

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Dr. Edgar Weinberg

**in re Account of Hans Goldstein**

Claim Number: 204812/MBC

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Edgar Weinberg (the “Claimant”) to the account of Hans Goldstein (the “Account Owner”) at the Zurich branch of 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 Claimant**

The Claimant submitted a Claim Form identifying the Account Owner as his paternal aunt’s husband, Hans Goldstein. The Claimant stated that his father’s sister, Stefanie (or Steffi) Weinberg, married Dr. Hans Goldstein in April 1920 and took her husband’s surname. He further stated his uncle and aunt, who were Jewish, lived at Budapesterstrasse 14, Berlin, Germany from 1926 until approximately 1939. The Claimant stated that Hans Goldstein passed away in approximately 1939, and that his aunt fled to South America in that year. She eventually settled in the United States of America, where she passed away in 1947.

The Claimant stated that his aunt was his uncle’s only heir, as the couple was childless. He further stated that after Hans Goldstein died, his aunt married Hans Kneller, who the Claimant thought perished in the Holocaust. The Claimant stated that there were no children from this marriage. The Claimant indicated that when Steffi died in 1947, her brother Edgar Weinberg became her only heir. The Claimant stated that he is the son of Edgar Weinberg, and that he was born on 22 October 1946 in the Netherlands.

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

The bank records include a completed power of attorney form, signed 16 August 1930 and dated 16 August 1930, and printouts from the Bank’s database.

The power of attorney form indicates that the Account Owner was Dr. Hans Goldstein and the Power of Attorney Holder was Frau Steffi Goldstein, née Weinberg, who both resided at Budapesterstrasse 14, Berlin W 50, Germany and at Rüsternallee 13, Berlin-Charlottenburg, Germany.

The bank records indicate that the Account Owner held a custody account.<sup>1</sup> 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 (“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 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. The Claimant’s uncle’s name exactly matches the name of the Account Owner. The Claimant has furthermore correctly identified the unpublished maiden name of the Power of Attorney Holder, the fact that the Account Owner had the title “Dr.,” and the street address of the Account Owner and Power of Attorney Holder.

### 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 Account Owner and his wife were Jewish, as evidenced by their marriage certificate, and lived in Berlin until 1939 when the Account Owner died and his wife fled to South America. The CRT accordingly finds that the Account Owner and his wife were targets of Nazi Persecution. This is consistent with their living in Germany post-1933 under the Nazi Regime. Furthermore, an addendum to Stefanie Weinberg’s birth certificate indicates that she was forced to take the extra name “Sara,” identifying her Jewish origins, by the Nazi’s Anti-Semitic legislation.

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

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that the Account Owner was his aunt’s husband. He has indicated that the Account Owner died in 1939, and that the Account Owner’s wife and only heir died in 1947.

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<sup>1</sup> The bank records contain a power of attorney form that references a “*Titeldepot*,” which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held a custody account, in the absence of evidence to the contrary, the CRT concludes that it is plausible that he held such an account.

He has further indicated that his father, Edgar Weinberg, was Stefanie Goldstein's only heir. The Claimant has submitted the birth certificates of his father and Stefanie Weinberg, which indicate that he is the sister of Stefanie Weinberg.

### The Issue of Who Received the Proceeds

Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.<sup>2</sup> The CRT concludes in this case that Presumption (j) applies and it is therefore plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder or their heirs.

### 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his aunt's husband, 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

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.

Article 37(3)(a) of the Rules provides that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, 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. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value, and 35% of the total award amount is 54,600.00 Swiss Francs.

### **Scope of the Award**

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT 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).

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<sup>2</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

**Certification of the Award**

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

Claims Resolution Tribunal

## APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;<sup>2</sup>
- i) the Account 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 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,

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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).