

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]  
also acting on behalf of [REDACTED]  
represented by [REDACTED]

**in re Account of Dr. Leo Ludwig Gans**

Claim Number: 219334/PY

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of [REDACTED], also known as [REDACTED].<sup>1</sup> This Award is to the account of Dr. Leo Ludwig Gans (the “Account Owner”) 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 a Claim Form identifying the Account Owner as her paternal great-great-uncle, Dr. Leo Ludwig Gans, also known as Dr. Leo Ludwig Gans-Landau, who was born on 4 August 1843 in Frankfurt am Main, Germany, and was married to [REDACTED], née [REDACTED], on 15 March 1876. According to the Claimant, her great-great-uncle, who was Jewish, lived in Frankfurt at Barkhausstrasse 14. The Claimant stated that Dr. Leo Ludwig Gans held the title *Geheimrat*, indicating that he was a prominent and successful businessman. The Claimant stated further that her great-great-uncle was a prominent citizen of Frankfurt, in whose honor a street in Frankfurt has been named. Among other things, he was a pioneer in the chemicals industry, in particular the paint industry, and president of the Frankfurt Aviation Association, which organized the International Aviation Exhibition in 1909. According to the Claimant, her great-great-uncle started his career in his father’s and uncle’s company, *Leopold Cassella & Co.* and later became a member of the Board of Directors of another large chemical company, *I.G. Farben Industrie*, which the Claimant asserted had business connections in Switzerland. The Claimant stated that Dr. Leo Ludwig Gans died on 14 September 1935 in Frankfurt.

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<sup>1</sup> The CRT will treat the claim to this account in a separate decision.

The Claimant indicated that Dr. Leo Ludwig Gans was one of the main executors of her paternal great-grandparents' joint will, and was the brother of her paternal great-grandfather. The Claimant stated that her great-grandparents were [REDACTED] and [REDACTED], née [REDACTED], and that [REDACTED]' family name was changed to [REDACTED] in 1912. According to the Claimant, [REDACTED] was co-owner of *Leopold Cassella & Co.* The Claimant added that under the terms of her great-grandparents' joint will, half of their estate was bequeathed to their grandchildren, one of whom was the Claimant's father, [REDACTED]. The will also states that the estate was to be administered by three executors, one of whom was Dr. Leo Gans from Frankfurt am Main. The Claimant stated further that some of these executors were to be replaced by or substituted with other executors, for example, in the event of the death of one of the executors, and that most of these executors were Jewish bankers. The terms of the will obliged the executors of the will to deposit the securities which formed part of the estate in custody accounts in secure banking institutions such as the *Darmstädter Bank*, the *Deutsche Bank*, and also in overseas banks. The Claimant stated that the executors disappeared or were killed by the Nazis in 1938 or 1939. The Claimant stated that she had previously made inquiries in 1990 and 1991 about possible accounts in Switzerland held by her great-grandfather or his estate to the Jewish Restitution Successor Organization in New York, the United States, the Swiss National Bank, the Swiss Ministry of Justice, and, in 1996, to the Swiss Federal Banking Commission. The Claimant also stated that she conducted research relating to possible accounts belonging to her great-grandfather or his estate at the Simon Wiesenthal Center in Vienna, Austria in 1988.

In support of her claim, the Claimant submitted the joint will of her great-grandparents, as well as a letter from the office of the administrators of the estate in Frankfurt am Main, dated 11 October 1926. The Claimant also submitted a special obituary written after the death of Dr. Leo Ludwig Gans that was published in the newspaper, *Frankfurter Zeitung*, indicating that his brother was [REDACTED]. She also submitted various other newspaper articles from the 1960s to the 1980s commemorating the death of the Claimant's great-great-uncle, as well as a story about Dr. Leo Ludwig Gans in a book published in 1987 commemorating Frankfurt's honored citizens, which states that he had connections to a chemical-pharmaceutical company in Wyl, Switzerland. The Claimant submitted another undated newspaper article which states that *I.G. Farben Industrie* had a holding in Switzerland named *Internationale Industrie-und-Handesbeteiligungen AG*, which was established in Basel in 1928. The Claimant also submitted an extract of a letter written by one of the executors of her great-grandparents' estate, [REDACTED], stating that the assets of the estate included about 35,000.00 Swiss Francs. The Claimant indicated that she was born on 6 August 1947 in Melbourne, Australia. The Claimant is representing [REDACTED], née [REDACTED], her mother, who was born on 13 July 1915 in Vienna.

The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by [REDACTED].

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

The bank records consist of a certified copy of a certificate of executorship of the estate of Dr. Leo Ludwig Gans, dated 10 October 1935 in Frankfurt am Main, and signed by the *Amtsgerichtsrat* (the district court councilor), named [REDACTED], and a printout from the Bank's database. According to these records, the Account Owner was *Geheimer Kommerzienrat*<sup>2</sup> Leo Ludwig Gans, also known as Dr. Leo Ludwig Gans-Landau, who resided in Frankfurt am Main at Bankhausstrasse 14, Germany. The bank records indicate that the Account Owner held an account of unknown type.

The bank records do not show 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 ("ICEP" or the "ICEP Investigation") 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. There is no evidence in the bank records that the Account Owner, his estate, its executors or his heirs closed the account and received the proceeds themselves.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her great-great-uncle's name matches the unpublished name of the Account Owner. The Claimant identified her great-great-uncle's title, street address, and date of death, which is consistent with unpublished information about the Account Owner contained in the bank records. The Claimant also stated that Dr. Leo Ludwig Gans was also known as Dr. Leo Ludwig Gans-Landau, which matches unpublished information about the Account Owner contained in the bank records. The CRT notes that the other claims to this account were disconfirmed because the date of death provided by those claimants did not match the date of death of the Account Owner in the bank records

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

The Claimant has made a plausible showing that the Account Owner was a Target of Nazi Persecution. The Claimant stated that the Account Owner and his heirs were Jewish and lived in Nazi Germany.

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<sup>2</sup> The CRT notes that this title normally indicates that the holder was a successful and prominent businessman who probably was an advisor to the commerce department or to a non-governmental business or organization.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents, including her great-grandparent's will, which demonstrate that she is the great-grandniece of the Account Owner.

### The Issue of Who Received the Proceeds

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 in this case 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 determine whether 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-great-uncle, and that relationship justifies 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 account.

### Amount of the Award

In this case, the Account Owner held one account of an unknown type. 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 present value of the account being awarded. Based on the investigation carried out pursuant to the instructions of the ICEP, in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

### Division of the Award

According to Article 23 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 of representation. In this case, the Claimant is representing her mother. The Claimant is a direct descendant of the Account Owner's parents, whereas her mother is the spouse of a descendent. Accordingly, the Claimant is entitled to 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  
April 4, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS  
(AS AMENDED)**

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 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).