

# 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 *M. & Mme Ernst Baumann***<sup>1</sup>

Claim Number: 204043/AY<sup>2</sup>

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Ernst Baumann (“Account Owner Ernst Baumann”) and *Mme* Ernst Baumann (“Account Owner *Mme* Ernst Baumann”) (together the “Account Owners”) at the [REDACTED] (the “Bank”). The account awarded is from the Total Accounts Database (the “TAD”) at 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 and an Initial Questionnaire identifying the Account Owners as his parents, Ernst Baumann, who was born on 25 October 1893 in Danzig, Germany, and Edith Baumann, née Katzkion, who was born on 1 January 1901. The Claimant indicated that his parents were married on 8 March 1928 in Gumbinnen, Germany, and had one child, the Claimant. The Claimant stated that his parents, who were Jewish, owned a large men’s clothing store on Königstrasse 9 in Gumbinnen, where they also lived. The Claimant further stated that his father was vice president of the Jewish congregation in Gumbinnen. The Claimant indicated that the Nazis confiscated his parents’ store in 1938, along with most of their possessions. According to the Claimant, during the Night of Broken Glass (*Kristallnacht*) in November 1938, the SS and the Gestapo arrested his father at 3:00 a.m., accusing him of setting the synagogue on fire, and took him to the Gestapo headquarters where he was imprisoned for six weeks. The Claimant explained that each day his father was held by the Gestapo, they put him against a wall and aimed their guns at him. The Claimant further explained that in an effort to get his father out

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<sup>1</sup> The CRT previously issued a Certified Award to the Claimant to the account of Ernst Engelbert Baumann (approved by the Court on 1 November 2002).

<sup>2</sup> The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the claim number 209256. The CRT will treat the claim to this claimed account in a separate decision.

of prison, his mother tried unsuccessfully to obtain a visa for entry into Switzerland. According to the Claimant, his father was released by the Gestapo in 1939, and subsequently fled with his family to Shanghai, China, where they remained in a ghetto until the end of the Second World War, at which time they immigrated to the United States. The Claimant stated that as far as he can remember, his parents transferred money to Switzerland prior to *Kristallnacht*. The Claimant further stated that any supporting documents he may have had were lost during the war. According to the Claimant, his father died in 1951 in San Francisco, California and his mother died in 1980, also in San Francisco. In support of his claim, the Claimant submitted a family tree. The Claimant stated that he was born on 11 July 1930 in Gumbinnen.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Ernst and Edith Baumann.

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

The Bank's records consist of a report prepared by the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") and a list of accounts frozen in London. According to these records, the Account Owners were *M.* (Mr.) and *Mme* (Mrs.) Ernst Baumann, who jointly held a custody account, numbered 124528, at the London branch of the Bank. There is no evidence in the Bank's records that the Account Owners or their heirs closed the account and received the proceeds themselves.

This account was not part of the Account History Database at the CRT, but was identified as a result of matching and research carried out at the Bank and using, as noted above, the TAD at the Bank. The TAD at the Bank is one of the databases comprising the approximately 4.1 million accounts representing the approximately 6.8 million accounts that were identified by the ICEP auditors as open or opened in the 1933-1945 period in Swiss banks, less the estimated 2.8 million accounts for which no records remain. These 4.1 accounts, in databases located at the 59 ICEP audited Swiss banks,<sup>3</sup> are composed of 1.9 million savings accounts with a 1930-1940s value of 200 Swiss francs or less and accounts with Swiss addresses, and 2.2 million accounts that ICEP concluded should not be included within the Account History Database -- the 36,000 accounts that ICEP determined were "probably or possibly" owned by victims of Nazi persecution.

In order to expedite the results of the ICEP investigation, certain necessarily arbitrary presumptions were used to exclude the 1.9 million savings and Swiss address accounts from the probable or possible accounts category. The 2.2 million were matched against the ICEP's victims database, but the reason for their exclusion in at least a significant number of cases no longer appears to be valid in the light of the experience of the CRT in reviewing cases as part of the Claims Resolution Process. For example, many accounts were excluded from the Account History Database on the grounds of activity after 1945, but in some cases there now appears to be no evidence that the account owners had full dominion over the accounts and were not just inquiring whether the bank, after many years, still maintained the record of their deposits, a fact

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<sup>3</sup> These 59 audited banks represent 254 banks that existed in the 1933-1945 period.

often denied by the banks in these circumstances as has been demonstrated in many Awards made by the CRT.

These two sources may contain significant numbers of accounts of Nazi victims, especially when it is considered that of the 33,000 claims that were submitted to the CRT, 21,000 did not match to the 36,000 accounts in the Account History Database of probable and possible Nazi victim accounts. Because of the significant potential of this body of accounts, in its final Report in December 1999, ICEP specifically recommended that all claims submitted to the CRT should be matched against the applicable databases of accounts. The Rules Governing the Claims Resolution Process provide the procedures under which the TADs would be available for matching and research, but as a practical matter, until now, they have not been available to the CRT for this purpose.

Starting in the first week of this year, a test of the TAD was initiated at the Bank, with its full cooperation. The results of this test are now being compiled. This award is part of a group of accounts identified during the TAD test. Others are in the process. A final recommendation on the use of the TAD will be made to the Court when the final results of the test have been compiled.

## **The CRT's Analysis**

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His father's name matches the name of Account Owner Ernst Baumann and his mother's status as the wife of Ernst Baumann matches the title of Account Owner *Mme* Ernst Baumann, as contained in the Bank's records. The CRT notes that the names of the Account Owners were not published because they were not contained in the Accounts History Database. The CRT further notes that the Bank's records do not contain any specific information about the Account Owners other than their names. The CRT further notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Ernst and Edith Baumann, which indicates that the Claimant had reason to believe that his parents owned a Swiss bank account prior to the completion of the ICEP Investigation and the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based his present claim not simply on the fact that individuals identified on the ICEP List as owning a Swiss bank account bear the same last name as his parents, but rather on a direct family relationship that was known to him before the publication of the ICEP List. This supports the credibility of the information provided by the Claimant. Finally, the CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owners.

### 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, that they lived in Germany during the Second World War, that Account Owner Ernst Baumann was arrested and taken into custody by the Gestapo, and that the Account Owners were forced to flee Nazi Germany in 1939 to escape further persecution.

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

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific biographical information and a family tree, demonstrating that they were his parents. There is no information to indicate that the Account Owner has other surviving heirs.

### The Issue of Who Received the Proceeds

In evaluating whether or not the Account Owners received the proceeds of their account, the CRT noted that given that the Account Owners were Jewish and resided in Nazi-occupied Germany until 1939; that the Account Owners would not have been able to repatriate their account to Germany without its confiscation; that Account Owner Ernst Baumann was arrested by the Gestapo and held for six weeks, an event that often resulted in coerced disclosure of foreign bank accounts; that Account Owner Ernst Baumann died in 1951, shortly after the end of the War; that there is no record of the payment of the Account Owners' account to them; and that the Account Owners and their heirs would not have been able to obtain information about the account from the Bank after the war due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability. The CRT also noted that it is possible that the Nazis obtained the account proceeds of their London based account as a result of a forced transfer initiated by the Account Owners; or that the account proceeds were confiscated as enemy property by the United Kingdom; or that the account proceeds were released to the Bank after the end of the War and incorporated into Bank profits. Regardless of which of these alternative outcomes actually occurred, it appears that the Account Owners did not receive the proceeds of their account in light of the circumstances of this case as described above, including Account Owner Ernst Baumann's arrest in 1938, the flight of the Account Owners to China immediately after Account Owner Ernst Baumann's release, and his death shortly after the end of the War.

In view of these facts and circumstances, and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners or their 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 Owners were his parents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed account.

### Amount of the Award

In this case, the Account Owners held one custody account, numbered 124528. Pursuant to Article 29 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 current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of 162,500.00 Swiss Francs.

### **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 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) at banks other than the Bank.

### **Certification of the Award**

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

Claims Resolution Tribunal  
8 April 2004