoslavian bonds at the Banks were later reported in the 1938 Census. Additionally, the 1938 Census records and the 1946 Judgment indicate that the Account Owner was arrested on 21 April 1938 and imprisoned until April 1939.¹² The 1938 Census further indicates that the Account Owner and his family were

¹² The CRT notes the discrepancy between the records as to the period of the Account Owner's imprisonment. The Account Owner's 1938 Census indicates that he was arrested on 21 April 1938 and imprisoned in a camp on 29 April 1938. Bank I's records and the 1946 Judgment indicate that Bank I was informed of the Account Owner's imprisonment in June 1938 (although the 1946 Judgment also indicates that the Account Owner was imprisoned at Buchenwald beginning in September 1938). In contrast, a Bank II list created in 1963 indicates that the Account Owner's demand deposit account was opened on 8 August 1938, by which time the Account Owner was already in custody, according to the other records. The CRT notes that the opening date of the demand deposit account, 8 August 1938, is the same as the date on which Felix Kozar, the Nazi-appointed asset manager, signed Arthur Albers' 1938 Census declaration in his stead. Considering that the 1938 Census is the only source actually contemporaneous with the Account Owner's imprisonment and that these records were created by the Account Owner's jailers, the CRT determines that the 1938 Census records are the most reliable source of information regarding the Account Owner's imprisonment.

not allowed to leave the Reich until after May 1939, by which time his property and business had been confiscated.

Bank I

According to Bank I's records and the 1946 Judgment, Bank I paid the proceeds of the Account Owner's custody account to the *Creditanstalt* in January 1939, despite Bank I's awareness of the Account Owner's imprisonment and a previous request on the Account Owner's behalf to protect the account from Nazi seizure. The CRT notes that the Court in the 1946 Judgment ordered Bank I to pay the Account Owner the previously agreed-upon sum of US \$1,150.00 for the custody account.¹³

With regard to the Account Owner's demand deposit account at Bank I, Bank I's records indicate that the Account Owner ordered Bank I to close the account on 16 December 1939. Given that Bank I's records indicate that the Account Owner ordered the closure of his account immediately after receiving news that his custody account had been improperly closed, thereby demonstrating his intention to immediately cease his business relationship with Bank I and to retrieve his remaining assets at Bank I, the CRT determines that the Account Owner received the proceeds of this demand deposit account.

Bank II

Bank II's records indicate that custody accounts 617 and 41973 were closed during the period of the Account Owner's imprisonment. As for the Account Owner's demand deposit account at Bank II, the records indicate that it was closed in 1982, long after the Account Owner's death.

Given the foregoing; given that Bank I's records and the 1946 Judgment indicate that one of the Account Owner's other accounts was transferred to the *Creditanstalt*; that there is no record of the payment of the Account Owner's Bank II accounts to him; and given the application of Presumptions (a), (b), (d), (f), (h), and (j),¹⁴ as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the proceeds of the accounts at Bank II 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her great-grandfather, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of four of the five accounts addressed in this Award.

¹³ The Amount of the Award section below addresses the valuation of this account in light of the 1946 Judgment.

¹⁴ See note 2, *supra*.

Amount of the Award

In this case, the Award is for three custody accounts and one demand deposit account.¹⁵

With regard to the custody account at Bank I, in the 1946 Judgment Bank I was ordered to pay the Account Owner the sum of US \$1,150.00, which was equivalent to SF 4,922.00.¹⁶ This amount is less than the market value of the bonds at Bank I, listed as RM 5,833.00, which was equivalent to SF 10,235.75 as of 31 December 1938,¹⁷ shortly before the bonds were sold for the benefit of the *Creditanstalt*. The CRT notes that Bank I's records indicate that the custody account at Bank I contained 7% Yugoslavian Government bonds with a nominal value of US \$5,000.00, and that this corresponds with dicta in the 1946 Judgment regarding the amount in the account.

Considering, therefore, that the amount awarded to Arthur Albers in the 1946 Judgment does not correspond to the bonds' reported 1938 market value and that there is no information as to the circumstances determining this amount, the CRT determines that the custody account at Bank I shall be valued at SF 5,313.75, which is the difference between the 1946 Judgment amount and the latest market value for the bonds in the 1938 Census file.¹⁸

With regard to the two custody accounts at Bank II, the CRT notes that one of them likely contained the remaining 7% Yugoslavian Government bonds with a nominal value of US \$5,000.00 reported in the 1938 Census. However, in contrast to the Bank I's records, it is impossible to determine from the available Bank II records whether these bonds constituted the entire contents of one of the custody accounts, nor is there any information about the securities held in the Account Owner's remaining custody accounts at Bank II. Therefore, the two custody accounts at Bank II shall be considered to be of unknown value. Pursuant to Article 29 of the Rules, when the value of an account is unknown, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00, amounting to a total Article 29 value for the two custody accounts at Bank II of SF 26,000.00.

¹⁵ The CRT notes that, according to Bank II's records, custody account 617 was closed on 7 May 1938, and custody account 41973 was opened on 9 May 1938. These records also indicate that the demand deposit account at Bank II was opened on 8 August 1938. Given that a second custody account was opened one day after the closure of the first custody account, and that a demand deposit account was opened three months later, the CRT would generally conclude that the Account Owner had control over his assets as of the date of closure of the first custody account. However, as noted above, the facts of this case are ambiguous as to the dates of the Account Owner's imprisonment by the Nazis. *See* note 12, *supra*. Several records indicate that the Account Owner was imprisoned at the time of these transactions, a conclusion which is supported by the fact that the opening date of the demand deposit account at Bank II coincides with the date that the Nazi-appointed asset manager signed Arthur Albers' 1938 Census declaration in his stead. Given this ambiguity, and the fact that the contemporaneous records indicate that the Account Owner was imprisoned at this time, the CRT determines that it is plausible that the Account Owner did not have control over his assets at this time, and that the Claimant is entitled to the custody account that was closed on 7 May 1938.

¹⁶ In calculating these amounts, the CRT uses official exchange rates.

¹⁷ *Id.*

¹⁸ The CRT notes that the compensation originally demanded by the Account Owner, US \$2,500.00, was worth SF 10,925.00 in 1938, which approximates the market value of the bonds when they were sold.

As for the demand deposit account at Bank II, Bank II's records indicate that its value as of 1945 was SF 987.50. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00.

Therefore, the total value of the Account Owner's accounts is SF 33,453.75. The current value of the amount of the award is determined by multiplying this amount by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount is SF 418,171.88.

Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim.

In this case, the Claimant has submitted the wills of the Account Owner and his daughter, [REDACTED]. Under the Account Owner's will, his daughters are each entitled to three-tenths of his residuary estate and his granddaughters to one-fifth each. As mentioned previously, the interests of only one of the Account Owner's daughters (in the will of [REDACTED]) and one of his granddaughters ([REDACTED 2]) are at issue in this Award. Therefore, in light of Article 27(1) of the Rules, which directs the CRT to seek the result that is most fair and equitable under the circumstances, the CRT determines that the shares apportioned to the Account Owner's unrepresented heirs shall be divided equally between [REDACTED] and [REDACTED 2]. Accordingly, [REDACTED 2] is entitled to nine-twentieths of the total award amount, and the portion to be distributed under [REDACTED]'s will is eleven-twentieths of the total award amount. As [REDACTED]'s heirs in equal parts, the Claimant, [REDACTED 4], and [REDACTED 3] are each entitled to eleven-sixtieths (11/60ths) of the total award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT 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

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
21 September 2005