

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimants Judith Schwartzman, Dennis Frank, and Hanna Lewinson

### **in re Accounts of Alfred Frank**

Claim Numbers: 201100/MBC; 201452/MBC; 202220/MBC

Award Amount: 26,750.00 Swiss Francs

This Certified Award is based upon the claims of Judith Schwartzman, née Frank (“Claimant Schwartzman”), Dennis Frank (“Claimant Frank”), and Hanna Lewinson, née Horwitz, (“Claimant Horwitz”) (together the “Claimants”) to the accounts of Alfred Frank (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

### **Information Provided by the Claimants**

Claimant Schwartzman and Claimant Frank each submitted Claim Forms identifying the Account Owner as their great-uncle, and Claimant Horwitz submitted a Claim Form identifying the Account Owner as her late husband’s uncle. All of the Claimants (Claimant Horwitz is the mother of Claimant Schwartzman and Claimant Frank) submitted substantially identical information and documents in their Claim Forms.

The Claimants stated that the Account Owner, Alfred Frank, was born in the early 1880s in Berlin, Germany, was neither married nor had children, and was a banker in Berlin until he fled from Nazi Germany to The Netherlands in the late 1930s. The Claimants also stated that Alfred Frank had one brother, Hermann Frank. The Claimants explained that Alfred and Hermann Frank, who also fled Nazi Germany, deposited money in Swiss banks before leaving Germany and that they may have held a joint account. The Claimants indicated that Hermann Frank, who was Claimant Horowitz’s father-in-law and Claimant Schwartzman’s and Claimant Frank’s grandfather, died in Amsterdam, The Netherlands in early 1940, some four months before the German invasion. The Claimants do not know the exact fate of Alfred Frank, but they believe he was probably deported to a concentration camp.

The Claimants further indicated that while living in The Netherlands, Alfred Frank sent monthly checks to his nephew, Gerald Frank (Claimant Horowitz's late husband and the father of Claimant Schwartzman and Claimant Frank), when he was in Cuba, where he was not allowed to work, and that the money for these checks came from a Swiss bank account. The Claimants added that Gerald Frank tried to recover the money after the Second World War but was unsuccessful.

In support of their claims, all of the Claimants submitted a copy of a letter dated 16 September 1965, in which the Swiss Justice Department of the Federal Justice and Police Department (the "Swiss Justice Department") denied the claim of Gerald Frank to the accounts of Alfred and Hermann Frank. In this letter, the Swiss Justice Department stated that it was denying the claim because according to the information provided by Gerald Frank, Hermann Frank died on 8 January 1940 due to heart problems, and Alfred Frank died on 10 February 1945 due to illness. According to the Swiss Justice Department, the alleged owners of the assets, Hermann and Alfred Frank, were not Nazi victims under the definition of the 1962 Swiss legislation regarding assets of Nazi victims because they died natural deaths. The department explained that it therefore could not undertake any new research regarding Hermann and Alfred Frank. The Claimants added that Gerald Frank died on 16 September 1965, on the same date in which the letter of denial is dated, in Fair Lawn, New Jersey.

Also, in support of their claims, Claimant Schwartzman submitted her birth certificate, which states that Gerald Frank was her father; and all of the Claimants submitted the marriage certificate of Gerald Frank and Hanna Frank, née Horwitz, dated 28 May 1949.

Claimant Schwartzman and Claimant Frank stated that they were born in New York on 25 May 1953 and 4 January 1951, respectively. Claimant Horwitz stated that she was born on 5 July 1920 in Velzen, Germany.

Claimant Frank and Claimant Horwitz previously submitted Initial Questionnaires with the Court in 1999 asserting their entitlement to a Swiss bank account owned by Alfred Frank and Hermann Frank.

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

The Bank's records consist of two customer cards. According to these records, the Account Owner was Alfred Frank, who resided in Berlin-Grünewald, Germany, and Amsterdam, The Netherlands. The Bank's records indicate that the Account Owner held a safe deposit box numbered 1615, which was opened when the Account Owner was in Berlin-Grünewald, and a demand deposit account in Swiss Francs, which was opened in Amsterdam. The Bank's records indicate that the safe deposit box, the opening date of which is illegible, was closed on 28 October 1938, and that the demand deposit account in Swiss Francs was opened on 30 April 1940 and closed on 31 October 1941. The Bank's records do not show to whom the accounts at issue were paid, nor do these records indicate the value of these accounts. There is no evidence in the Bank's records

that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

## **The CRT's Analysis**

### Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the three claims of the Claimants in one proceeding.

### Identification of the Account Owner

The Claimants' great-uncle's and husband's uncle's name and country of residence match the published name of the Account Owner. The Claimants stated that their relative resided in Berlin and The Netherlands, which matches unpublished information about the Account Owner contained in the Bank's records. In support of their claims, the Claimants submitted documents, including Claimant Schwartzman's birth certificate, which states that Gerald Frank was her father; and the marriage certificate of Gerald Frank and Hanna Frank, née Horwitz, dated 28 May 1949. In addition, the Claimants submitted a letter dated from 1965, in which the Swiss Justice Department denied the claim of Gerald Frank (Claimant Horowitz's late husband and the father of Claimant Schwartzman and Claimant Frank) to the account of Alfred Frank.

The CRT further notes that Claimant Frank and Claimant Horwitz filed an Initial Questionnaire with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Alfred Frank, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimants have based their present claims not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that the Claimants had reason to believe that their relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Alfred Frank, and indicates that he lived with Hermann Frank at Jan Van Eyckstraat 23, Amsterdam, The Netherlands. This is consistent with the information provided by the Claimants about the Account Owner. 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. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

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

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, that he fled Nazi Germany in the late 1930s, and that while his exact fate is unknown, he was probably deported to a concentration camp. As noted above, a person named Alfred Frank was included in the CRT's database of victims.

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

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents and detailed biographical information, demonstrating that the Account Owner was the great-uncle of Claimant Schwartzman and Claimant Frank, and Claimant Horwitz's late husband's uncle. The CRT further notes that the Claimants identified unpublished information about the residences of Alfred and Hermann Frank in Berlin and in The Netherlands, as contained in the Bank's records; that Claimant Frank and Claimant Horwitz filed an Initial Questionnaire with the Court in 1999, identifying the relationship between Alfred and Hermann Frank, prior to the publication in February 2001 of the ICEP List; and that the Claimants also identified that Alfred and Hermann Frank resided together in The Netherlands which matches information contained in the Yad Vashem records. The CRT further notes that the Claimants submitted a copy of a Swiss Justice Department letter, dated 16 September 1965, pertaining to Claimant Frank's and Claimant Schwartzman's father's and Claimant Horwitz's late husband's claim to the accounts of the Alfred and Hermann Frank. The CRT notes that it is plausible that this 1965 document, which indicates the Account Owner's name as contained in the Bank's records and the Account Owner's brother's name, is a document which most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimants as a family member, and all of this information supports the plausibility that the Claimants are related to the Account Owner and the Account Owner's brother, as they have asserted in their three separate Claim Forms.

### The Issue of Who Received the Proceeds

With regard to the demand deposit account that was opened on 30 April 1940 before the Nazi invasion of The Netherlands and closed on 31 October 1941, given that the Account Owner resided in The Netherlands and the account was closed, unknown to whom, more than a year and half after the Nazis had occupied the country; that the exact fate of the Account Owner is unknown, but that it appears that the Account Owner was deported, as evidenced by his disappearance during the German occupation of The Netherlands, and by the fact that the Yad Vashem database contains a record concerning the Account Owner as a victim of Nazi persecution; that there is no record of the payment of the Account Owner's account to him; that the Account Owner and his heirs would not have been able to obtain information about his 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 Presumptions (a), (h), and (j), as provided in Article 28 of the Rules (see Appendix A), 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.

With regard to the safe deposit box, which was closed on 28 October 1938, the CRT has determined not to award this account given that it is plausible that the Account Owner would not have opened a new, separate account in 1940, approximately one year and a half after the safe deposit box was closed, at the same Bank that held his safe deposit box if the safe deposit box had been confiscated previously. In reaching this conclusion, the CRT also took into account that it is plausible that the Account Owner would have known prior to the opening of his demand deposit account that he was not being charged fees for the box and would have made an inquiry to the Bank regarding the status of the box at least at the time he was in contact with the Bank when he opened his demand deposit account in 1940. Therefore, the CRT concludes that he would have been alerted by these contacts with the Bank that his safe deposit box had been closed without his authorization and he would not have subsequently opened a new demand deposit account at the same Bank in 1940.

#### Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was Claimant Schwartzman's and Claimant Frank's great-uncle, and Claimant Horwitz's late husband's uncle, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed demand deposit account.

#### Amount of the Award

In this case, the Account Owner held one demand deposit account. 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 2,140.00 Swiss Francs. The current value of this amounts 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 26,750.00 Swiss Francs.

### Division of the Award

According to Article 23(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim in equal shares by representation. In order to provide an adequate solution for dividing an award between the Account Owner's nephew's wife and the Account Owner's nephew's children, the CRT finds it appropriate to apply the equity principal set forth in Article 23(g) and Article 27 of the Rules. These Articles stipulate the application of the principles of fairness and equity under the circumstances. Accordingly, the CRT determines that each Claimant is entitled to one-third of the total award amount.

### **Scope of the Award**

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claim to determine whether there are additional Swiss bank accounts to which they 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  
19 November 2003