

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]

## **in re Account of Leopold Herz**

Claim Number: 710427/AE<sup>1</sup>

Award Amount: 189,250.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published account of Leopold Herz (the “Account Owner”) at the [REDACTED] (the “Bank”).<sup>2</sup>

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 an Initial Questionnaire (“IQ”) with the Court in 2000 identifying the Account Owner as her father, Leopold Herz, who was born on 10 February 1873, and who resided in Vienna, Austria. In a telephone conversation with the Claimant on 4 January 2005, the Claimant indicated that her father, who was Jewish, was married to [REDACTED], née [REDACTED], and that they had two children: herself and her brother, [REDACTED]. The Claimant further stated that her father owned a store that sold women’s coats. The Claimant indicated that the Nazis confiscated all her father’s property in Vienna. The Claimant further indicated that her brother was temporarily sent to a concentration camp prior to the outbreak of the Second World War, but was released in late 1939. The Claimant further stated that her father, mother, and brother subsequently fled Austria in 1939 to Nice, France, where they lived

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<sup>1</sup> [REDACTED] did not submit a Claim Form to the CRT. However, in 2000 she submitted an Initial Questionnaire (“IQ”), numbered GER 0062154, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires that can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 710427.

<sup>2</sup> The CRT notes that, 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”), Leopold Herz is indicated as having one account. Upon careful review, the CRT has concluded that the Bank’s record evidences the existence of two accounts.

in hiding. The Claimant indicated that her father and mother returned to Vienna after the War and that her father died there in 1952. In support of her claim, the Claimant submitted her birth certificate, showing that she was born in Vienna and that her father was Leopold Herz, as well as records from the Austrian State Archive concerning Leopold Herz, which show that he lived in Vienna, that his wife was [REDACTED], née [REDACTED], and that he had one daughter named [REDACTED]. The Claimant stated that she was born on 20 February 1916 in Vienna.

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

The Bank's record consists of a customer card. According to this record, the Account Owner was Leopold Herz who resided in Vienna. The Bank's record indicates that the Account Owner held one custody account numbered 57816, and one demand deposit account. The Bank's record shows that the custody account was closed on 10 December 1938 and the demand deposit account was closed on 20 March 1940. The amount in the accounts on the date of their closure is unknown. There is no evidence that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

### **Information Available from the Austrian State Archive**

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Leopold Herz, numbered 39141. According to these records, Leopold Herz was a businessman who was born on 10 February 1873, and resided at Silbergasse 1 in Vienna with his wife, [REDACTED], née [REDACTED], born on 4 November 1876. The records indicate that Leopold Herz had one daughter, named [REDACTED], born on 20 February 1916, and that she left Austria before December 15, 1938. These records further show that Leopold Herz owned a wholesale and export business that sold women's coats, which was aryanized on 17 June 1938 for 70,000.00 Reichsmark ("RM"), and that the family owned real estate worth RM 154,000.00 which was sold for RM 106,000.00. These records also indicate that Leopold Herz was assessed "flight tax" (*Reichsfluchtsteuer*) of RM 77,871.00 and atonement tax of RM 35,400. Finally, the records show that the family participated in the *Gildemeester Aktion*, which arranged emigration for Jewish families in return for their ceding all their assets and which was subject to the strict control of the Central Office for Jewish Emigration (*Zentralstelle für Jüdische Auswanderung*), headed by Adolf Eichmann and then Alois Brunner. These records make no mention of assets held in a Swiss bank account.

### **The CRT's Analysis**

#### Identification of the Account Owner

The Claimant's father's name and country of residence match the published name and country of

residence of the Account Owner. The Claimant also identified the Account Owner's city of residence, Vienna, which matches unpublished information about the Account Owner contained in the Bank's record. In support of her claim, the Claimant submitted documents, including her birth certificate, stating that she was born in Vienna and that her father was Leopold Herz, and her father's 1938 Census record showing that Leopold Herz lived in Vienna, was married to [REDACTED], and had a daughter named [REDACTED], providing independent verification that the person who is claimed to be the Account Owner had the same name and city of residence recorded in the Bank's record as the name and city of residence of the Account Owner.

The CRT further notes that the Claimant filed an IQ with the Court in 2000, asserting her entitlement to a Swiss bank account owned by Leopold Herz, prior to the publication in February 2001 of the 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"). This indicates that the Claimant has based her present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different city or country of residence than the city or country of residence of the Account Owner. Taking all 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 Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, and that he fled Austria for France in 1939. The Claimant further stated that the Nazis confiscated all the Account Owner's property in Vienna in March 1938.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's father. These documents include the Claimant's birth certificate, indicating that her father was Leopold Herz. Furthermore, the 1938 Census record submitted by the Claimant indicated that the Account Owner had a daughter named [REDACTED].

#### The Issue of Who Received the Proceeds

The CRT notes that the Bank's record indicates that the custody account was closed on 10 December 1938. Given that the Account Owner fled Austria in 1939; that there is no record of the payment of the Account Owner's custody account to him; that the Account Owner and his heirs would not have been able to obtain information about the custody 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 (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 that it is plausible that the proceeds of the custody account was 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.

The CRT further notes that the Bank's record indicates that the demand deposit account was closed on 20 March 1940, at which time, according to information provided by the Claimant, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's record does not indicate to whom the demand deposit account was closed, that the Account Owner fled Austria due to Nazi persecution, that the Account Owner may have had relatives remaining in Austria and that he may therefore have yielded to Nazi pressure to turn over his demand deposit account to ensure their safety, that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 (h) and (j), as provided in Article 28 of the Rules, the CRT concludes that it is plausible that the demand deposit account proceeds were not paid to the Account Owner or his 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her father, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

#### Amount of the Award

In this case, the Account Owner held one custody account and 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 investigation carried out pursuant to the instructions of ICEP, in 1945 the average value of a custody account was 13,000.00 Swiss Francs ("SF") and the average value of a demand deposit account was SF 2,140.00. Thus, the total 1945 average value of the accounts at issue in SF 15,140.00. The current value of these amounts is calculated by multiplying them by a factor of 12.5 in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 189,250.00.

### **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  
9 March 2005