

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]

**in re Accounts of Mario Calfon**

Claim Number: 734220/MBC<sup>1</sup>

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the unpublished accounts of Mario Calfon (the “Account Owner”) at the Bern branch of the [REDACTED] (the “Bank”).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 an Initial Questionnaire (“IQ”) identifying the Account Owner as her father, Mario Calfon, who was born on 10 November 1896 in Florence, Italy, and was married to [REDACTED]. The Claimant stated that her father, who was Jewish, was a businessman in the weaving and jewelry industries, and that he resided at 2 Via Strambio in Milano, Italy. The Claimant indicated that her parents had two other daughters: [REDACTED] and [REDACTED].

The Claimant further indicated that her family was persecuted in Nazi-allied Italy, and that with the help of partisans, her two sisters went into hiding with Catholic families in Florence, while she and her parents managed to escape and cross the border to Switzerland on 30 December 1943, where they remained for approximately two years. The Claimant indicated that the jewelry that her father had in his possession was confiscated by the Swiss authorities and put in an account at the Bank, and that her father never had his jewelry returned to him.<sup>2</sup> According to

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<sup>1</sup> Claimant [REDACTED] (“Claimant [REDACTED]”) did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered ITA-0005-118, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 734220.

<sup>2</sup> The CRT notes that pursuant to the Swiss Federal Council’s Decree of 12 March 1943 (“the Decree”), the assets of all refugees who had entered Switzerland after 1 August 1942 were confiscated by the Swiss Federal authorities and

the Claimant, her father was forced to work in a refugee camp in Switzerland, and her parents were hospitalized while in Switzerland.

The Claimant submitted copies of:

- (1) her father's refugee booklet, indicating that Mario Calfon was born on 10 November 1896 in Florence, that he was an Italian national, that he was a businessman, and that during his stay as a refugee in Switzerland, he was interned in several labor and refugee camps: "Albergo Majestic" between 19 January 1944 and 15 May 1944, "Mezzovico-Vira" as of 15 May 1944, "Berenhof" between 1 August 1944 to 16 March 1945, "Cassarate" as of 17 March 1945, and "Diana" between 25 June 1945 to 11 July 1945, all located in the area of Lugano, Switzerland;
- (2) her father's personal details form for the purposes of the issuance of a refugee booklet (*Foglio dei connotati per il rilascio di libretti per rifugiati*), dated 1 January 1944, indicating that Mario Calfon was born on 10 November 1896 in Florence, that he was married to [REDACTED], and that he was a businessman;
- (3) her father's death certificate, issued by the city of Milan, indicating that Mario Calfon was born on 10 November 1896 in Florence, that his wife's name was [REDACTED], and that he died on 30 August 1996 in Milan;
- (4) the minutes of a verbal hearing (*Verbale d'interrogatorio*), written by the Police Division at the Federal Department of Justice and Police (*Dipartimento federale di giustizia e polizia-Divisione della polizia*) (the "Police Division"), dated 1 January 1944, documenting the hearing which was conducted in the matter of Mario Calfon, and indicating that he was born on 10 November 1896 in Florence, that he resided at 2 Via Strambio in Milan, that he was married to [REDACTED] and that his daughter was [REDACTED]. According to the protocol, Mario Calfon stated that he was Jewish, that he fled from Florence on 26 December 1943 and arrived in Switzerland on 30 December 1943;
- (5) a report by the Police Division, dated 22 January 1944, concerning refugee Mario Calfon, an Italian citizen who was born on 10 November 1896, indicating that he entered Switzerland illegally and the decision of the Police Division was to allow his internment in Switzerland until further notice, providing that, throughout his stay, he had sufficient financial means to support himself; and
- (6) over twenty letters in Italian, French and German, forming a lengthy correspondence between the Claimant's father, the Bank, and the Police Division in Bern, evidencing the accounts of Mario Calfon at the Bank. These documents are described in detail below.

The Claimant indicated that she was born on 4 October 1931.

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held for them in accounts at the Bank, which accounts were managed by the Swiss police authorities. The Decree applied retroactively to refugees who entered Switzerland after 1 August 1942, and provided that cash exceeding 100.00 Swiss Francs, securities, and valuables belonging to refugees were to be put under the control of the Swiss Federal authorities. See Independent Commission of Experts, Switzerland - Second World War, *Switzerland, National Socialism, and the Second World War: Final Report*, at 158-59 (2002) (hereinafter "*Bergier Final Report*"). See also Independent Commission of Experts, Switzerland - Second World War, *Die Schweiz und die Fluchtlinge zur Zeit des Nationalsozialismus (Switzerland and Refugees in the Nazi Era)* ("*Refugee Report*").

## Information Available in the Bank's Records

The CRT notes that 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") did not report an account belonging to Mario Calfon during their investigation of the Bank. The Bank's documents were forwarded to the CRT by the Claimant and are described below.

According to these records, the Account Owner was refugee Mario Calfon, an Italian citizen who was interned between 1944 and 1945, in the "Albergo Majestic", "Mezzovico-Vira", "Berenhof", "Lugano-Cassarate", and "Diana" refugee camps, all of them in the area around Lugano, Switzerland, and who resided after the Second World War in Florence, Italy.

The Bank's records indicate that the Account Owner held a custody account in which he had deposited jewelry, and a demand deposit account.

These documents include a letter from the Account Owner to the Police Division in Bern, dated 29 April 1944, in which the Account Owner wrote that he had deposited his assets at the Bank on 2 January 1944, and that he asked to withdraw 29.00 Swiss Francs ("SF"), out of the cash that he had deposited in his account.

These documents further include a letter from the chief of the Police Division (*Chef de la division de police*) to the management of the refugee camp "Majestic", with copy to the Bank, dated 6 May 1944, instructing the management to order refugee Mario Calfon to sell his deposited assets in the custody account in order to cover the sum of SF 539.17 which was accrued in hospitalization costs at the *Beate Vergine* hospital between 17 January 1944 and 20 March 1944. According to the letter, failure to give this order to the Bank would cause the forced sale of the Account Owner's deposited assets in the custody account. In response to the Police Division, the Account Owner wrote on 12 May 1944 that his deposited assets included several pieces of imitation jewelry which he asked the Bank to evaluate, as well as a gold bracelet and a gold cigarette case, which he asked the Bank not to evaluate, since he did not want them sold. The Account Owner repeated his request not to sell the gold jewelry in a letter to the Police Division, dated 6 June 1944.

Furthermore, in a letter to the Police Division, dated 2 July 1944, the Account Owner described how he asked for, and consequently received, a credit of SF 600.00 from the Bank to pay off his debt of approximately SF 530.00 to the hospital, apparently a course of action suggested by the Police Division. The Account Owner further requested that he be granted the remaining credit of SF 70.00 in order to buy supplies for his family. In response to his request, the Bank wrote to the Account Owner on 6 July 1944, confirming the debiting of his account in the amount of SF 539.17 and SF 3.50 for stamping costs, and refusing to provide for the remaining credit without the authorization of the Police Division.

In a letter to the Bank, dated 21 August 1944, the Account Owner responded to the Bank's demand to sell his jewelry to pay off his debt of SF 600.00, and proposed an alternate agreement under which the Bank would cover his costs of living in Switzerland for one year. Under this

proposed agreement, a person named Mr. Benedick from Lugano would act as the Account Owner's guarantor in case the Account Owner was not able to pay back his debts to the Bank after a year. In this case, Mr. Benedick would buy the jewelry from the Bank, upon the Bank's request, at its current estimated value, plus interest. The Account Owner then urged the bank to contact Mr. Benedick to make the necessary arrangements, which he, the Account Owner, would authorize by a letter.

According to a letter sent by the Bank to the Account Owner on 3 October 1944, such an agreement was in fact reached. In that letter, the Bank confirmed that based on an agreement signed by the Account Owner in which his deposited jewelry was used as collateral security, and based on the commitment of Mr. Benedick to buy, upon the Bank's demand, the jewelry at the price of SF 2,200.00 plus interests, the Bank evaluated the jewelry at SF 2,245.00 and provided the Account Owner with a credit to his demand deposit account of SF 2,200.00. The Bank further indicated that the remaining credit in the demand deposit account was SF 1,680.00, which could only be used with the authorization of the Police Division in Berne. Finally, the Bank indicated that it would charge interest of 4 percent, and one-half percent commission for the allocation of the credit to the Account Owner, and that it debited the account SF 15.60 for transaction costs.

In a letter dated 4 October 1944, the Police Division sent an invoice to the Account Owner, and informed him that his demand deposit account was debited SF 1,491.70, an amount that included living costs at the refugee camps (*Frais de pension dans les camps d'accueil de la famille Calfon*) for the Account Owner and his family in the amount of SF 1,289.50, and SF 202.20 for his wife's hospital costs.

In a letter dated 13 October 1944, the Police Division informed the Account Owner that his demand deposit account was debited SF 50.00 as a fee for searching for his children, and an additional amount of SF 100.00 was blocked in his account to cover further costs that might arise.

The documents that the Claimant submitted concerning her father's refugee accounts further include letters that were written between 1945 and 1957, after the Account Owner returned to Florence, in which the issue of the deposited jewelry was repeatedly addressed. In two letters from the Account Owner to the Police Division dated 5 May 1945 and 28 May 1945, and in a third letter from the Account Owner to Swiss Consul in Florence, dated 31 July 1945, the Account Owner requested that his deposited jewelry be returned to him. In the latter letter, the Account Owner argued that his debt to the Bank should be cancelled and that Mr. Benedick should be released from his obligation to purchase the jewelry, because of the fact that he had labored in the refugee camps without payment, because the credit the bank gave him was used to pay for a medical condition that was caused by forced labor in the refugee camps, and because he had been promised that when he left Switzerland his assets would be returned to him, but that they had not been returned to him.

A letter from the head of the Police Division in Bern to the Account Owner, dated 21 August 1945, indicated that the Account Owner was subject to the Swiss Federal Council's Decree of 12 March 1943 (the "Decree"), and that accordingly, his expenses for staying in the refugee camp,

as well as the hospital costs, were reimbursed using the credit that the Bank provided against his deposited jewelry, and that therefore, his request could not be fulfilled.

The Account Owner repeated his request in a letter to the Police Division, dated 24 July 1946, and was answered by head of the Police Division in Bern in a similar manner, on 31 July 1946.

In a letter from the Bank to the Police Division, dated 18 December 1945, the Bank answered a letter from the Police Division, stating that the jewelry of the Account Owner was foremost a guarantee for the credit to his demand deposit account that he received from the Bank with the approval of the Police Division; that that credit had been exhausted since the Account Owner owed the Bank SF 2,218.00, which was the negative balance of his demand deposit account; that the Bank realistically evaluated the jewelry at SF 2,245.00; and that [REDACTED] from Lugano was the guarantor and would purchase the jewelry to pay off the debt of the Account Owner.

In another letter from the Bank to the Police Division, dated 17 November 1946, the Bank provided a list of names of five refugees who held demand deposit accounts at the Bank, among them the Account Owner, and requested to know whether the Decree was still applicable in their case, or whether these accounts could be treated as regular demand deposit accounts at the Bank.

In a letter to the Police Division in the matter of refugee Mario Calfon, dated 11 March 1947, the Bank informed the Police Division that according to their instructions from 12 October 1945, the Bank returned the assets belonging to refugee Mario Calfon that had been held in his custody account at the Bank to him, and that consequently, the Account Owner's custody account had been closed.

Despite the Bank's assurances to the Police Division to the contrary, the Bank's records indicate that the Account Owner did not receive the assets that had been held in the custody account. The Account Owner made a last attempt to recover his jewelry in 1957, when he wrote two letters to the Police Division in Bern, on 12 August 1957 and 6 November 1957, introducing his case and arguing that he had discovered that several past refugees were exempted from their debts created due to the cost of their stay as refugees in Switzerland, and that he therefore requested the restitution of his assets. In the final letter available in the matter, the head of the Police Division replied on 27 November 1957, that the value of the jewelry was used in accordance to Article 8 of the Decree to cover the costs created when the Account Owner stayed in Switzerland as a refugee and that the government therefore could not fulfill his request.

The records indicate that the Account Owner's custody account was closed some time before 11 March 1947. The Bank's records do not indicate the fate of the jewelry deposited in the custody account.

With respect to the demand deposit account, the Bank's records do not indicate when that account was closed.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name, city, and country of residence match the unpublished name, city, and country of residence of the Account Owner. The Claimant identified the Account Owner's profession, as well as his wife and daughter's names, which match unpublished information about the Account Owner contained in the Bank's records. The CRT notes that the Claimant submitted the documents evidencing the existence of accounts held by her father.

In support of her claim, the Claimant submitted documents, including her father's refugee booklet, her father's Personal Details Form for the Issuance of a Refugee Booklet, her father's death certificate, a protocol of her father's verbal hearing, and over twenty letters between the Claimant's father, the Bank, and the Police Division in Bern, evidencing the accounts of Mario Calfon at the Bank.

These documents provide independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the Bank's records as the name and city of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Mario Calfon, and indicates that his date of birth was 10 November 1896, his country of residence was Italy, and that he was a refugee in Switzerland, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

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 Claimant stated that the Account Owner was Jewish, lived in Nazi-allied Italy, that he was forced to hide two of his daughters in Florence, and that he fled to Switzerland, where he was forced to stay in refugee camps.

As noted above, a person named Mario Calfon was included in the CRT's database of victims.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's father. These documents include a copy of the minutes of her father's verbal hearing, indicating that Mario Calfon's daughter was [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

## The Issue of Who Received the Proceeds

The Bank's records indicate that, throughout 1944 and 1945, the proceeds of the Account Owner's demand deposit account were used to pay the costs of living and hospital bills of the Account Owner and his family while they were living in refugee camps in Switzerland, and that by 1945, there was a negative balance on that account. The CRT notes that the Account Owner was not provided with an invoice for the alleged costs of living and that the work he performed was not credited towards any of the alleged costs. Significantly, the Account Owner was not consulted prior to the deduction of these costs from his demand deposit account, nor was his consent obtained by the Bank before his account was debited. The CRT therefore concludes that the Account Owner had no dominion over this account, and that he did not receive its proceeds.

With regard to the custody account, the records indicate that the assets in the custody account were used as security by the Bank, and that the Bank indicated that it had returned the assets in the custody account to the Account Owner by 11 March 1947, but that the Account Owner stated that he never received those assets, as detailed and acknowledged in post-War correspondence from the Police Division to the Account Owner.

With regard to both accounts, given that the Account Owner left Switzerland in 1945 and returned to Italy; that refugees in Switzerland whose assets were placed in accounts at the Bank by the Swiss authorities generally could not freely dispose over their accounts;<sup>3</sup> that a number of refugee accounts could not be retrieved by account owners;<sup>4</sup> that complaints of refugees mostly concerned the fact that their deposit assets were not returned;<sup>5</sup> that the Account Owner indicated that he did not receive the proceeds of the custody account; that the Account Owner and his heirs would not have been able to obtain information about his savings account after the Second World War from the Bank 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; and given the application of Presumption (h), 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 custody 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her father, 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 the claimed accounts.

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<sup>3</sup> *Refugee Report* at 295, 315.

<sup>4</sup> *Refugee Report* at 309, 312 ff.

<sup>5</sup> Jung, Joseph (ed.): *Zwischen Bundeshaus und Paradeplatz - Die Banken der Credit Suisse Group im Zweiten Weltkrieg (Between Parliament and Paradeplatz: The Banks of the Credit Suisse Group in the Second World War)*, Zurich: NZZ Verlag, 2001, at 704.

### Amount of the Award

In this case, the Account Owner held one demand deposit account and one custody account. With regard to the demand deposit account, the records do not indicate the original value of the account. With regard to the custody account, the Bank's records indicate that the Bank evaluated the deposited jewelry items in the account at SF 2,245.00. However, the CRT notes that the Account Owner had no control over the determination of the value of his deposited jewelry nor any capacity to negotiate their value. Thus, the CRT determines that value of both accounts, for the purpose of this award, shall be determined to be unknown. 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 demand deposit account was SF 2,140.00 and the average value of a custody account was SF 13,000.00, for a total 1945 value of SF 15,140.00. 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 SF 189,250.00.

### **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  
25 November 2008