

# CLAIMS RESOLUTION TRIBUNAL

---

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

## **Certified Award**

to Claimant [REDACTED]

## **in re Account of Walter Gerstel**

Claim Number: 208909/FC

Award Amount: 45,425.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Walter Gerstel (the “Account Owner”) at the Basel 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 a Claim Form to the Tribunal identifying the Account Owner as his late father, Walter Gerstel, who was born on 11 February 1901 in Swietochlowice, which was then in Germany and is now part of Poland, and died in Miami, Florida, on 28 February 1952. The Claimant stated that his father was married to Erna Gerstel, née Simon (the Claimant’s mother, who is now deceased), and that his parents lived in Mannheim, Germany, at Prinz-Wilhemstrasse 14 until 1929 and at Lameystrasse 30, until 1937. According to the Claimant’s submissions, his father was Jewish, and was forced to flee Germany in 1937, after which time he settled in New York.

In support of his claim, the Claimant submitted several documents, such as his birth certificate, his parents’ passports and their certificate, his father’s death certificate, and documents relating to his father’s estate. These documents establish that the Claimant is Walter and Erna Gerstel’s son and that he is entitled to their estate.

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

The bank records consist of a printout from the Bank’s database. According to these records, the sole Account Owner was Walter Gerstel, who resided in Mannheim, Germany, and that a power of attorney was given to Erna Gerstel, née Simon (the “Power of Attorney Holder”). The bank documents record that the account was opened on 3 October 1930 but do not indicate the type of account that the Account Owner held. The bank records do not show if or when the account at issue was closed, or to whom it was paid, nor do they 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 (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 could not determine whether there had been activity on this account after 1945.

## **The Tribunal’s Analysis**

### Identification of the Account Owner

The Claimant has demonstrated that it is plausible that the Account Owner was his father. His father’s name, Walter Gerstel, matches that of the published Account Owner. His mother’s name, Erna Gerstel, née Simon, matches that of the published Power of Attorney Holder. Finally, the Claimant has indicated that his father resided in Mannheim, which matches the Account Owner’s published city of residence. The Claimant’s statements regarding his parents’ names and their place of residence are confirmed by the documents submitted in support of his claim.

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

The Claimant has provided plausible evidence that the Account Owner was a Victim of Nazi Persecution. The Claimant has stated that the Account Owner was Jewish, and that he lived in Nazi Germany until 1937, when he had to flee to escape Nazi Persecution.

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

The Claimant has demonstrated that it is plausible that he is related to the Account Owner by submitting documents demonstrating that he is the Account Owner’s son. From the Claimant’s submissions, it appears that the Account Owner has no other living descendants.<sup>1</sup> The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information.

### The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the account at issue was paid to the Account Owner or his heirs, the Tribunal must consider the question of what happened to the funds in this case.

The historical evidence developed by the ICEP Investigation demonstrates that the funds of Nazi victims in Swiss banks were disposed of in various ways. In some cases, the account owners and/or their families withdrew and received the funds. In other cases, Nazi authorities coerced account owners to withdraw the balances in their Swiss accounts and transfer the proceeds to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but account values were consumed by regular and special bank fees and

---

<sup>1</sup> The Account Owner’s niece, [REDACTED], also has submitted a claim to the account at issue. Pursuant to Article 29(1) of the Rules Governing the Claims Resolution Process (the “Rules”), the child of an Account Owner has priority over the descendants of the Account Owner’s parents. The Tribunal will address the claim filed by the Account Owner’s niece in a separate decision.

charges, which resulted ultimately in closure without any payment to the account owners. In still other cases, particularly after a period of inactivity or dormancy, the proceeds were paid to bank profits. Thus, since the funds in this case apparently were not paid to the Account Owner or his family, there is a substantial likelihood that these funds went to the Nazis or to the Bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the account at issue, the Tribunal concludes that it is plausible that neither the Account Owner nor his heirs received the proceeds.<sup>2</sup> The application of confiscatory laws by the Nazi Regime during the 1930s, as described in more detail in footnote two below, makes it unlikely that the Account Owner received the proceeds himself. Indeed, although the Account Owner was able to escape from Nazi Germany in 1937, there is no indication that he may have entered Switzerland and accessed his account on his way to the United States. Rather, in light of the circumstances of this case, the Tribunal considers that it is plausible that the Account Owner had to surrender his account to the Nazi authorities as a “flight tax” in order to be allowed to leave Germany. Moreover, there is no evidence in the bank records suggesting that the Account Owner closed the account and received the proceeds himself.

#### Basis for the Award

The Tribunal has determined that an Award may be made in favor of the Claimant. First, the claimed account belonged to a Victim of Nazi Persecution. Second, the Claimant has plausibly demonstrated that he is the Account Owner’s son, and that relationship justifies an Award. Finally, the Tribunal 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

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. In this case, the type of account that the Account Owner held is not known. Therefore, the Tribunal will use the average value of a Swiss bank account in 1945. Based on the results of the ICEP Investigation, the average value of a Swiss bank account in 1945 was 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 45,425.00 Swiss Francs.

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, or

---

<sup>2</sup> In reaching this conclusion, the Tribunal is relying in part on research cataloguing more than forty different laws, acts, and decrees used by the Nazi Regime to confiscate Jewish assets abroad. Although some of these laws were promulgated before the Nazis came into power, and although many of the laws were facially non-discriminatory, the Nazi Regime increasingly enforced these laws on a discriminatory basis against Jewish asset holders. These laws included, for example, increasingly stringent registration and repatriation requirements for assets held outside Germany and special confiscatory taxes for emigrants who wished to flee Germany. Until 1937, the laws generally did not explicitly target Jews, although in practice the laws were enforced more stringently against Jews. Over the course of 1937, however, the spoliation process became increasingly wholesale and systematic and Nazi expropriations of Jewish assets held in Swiss banks and elsewhere became widespread. A decree dated 26 April 1938 required Jews to register their assets, and subsequent to that date the Nazi Regime began to enact legislation and orders to repatriate and confiscate foreign assets both for Jews who sought permission to flee the Reich and for those unable to flee. A listing of the principal laws invoked by the Nazi Regime in specific confiscatory situations appears at the CRT-II website, [www.crt-ii.org](http://www.crt-ii.org).

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, or where the Tribunal has determined that an account may be subject to later competing valid claims, claimants shall receive an initial payment of 35% 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 65% 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, 35% of the total award amount is 15,898.75 Swiss Francs.

### **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 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).

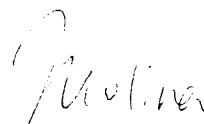
### **Certification of the Award**

At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a plausible case for entitlement to an award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same account will be forthcoming. Article 37(3)(a) and (b) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, and/or the Tribunal determines that an account may be subject to later competing claims, the initial payment to the claimant shall be 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. Thus, the Rules instruct and require the Tribunal to certify and recommend an initial 35% payment in awards submitted for Court approval in particular cases where either the Tribunal has used the value presumptions of Article 35 or it has determined that the account may be subject to later competing claims, or both.

In this case, the Tribunal has used the value presumptions of Article 35 of the Rules to calculate the account value. On this basis, the Tribunal certifies this Award for approval by the Court and for payment by the Special Masters in accordance with Article 37(3) of the Rules.

*26 March 2002*

Date



---

Martin Molina  
Resident Claims Judge