

# CLAIMS RESOLUTION TRIBUNAL

---

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

## **Certified Award**

to Claimant Arthur Herz  
also acting on behalf of Gertrude Kracauer and Ly Brettler

**in re Accounts of Emil E. Herz  
and  
Gabriele Herz**

Claim Numbers: 221688/SB; 221689/SB

Award Amount: 818,500.00 Swiss Francs

This Certified Award is based upon the claim of Arthur Herz (the “Claimant”) to the published accounts of Emil E. Herz (“Account Owner E. Herz”) and Gabriele Herz (“Account Owner G. Herz”) (together the “Account Owners”) 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 Claimant**

The Claimant submitted a Claim Form identifying the Account Owners as his parents, Emil Herz and Gabriele Herz, née Berl, who were born on 5 April 1877 in Warburg, Germany and 26 April 1886 in Vienna, Austria, respectively, and were married on 7 July 1910 in Berlin, Germany. The Claimant stated that his parents, who were Jewish, resided in Berlin, where his father was an editor at the *Ullstein Publishing House*. The Claimant further stated that his parents had four children, Gertrude, Ly (Elisabeth), Erwin, and Arthur (the Claimant). The Claimant explained that his parents fled Germany in 1937, initially to Lugano, Switzerland, then to Italy, and, in 1940, to the United States. The Claimant stated that his mother died on 14 February 1957 in New York, the United States, his father died on 7 July 1971 also in New York and his brother, Erwin, died on 7 December 1975. In support of his claim, the Claimant submitted (1) Emil Herz’s last will and testament, dated 15 April 1971, which indicates that he resided at 1018 Park Avenue, Rochester, New York, and that he bequeathed his estate to his children, Erwin Herz, Arthur Herz, Elisabeth Brettler and Gertrud Kracauer, in equal shares, and (2) a copy of a photograph of the tombstone for Emil and Gabriele’s joint grave.

The Claimant indicated that he was born on 11 February 1921 in Berlin. The Claimant represents his sisters, Gertrud Kracauer and Ly (Elisabeth) Brettler.

## Additional Information Obtained by the CRT

According to information obtained by the CRT, Emil Herz was the chief editor of the Ullstein Publishing House from its inception in 1903 until he was forced to leave by the Nazis in 1934. During this period, Ullstein became the leading newspaper publisher in Germany. It controlled many local newspapers across the country, including two influential mass-circulation dailies in Berlin, the *Berliner Morgenpost* and the *Berliner Zeitung*, both considered bastions of social democratic politics. By 1919, Ullstein had expanded to include several book publishing companies, such as the Propyläen Verlag, whose roster of authors included such modernists as Bertoldt Brecht, Erich Maria Remarque, Lion Feuchtwanger and Heinrich Mann.<sup>1</sup>

## Information Available in the Bank's Records

The Bank's records consist of a customer card; correspondence between the Bank and *Svenska Handelsbanken* of Stockholm, Sweden; a letter to *J.P. Morgan & Co.* of New York, New York, the United States; correspondence between Account Owner E. Herz, his legal representative and the Bank in the 1950s and 1960s; correspondence between the Bank and the *Schweizerische Volksbank*; the Bank's internal note; and printouts from the Bank's database. According to these records, the Account Owners were Dr. Emil Herz, who was also referred to as Emanuel Emil Herz, and *Frau* (Mrs.) Gabriele Herz, who originally resided in Berlin, Germany. The Bank's records indicate that Account Owner E. Herz was the managing director of *Ullstein A.G.* in Berlin. The Bank's records further indicate that the Account Owners also resided in Lugano-Besso, Switzerland, in Florence, Italy, and later at 1018 Park Avenue, Rochester, New York, the United States.

The customer card indicates that the Account Owners jointly held two demand deposit accounts, one in Swiss Francs ("SF") and one in United States Dollars (US\$), and a custody account, numbered L37273, all of which had previously been solely owned by Account Owner G. Herz. This record further indicates that the ownership of these accounts was transferred when the Account Owners resided in Lugano-Besso.

The Bank's records indicate that, on or before 21 May 1938, the Account Owners instructed the Bank to transfer from custody account L37273 the following securities, which were deposited at *J.P. Morgan & Co.* in New York, to an account belonging to *Svenska Handelsbanken*, a bank in Stockholm, Sweden, at the *First Boston Corporation* in New York:

1. 4% *Argentine Republic ext. skg.* bonds, per 15 April 1972, with a total nominal value of US \$5,000.00 ;
2. 5% *Commonwealth of Australia gd.* bonds, per 1 September 1957, with a total nominal value of US \$1,000.00;
3. 4<sup>1</sup>/<sub>2</sub>% *Kingdom of Norway* bonds, per 1. April 1955, with a total nominal value of US \$2,000.00;

---

<sup>1</sup> See <http://www.ullsteinbuchverlage.de/ullsteinhc/verlag.php> and [www.polunbi.de/inst/ullstein.de](http://www.polunbi.de/inst/ullstein.de).

4.  $4\frac{1}{2}\%$  *Canadian National Railway Co.* bonds, per 1 February 1956, with a total nominal value of US \$1,000.00;
5.  $4\frac{1}{2}\%$  *New York Central Railroad Co. Serie A* bonds, per 1 October 2013, with a total nominal value of US \$2,000.00;
6.  $4\%$  *Southern Railway Co. Serie "A"* bonds, per 1 April 1956, with a total nominal value of US \$2,000.00;
7. 30 common shares in *General Motors Corporation* with a nominal value of US \$10.00 per share; and
8. 50 common shares in the *International Nickel Co. of Canada*, the value of which is not indicated.

According to the customer card, the demand deposit account in United States Dollars and custody account L37273 were closed in December 1938, and the demand deposit account in Swiss Francs was closed on 20 December 1940. The amounts in the accounts on the date of their closure are not known. There is no evidence in the Bank's records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The Bank's records indicate that Account Owner E. Herz's legal representative, Dr. Eugen Frenzel of Frankfurt am Main, Germany, wrote to the Bank on 3 December 1951 with the expressed purpose of obtaining information needed for compensation and restitution claims against Germany. In his letter, Dr. Frenzel explained that Account Owner E. Herz fled Germany for Switzerland in fall of 1937 and that he subsequently emigrated to the United States. Dr. Frenzel stated that Account Owner E. Herz managed to transfer his assets and securities from Germany to Switzerland and other countries, but suffered substantial losses from those transfers. Dr. Frenzel stated further that the assets that had been transferred to Switzerland were converted into United States Dollars and deposited with the Bank. Dr. Frenzel requested the Bank, on behalf of Account Owner E. Herz, to provide him with yearly statements of Account Owner E. Herz's custody account from 1 January 1935 until the closure of the accounts and with any other information about Account Owner E. Herz's accounts, especially information regarding transfers of foreign securities. Dr. Frenzel's letter contain handwritten notations, apparently written by Bank employees, that reference the existence of two demand deposit accounts, which were closed in 1938, and a custody account, which was closed in 1940, that had been held in Account Owner E. Herz's name. Nevertheless, in its reply of 11 December 1951, the Bank explained that it could not provide Dr. Frenzel with any information without a power of attorney from Account Owner E. Herz, and that in any event, pursuant to Swiss law, the Bank was only obliged to maintain records for ten years.

The Bank's records indicate that Account Owner E. Herz himself wrote to the Bank on 3 February 1952, explaining he had been a client of the Bank's for many years, and that he therefore requested a favor from them, namely, information regarding his account activity. In his letter, Account Owner E. Herz explained that he previously resided in Berlin-Dahlem at Griegstrasse 19/21, and was forced to emigrate from Germany in 1937 to escape Nazi persecution. In this letter, Account Owner E. Herz explained that he had opened a custody account at the Bank under his name, about which he was required to provide information to the Berlin Foreign Currency Transactions Office (*Devisenstelle Berlin*) until he left Germany. According to his letter, shortly before leaving Germany on 9 June 1937, Account Owner E. Herz

was informed by the *Devisenstelle* that he was permitted to dispose of the following securities deposited in his custody account at the Bank:

1.  $4\frac{1}{2}\%$  *Schweizer Bundesbahnen von 1928* bonds with a total nominal value of SF 30,000.00 Swiss Francs; and
2.  $4\frac{1}{2}\%$  *Kingdom of Denmark ext. Loan 1962* with a total nominal value of US \$1,000.00.

The letter goes on to state that Account Owner E. Herz later sold these securities through the Bank in September 1937 and October 1938. In his letter, Account Owner E. Herz stated that the remaining securities had to be transferred to the *Deutsche Reichsbank* pursuant to the regulations of the *Devisenstelle*, and that consequently, the Bank had to deliver Account Owner E. Herz's remaining securities to the *Reichsbank* or to a bank designated by the *Reichsbank* between June 1937 and September 1937, and that in return Account Owner E. Herz's personal account at *Bankhaus Gebrueder Arnhold* was credited with an amount of approximately SF 47,000.00.

Account Owner E. Herz explained that many of his bank documents had been lost in the course of emigrating, and therefore he could no longer ascertain exactly which securities had been transferred to the *Reichsbank*. Account Owner E. Herz went on to explain that he required these particulars for the purposes of seeking restitution from the German government. He stated that the value of those securities exceeded US \$10,000.00. Account Owner E. Herz closed his letter with an appeal to the Bank's loyalty to its old client, and offered to compensate the Bank for the time and effort required to obtain this information. Account Owner E. Herz's letter contains several detailed handwritten notations, apparently from Bank employees, regarding Account Owner E. Herz's accounts. One of the notations refers to a letter of 2 August 1937, which was apparently available to the Bank at that time.

The Bank's records show that the Bank wrote to Account Owner E. Herz on 14 February 1952, stating that they were unable to provide him with the requested information as their records from 1937 and 1938 were incomplete, as they were legally not required to retain records after a period of ten years.

The Bank's records also contain a file note dated 7 May 1952 written by the Bank's legal department stating that an acquaintance of Account Owner E. Herz inquired with one of the Bank's directors about Account Owner E. Herz's case. This note, apparently motivated by the Bank's concern for double liability, states that even though the Bank had delivered certain of his assets to the German state in 1937, Account Owner E. Herz had continued to deal with the Bank after he fled to Switzerland. According to this note, the Bank's employee recommended to Account Owner E. Herz's acquaintance that Account Owner E. Herz should turn again to the Bank and "insist" that he is only seeking information about the securities in his custody account in order to seek restitution from the German government.<sup>2</sup>

---

<sup>2</sup> "Eine Bekannte von Herrn Direktor Waespe hat sich über den Fall erkundigt. Dr. Herz benötigt die Angaben nur für sein Wiedergutmachungsgesuch in Deutschland. Ich stelle fest, dass Herr und Frau Dr. Herz bereits 1937 aus Deutschland auswanderten. Trotz der Ablieferung von bestimmten Vermögenswerten an den deutschen Staat haben sie vorbehaltlos mit uns weiter verkehrt, nachdem sie ihren Wohnsitz zunächst in die Schweiz verlegten.

Unter diesen Umständen habe ich Herrn Mariotti, der für Herrn Direktor Waespe die Angelegenheit behandelt hat, empfohlen, Herrn Dr. Herz durch Vermittlung jener Dame sagen zu lassen, er solle noch einmal insistieren,

According to the Bank's records, on 18 December 1953 and 11 January 1954, a director of the *Schweizerische Volksbank*, Mr. Vogelin, wrote to the Bank on behalf of Account Owner E. Herz, once again appealing to the Bank to check if it still had the relevant records and again restating that this information was required solely for the purpose of obtaining restitution from the German government. The records show that the Bank's response on 21 January 1954 was again negative, stating that the correspondence file from year 1937 was missing, and thus it was not possible to provide a list of securities transferred to Germany and to clarify the fate of the securities deposited in Account Owner E. Herz's custody account ("*Da uns aber das Dossier-Dossier aus dem hier massgebenden Jahre 1937 fehlt, sind wir zu unserem Bedauern nicht in der Lage, Herrn Herz eine Aufstellung jener Titel zu geben, die seinerzeit den deutschen Stellen übergeben worden sein sollen. Die noch vorhandenen Unterlagen gestatten uns nicht, eine Erklärung darüber abzugeben, was mit den Titeln geschehen ist, die einst bei uns in Depot lagen*").

The records show that Account Owner E. Herz again corresponded with the Bank in 1954, requesting copies of the "existing documentation" mentioned in their letter of 21 January 1954, and offering to cover any expenses incurred in connection therewith. The Bank sent another negative response to Account Owner E. Herz on 31 March 1954, stating that the only documents they had were internal receipts and a register, of which they were not permitted to provide copies. On 8 April 1954, Account Owner E. Herz responded to the Bank, asking them for documentation relating to the financial relationship between Switzerland and Germany during the Second World War and the period preceding that, and stating that the Bank had transferred a large part of the following securities that had belonged to him to Germany:

1.  $4\frac{1}{2}\%$  *Schweizer Bundesbahnen* bonds with a total nominal value of SF 40,000.00; and
2. *Dänische Staatsanleihe* bonds with a total nominal value of US \$1,000.00.

Account Owner E. Herz again appealed to the Bank for its assistance, stating that it was not possible to obtain any information from the *Reichsbank*, as its successor, the *Berliner Zentralbank*, was located in the Soviet-occupied part of Berlin. The Bank once again sent a negative reply on 27 April 1954, stating that it had no documents pertaining to the transaction referred to in Account Owner E. Herz's letters.

The Bank's records show that Account Owner E. Herz next corresponded with the Bank on 8 December 1963. In that letter, Account Owner E. Herz explained that the district court of Berlin had requested information about the transfer of Account Owner E. Herz's securities to Germany and that the Bank provided the requested information to the court with a letter of 4 March 1960. A copy of that letter is not available. Account Owner E. Herz stated that the circumstances of the transfer of his securities to Germany could not have been entirely clarified and inquired whether the *Reichsbank* held a custody account at the Bank in 1937 to which the Account Owner's securities could have been transferred. On 19 December 1963 the Bank responded that owing to its obligations of banking secrecy, it was not permitted to disclose such information to

---

*ausserdem ausdrücklich bemerken, dass er die Angaben nur für die Wiedergutmachung benötige und damit keine andern Zwecke verfolge. Wenn unsere Akten unvollständig seien, so bitte er uns, wenigstens das festzustellen, was noch festzustellen sei."*

unauthorized third parties, and recommended that Account Owner E. Herz attempt to obtain such information from the *Reichsbank* and/or its successor, the *Deutsche Bundesbank*.

## **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 two claims of the Claimant in one proceeding.

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's parents' names and city and country of residence match the published names and city and country of residence of the Account Owners. The Claimant identified the Account Owners' other places of residence in Lugano and New York and the Account Owners' street address in New York, which matches unpublished information about the Account Owner contained in the Bank's records. In support of his claim, the Claimant submitted documents, including Emil Herz's last will and testament, which indicates that he resided at 1018 Park Avenue, Rochester, New York and a copy of a photograph of the tombstone of Emil and Gertrude's joint grave providing independent verification that the persons who are claimed to be the Account Owners had the same names and resided in the same cities recorded in the Bank's records as the names and cities of residence of the Account Owners. The Claimant also submitted a sample of his father's signature, which matches the signature sample contained in the Bank's records.

The CRT notes that the names Emil Herz and Gabriele Herz appear only once each on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of victims of Nazi persecution (the "ICEP List"). The CRT notes that there are no other claims to these accounts.

### Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and fled Germany in 1937 to Switzerland and then to Italy before emigrating to the United States.

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

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were the Claimant's parents. These documents include Account Owner E. Herz's last will and testament which indicates that the Claimant is his son. There is no information to indicate that the Account Owners have other surviving heirs other than the parties which the Claimant is representing.

### The Issue of Who Received the Proceeds

Given that the Account Owners fled Germany to Switzerland and Italy before emigrating to the United States; that the Nazi authorities were aware of the existence of Account Owner E. Herz's custody account at the Bank and specifically informed Account Owner E. Herz that he was only permitted to dispose of certain of the securities deposited therein; that there is no record of the payment of the Account Owners' accounts to them; that the Bank's records show that Account Owner E. Herz was unable 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, even for the stated purpose of obtaining restitution from the German government; 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 Owners or their 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 Owners were his parents, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

### Amount of the Award

In this case, the Account Owners held jointly two demand deposit accounts and a custody account, and Account Owner E. Herz held one custody account.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case with the demand deposit accounts and the custody account held jointly by the Account Owners, 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 investigation carried out pursuant to the instructions of ICEP (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. Thus, the total 1945 average value of three accounts at issue is SF 17,280.00. 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 an amount of SF 216,000.00 for these accounts.

With regard to the custody account held by Account Owner E. Herz, Account Owner E. Herz's letter of 8 April 1954 indicates that the Bank had transferred a large part of the following securities deposited in the custody account to Germany in 1937:

1. 4<sup>1</sup>/<sub>2</sub>% *Schweizer Bundesbahnen* bonds with a total nominal value of SF 40,000.00; and

2. *Dänische Staatsanleihe* bonds with a total nominal value of US \$1,000.00.

The market value of the  $4\frac{1}{2}\%$  *Schweizer Bundesbahnen* bonds as of 31 December 1937 was SF 43,840.00 and that of the *Dänische Staatsanleihe* bonds was US \$996.25 as of 16 December 1937.<sup>3</sup> With regard to the *Dänische Staatsanleihe* bonds, according to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal value on the date the account owner is deemed to have lost control over the account. It is presumed that the account owner, if able to decide freely, could have opted to hold the bond to maturity to avoid a capital loss. The CRT therefore determines that the value of the Danish bonds was US \$1,000.00, which was equivalent to SF 4,360.00 in 1937.<sup>4</sup> Thus, the total value of the securities transferred to Germany in 1937 was SF 48,200.00. The CRT notes that this valuation is consistent with Account Owner E. Herz's letter to the Bank of 3 February 1952, in which he indicated that the value of those securities transferred to Germany was approximately SF 47,000.00. Therefore, the CRT uses the value of SF 48,200.00 to calculate the award amount for this account. The current value of this amount is calculated by multiplying it by a factor of 12.5 to produce an amount of SF 602,500.00 for this account.

Consequently, the total award amount is SF 818,500.00.

The CRT notes that, according to the information provided by Account Owner E. Herz in his letters to the Bank, Account Owner E. Herz was able to dispose of the following securities in his custody account in 1937 and 1938:

1.  $4\frac{1}{2}\%$  *Schweizer Bundesbahnen von 1928* bonds with a total nominal value of SF 30,000.00; and
2.  $4\frac{1}{2}\%$  *Kingdom of Denmark ext. Loan 1962* bonds with a total nominal value of US \$1,000.00.

Consequently, the CRT is not awarding the value of these securities.

#### Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will, or other inheritance documents, who have submitted a claim. In this case, the Claimant represents his sisters, Gertrud Kracauer and

---

<sup>3</sup> The CRT notes that  $4\frac{1}{2}\%$  *Schweizer Bundesbahnen* bonds were issued in 1927 and in 1928. As the Bank's records indicate that the Account Owners owned a separate tranche of  $4\frac{1}{2}\%$  *Schweizer Bundesbahnen* bonds which were issued in 1928, the CRT presumes that this tranche was also issued in 1928. The CRT relies on prices as quoted on the Stock Exchange of Zurich on 31 December 1937 to determine the market value of these securities. In this case, the market value for this security is from the 31 December 1937 issue of the *Kursblatt der Zürcher Effektenbörse*. The market value for the Kingdom of Denmark  $4\frac{1}{2}\%$  percent of 1962 (*Dänische Staatsanleihe*) bonds is from the 16 December 1937 issue of the *Wall Street Journal*.

<sup>4</sup> The CRT uses official exchange rates when calculating this value.



Ly (Elisabeth) Brettler. Accordingly, the Claimant and his sisters are each entitled to one-third of 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 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**

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

Claims Resolution Tribunal  
31 December 2005