

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]  
acting on behalf of herself and [REDACTED]

## **in re Account of Ernst Blumenthal and Dorothea Blumenthal**

Claim Numbers: 209568/MB; 209569/MB

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the account of Ernst Blumenthal and Dorothea Blumenthal (the “Account Owners”) at 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 two Claim Forms identifying Ernst Blumenthal and Dorothea Blumenthal as her parents. According to the Claimant, Ernst Blumenthal, who was born on 7 April 1897 in Ratibor, Germany, and Dorothea [REDACTED], who was born on 15 December 1903, both of whom were Jewish, married on 29 January 1929 in Berlin-Charlottenberg, Germany. The Claimant stated that Ernst Blumenthal was a physician and that Dorothea Blumenthal was a doctor’s assistant. The Claimant indicated that Ernst and Dorothea Blumenthal had two children: the Claimant, who was born 16 October 1933 in Berlin, and [REDACTED] née [REDACTED], who was born 7 February 1930, whom the Claimant is representing. The Claimant stated that Ernst and Dorothea Blumenthal fled Germany in 1933 with their children and took asylum in Zagreb, Yugoslavia until they were forced to leave Yugoslavia in 1938, at which time they emigrated to the United States. The Claimant indicated that Ernst Blumenthal died in New York in 1954 and that Dorothea Blumenthal died in New York in 1994. In support of her claim, the Claimant submitted documents, including copies of her parents’ birth certificates, marriage certificate, passports, naturalization certificates, and death certificates, as well as a copy of the Claimant’s own birth certificate.

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

The bank records consist of an account opening card that contains signature samples of the Account Owners and printouts from the Bank's electronic database. According to these records, the Account Owners were Dr. Ernst Blumenthal and Dorothea Blumenthal with an address at Jlica 15, Zagreb, Yugoslavia. The bank records indicate that the Account Owners held a custody account that was open with the Zagreb address as of 8 August 1935. The bank records do not show if or when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this account. 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 did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945.

## **The Tribunal's Analysis**

### Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the discretion of the Claims Judges. In this case, the Tribunal determines it appropriate to join the two claims of Claimant [REDACTED] in one proceeding.

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her parents' names match the published names of the Account Owners and the information the Claimant provided about her father's profession matches the unpublished title of Account Owner Ernst Blumenthal contained in the bank documents. Further, the Claimant submitted documents indicating that her parents lived in Zagreb between 1933 and 1938, which matches published information in the bank records regarding the Account Owners' address. In support of her claims, the Claimant submitted documents, including copies of her parents' birth certificates, marriage certificate, passports, naturalization certificates, and death certificates. Finally, the Claimant submitted samples of her parents' signatures, which match the signature samples contained in the bank records.

### Status of the Account Owners as Victims of Nazi Persecution

The Claimant has plausibly shown that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, fled Germany, and took asylum in Zagreb until 1938.

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

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that she is the daughter of Dr. Ernst Blumenthal and Dorothea Blumenthal. There is no information to indicate that the Account Owners have any

surviving heirs other than the Claimant and her sister, [REDACTED] née [REDACTED], whom the Claimant represents.

### The Issue of Who Received the Proceeds

This case raises the question of whether the Account Owners could have accessed their account after leaving Germany. The bank records indicate that the Account Owners were German nationals with an address in Germany. Given the Nazi enforcement of flight taxes, the Nazi campaign to confiscate the domestic and foreign assets of its Jewish nationals, and the application of Presumptions (h) 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 Tribunal 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. Second, the Claimant has plausibly demonstrated that the Account Owners were her parents, and that relationship justifies an Award. Finally, the Tribunal 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

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 custody account was 13,000.00 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 156,000.00 Swiss Francs.

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, 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 case, the value of the account at issue is based on the Article 35 presumptions. In this instance, 65% of the total award amount is 101,400.00 Swiss Francs.

### Division of the Award

The Claimant is representing her sister in these proceedings. According to Article 29 of the Rules, her sister is entitled to receive one-half of any payment made to the Claimant.

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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 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**

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

Claims Resolution Tribunal  
October 24, 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>1</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>2</sup>
- 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>3</sup>

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<sup>1</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*

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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>2</sup> See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

<sup>3</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).