

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Christine Celia Hackett

## **in re Accounts of Bertha Hirsch-Marchand**

Claim Number: 217285/PY<sup>1</sup>

Award Amount: 406,165.25 Swiss Francs

This Certified Award is based upon the claim of Christine Celia Hackett, née Nash, (formerly Nadenheim) (the “Claimant”) to the published account of Helene Schweizer.<sup>2</sup> This Award is to the accounts of Bertha Hirsch-Marchand (the “Account Owner”), over which Daniel Hirsch (the “Power of Attorney Holder”) held Power of Attorney, at the Basel and New York branches 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 Power of Attorney Holder as her father’s paternal cousin, Daniel Hirsch, who was born in 1866 and who resided in Mannheim, Germany. The Claimant stated that her father’s cousin was a businessman and that he had a sister, Helene Hirsch, who was married to Theodor Schweizer. The Claimant stated that Daniel Hirsch and his sister, who were Jewish, owned a residence located at L.8.15 in Mannheim, Germany, in 1938. The Claimant further stated that Helene Schweizer was deported to a concentration camp in France, and that her three children were killed there. The Claimant explained that Helene Schweizer survived the concentration camp and moved to New York, New York, where she died in approximately 1954. According to information provided by the Claimant, Daniel Hirsch fled Germany for England, where he remained until his death in 1944.

In support of her claim, the Claimant submitted documents, including a family tree; a notarized 1938 contract concerning the property at L.8.15 in Mannheim; and a statement by the Claimant’s father, Kurt Nash, dated 15 August 1951, also concerning the property at L.8.15 in Mannheim. The 15 August 1951 statement identifies Helene Schweizer and Daniel Hirsch as the Claimant’s

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<sup>1</sup> The Claimant submitted an additional claim to the account of Kurt Hans Nadenheim, which is registered under the Claim Number 600370. The CRT will treat the claim to this account in a separate decision.

<sup>2</sup> In a decision dated 7 August 2003, the Court approved an award to the accounts of Helene Schweizer to the Claimant. See *In re Accounts of Frau Helene Schweizer*.

father's cousins. The statement explains that Daniel Hirsch felt threatened by the Nazis because he was Jewish, and it states that Helene Schweizer also had a residence at Isabellastrasse 34, in Munich, Germany in 1938.

The Claimant previously submitted an Initial Questionnaire ("IQ") with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Helene Schweizer and an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Kurt Nadenheim, both of which indicate that her relatives resided in L8.15 in Mannheim.

The Claimant indicated that she was born on 9 February 1939 in New York, New York, the United States.

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

The Bank's records consist of a power of attorney form, an application from the Bank for the release of the assets held by the Account Owner at the Bank, correspondence between the Bank and the Department for the Liquidation of German Assets at the Swiss Clearing Authority, bank statements, a copy of the Swiss Federal legislation dated 20 December 1962 pertaining to assets held in Switzerland by foreigners or stateless persons who had presumably been victims of racial, religious or political persecution (the "1962 Survey"), a copy of the registration form submitted by the Bank to the registration office for assets of missing foreigners, the list of dormant Swiss accounts published by ATAG in 1997, as well as a judgment rendered by the Claims Resolution Tribunal for Dormant Accounts in Switzerland ("CRT-I").<sup>3</sup>

According to these records, the Account Owner was *Frau* (Mrs.) Dr. *Wwe.* (Widow) Bertha Hirsch-Marchand from Frankfurt am Main, Germany, who was the widow of Dr. Leopold Hirsch, and whose maiden name was Marchand. The records indicate that the Power of Attorney Holder to the securities deposited in London was Daniel Hirsch, the Account Owner's brother-in-law, who resided in Mannheim, at L8.15, and later in Harrogate, England. The Bank's records indicate that the Account Owner had been the Bank's customer since 1920. The Bank's records indicate that on 1 October 1935, the Bank was instructed to direct correspondence to *Frau* (Mrs.) Clara Forter, who lived at Zeil 50/IV, Frankfurt am Main. The Bank's records indicate that the Bank had not heard from the Account Owner since 15 February 1938. Furthermore, the Bank's records indicate that the Account Owner's accounts had been considered for registration in the 1962 Survey, but ultimately were not registered.

The Bank's records indicate that the Account Owner held a custody account at the Basel branch of the Bank that was numbered 84555-II/84555 and was denominated in Swiss Francs and nine demand deposit accounts: one demand deposit account, numbered 84560, denominated in Canadian Dollars; one demand deposit account, also numbered 84555, denominated in Swiss

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<sup>3</sup> See Docket Number 9060/0799/RP. The Bank's records indicate that the Account Owner's name had been published on a list of dormant account owners by ATAG in 1997. A claim was made to the Account Owner's dormant account in CRT-I, but the judgment rendered by CRT-I, which is contained in the Bank's records, indicates that this claimant was denied on the basis that the claimant there had not provided sufficient information about the Account Owner. The CRT notes that that claimant is not related to the Claimant in these proceedings.

Francs; four demand deposit accounts denominated in United States Dollars, one of which was numbered 84561; and three demand deposit accounts denominated in Pound Sterling. The Bank's records indicate that the three unnumbered demand deposit accounts denominated in United States Dollars were referred to as the "ordinary blocked account," "special account 1815 blocked," and "special account 1815 General Ruling 6/17 blocked," respectively, and were held in the New York branch of the Bank, and that the other demand deposit accounts were held at the Bank's Basel branch. The demand deposit accounts denominated in Pound Sterling were referred to as "£ Sterling Custodian reported account, reg. 8 Nr. 368," "£ Sterling blocked account CUKSA Nr. 2890," and "£ Sterling suspense blocked account," respectively.

According to the Bank's records, the value of the custody account numbered 84555-II/84555 as of 16 February 1945 was 6,926.00 Swiss Francs.

The Bank's records further indicate that the following securities were contained in the custody account at the Bank's Basel branch as of 3 February 1947: *3<sup>1</sup>/<sub>4</sub>% Schweizerische Eidgenossenschaft 1944* bonds, with a nominal value of 1,000.00 Swiss Francs; *Mexico Interest Arrears Cert. Class "A"*, with a nominal value of 90.00 United States Dollars; *Mexico Interest Arrears Cert. Class "B"*, with a nominal value of 270.00 United States Dollars; Mexico Scrip receipts with a nominal value of 33.75 United States Dollars; *4<sup>1</sup>/<sub>2</sub>% Institution for Encouragement of Irrigation Works and Development of Agriculture S.A. 1943* bonds, with a nominal value of 1,000.00 United States Dollars; two shares in the *Internationale Gesellschaft für Chemische Unternehmungen A.G., Basel*, with a nominal value of 500.00 Swiss Francs; and eight *Canton de Fribourg 1902* bonds with a nominal value of 15.00 Swiss Francs each. The Bank's records also indicate that, as of the same date *5% Commonwealth of Australia 1955* bonds with a nominal value of 1,000.00 United States Dollars were contained in the same custody account, but were located at the Bank's New York branch and administered by its Basel branch. Furthermore, the Bank's records indicate that the following securities were deposited in the same custody account but were located at the Bank's London branch and similarly administered by its Basel branch on 3 February 1947: stock in the *Canadian National Railway Co. 1927*, with a nominal value of 50.00 Pound Sterling, *4% Grand Trunk Pacific Railway Co. 1955 Mortgage Sterling Bonds Series B. (Mountain Section)*, with a nominal value of 100.00 Pound Sterling, as well as ordinary stock in *Imperial Chemical Industries Ltd.* with a nominal value of 21.00 Pound Sterling.

The Bank's records further indicate that on or before 12 April 1949, the Bank exchanged the two shares held by the Account Owner in the *Internationale Gesellschaft für Chemische Unternehmungen A.G., Basel*, for two shares in the *Internationale Industrie & Handelsbeteiligungen A.G., Basel*, which were subsequently deposited in the Account Owner's custody account. Correspondence between the Bank and the Swiss Clearing Authority indicates that these shares were subsequently sold by the Bank on or before 27 November 1953, and that the Mexican bonds and scrip receipts were sold by the Bank on or before 18 August 1953, and that the proceeds were credited to the demand deposit account in Swiss Francs.

According to the Bank's records, the *5% Commonwealth of Australia 1944* bonds, which were located at the Bank's New York branch, were blocked and confiscated by the Office of Alien Property of the United States Department of Justice in Washington pursuant to a vesting order

dated 5 June 1951, and delivered to the Federal Reserve Bank of New York. The Bank's records further indicate that the demand deposit accounts referred to as "ordinary blocked account," "special account 1815 blocked," and "special account 1815 General Ruling 6/17 blocked" held by the Account Owner at the Bank's New York branch were similarly blocked and confiscated.

The Bank's records also indicate that the securities located in the London branch of the Bank were confiscated as German property by the Custodian of Enemy Property in London on or before 9 July 1953.

The Bank's records show that the demand deposit account denominated in Canadian Dollars was opened sometime between 1951 and 1962, and that its value as of 20 December 1962 was 520.60 Canadian Dollars (then equivalent to 2,079.80 Swiss Francs). Furthermore, the Bank's records indicate that the value of the demand deposit account denominated in Swiss Francs as of 31 December 1946 was 1,619.00 Swiss Francs; that the values of the demand deposit accounts denominated in United States Dollars referred to as the "ordinary blocked account," "special account 1815 blocked," and "special account 1815 General Ruling 6/17 blocked" as of the same date were 70.50 United States Dollars, 72.25 United States Dollars, and 122.75 United States Dollars, respectively; that the values of the demand deposit accounts denominated in Pound Sterling referred to in the Bank's records as the "£ Sterling, Custodian reported account, reg. 8 Nr. 368," and "£ Sterling blocked account CUKSA Nr. 2890" as of 31 December 1951 were 10.12.8 Pound Sterling and 52.13.3 Pound Sterling,<sup>4</sup> respectively, and that the "£ Sterling suspense blocked account" had been closed on or before that date. The Bank's records do not indicate the balance of this account on its date of closure but do indicate that the account had a negative balance of -9.00 Pound Sterling as of 31 December 1949.

The Bank's records show that on 27 October 1988, the demand deposit account denominated in United States Dollars numbered 84561 and the demand deposit account denominated in Canadian Dollars numbered 84560 were transferred to the demand deposit account denominated in Swiss Francs numbered 84555 and closed. The Bank's records further indicate that the balance of the demand deposit account numbered 84561 at this date was 10.90 United States Dollars, and that the balance of the demand deposit account numbered 84560 at this date was 298.50 Canadian Dollars. The demand deposit account denominated in Swiss Francs numbered 84555 remains open and dormant.

With respect to the demand deposit account denominated in Pound Sterling referred to as "£ Sterling suspense blocked account," the Bank's records indicate that it was closed on or before 31 December 1951. The Bank's records do not indicate to whom it was paid. With respect to the demand deposit accounts denominated in Pound Sterling referred to as "£ Sterling, Custodian reported account, reg. 8 Nr. 368" and "£ Sterling blocked account CUKSA Nr. 2890," as well as the custody account numbered 84555-I/84555, the Bank's records do not show when they were closed or to whom they were paid.

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<sup>4</sup> These values in Pounds Sterling are prior to the decimalization of the Pound in 1971, and are expressed in terms of pounds, shillings and pence. The CRT has converted these values to decimal values for the purposes of calculating the current values of these accounts. In decimal terms, one shilling is equivalent to £1/20 and one pence is equivalent to £1/240.

The auditors who carried out the investigation of this bank to identify Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP or the “ICEP Investigation”) did not find these accounts in the Bank’s system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945.

With respect to all the accounts but for the demand deposit account denominated in Swiss Francs which remains open and dormant, and the demand deposit accounts in United States Dollars and Canadian Dollars, the proceeds of which were transferred to the demand deposit account in Swiss Francs, there is no evidence in the Bank’s records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

## **The CRT’s Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Power of Attorney Holder. Her father’s cousin’s name matches the published name and city of residence of the Power of Attorney Holder. The Claimant identified her father’s cousin’s street address in Mannheim, which matches unpublished information about the Power of Attorney Holder contained in the Bank’s records. Finally, the Claimant identified the fact that the Power of Attorney Holder relocated from Germany to England, which also matches unpublished information about the Power of Attorney Holder. In support of her claim, the Claimant submitted a copy of a private agreement dated 20 January 1938 between Daniel Hirsch and her father relating to the property at L8.15, Mannheim, providing independent verification that the person who is claimed to be the Power of Attorney Holder had the same name and street address as the name and street address of the Power of Attorney Holder.

Although the Claimant did not mentioned the name of the Account Owner in her Claim Form, the CRT nevertheless finds that she has plausibly identified the Account Owner, as the Claimant has made a definite identification of the Power of Attorney Holder by providing his exact street address, and as the Bank’s records indicate that her cousin was the brother-in-law of the Account Holder.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Bertha Hirsch Marchand, and indicates that she resided in Frankfurt am Main, which matches information about the Account Owner found in the Bank’s records. This database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different maiden name than that of the Account Owner, or because they incorrectly identified the relationship between the Account Owner and the 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. Although the Claimant makes no mention of the Account Owner in her Claim Form, she has made a definite identification of the Power of Attorney Holder, whom, as stated above, is the Account Owner's brother-in-law. The Bank's records in turn indicate that the Bank had assumed that the Account Owner had been persecuted as it had registered the name of the Account Owner in the 1962 Survey. As noted above, a person named Bertha Hirsch Marchand was included in the CRT's database of victims.

### 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, demonstrating that the Power of Attorney Holder is her father's cousin. The CRT notes that the Claimant identified unpublished information about the Power of Attorney Holder as contained in the Bank's records. The CRT further notes that the Claimant submitted a narrative by her father Kurt Nash (formerly Nadenheim) about his family made in 1951, indicating that Daniel Hirsch was his cousin, and a copy of a private agreement dated 20 January 1938 between Daniel Hirsch and her father relating to the property at L8.15, Mannheim, which provide independent verification that the Claimant's relatives bore the family name Hirsch. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Power of Attorney Holder was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Power of Attorney Holder, as she has asserted in her Claim Form. As the Bank's records indicate that the Power of Attorney Holder was the Account Owner's brother-in-law, the CRT concludes that the foregoing information also supports the plausibility that the Claimant is related to the Account Owner.

### The Issue of Who Received the Proceeds

The Bank's records indicate that the demand deposit account numbered 84555, to which the demand deposit account denominated in United States Dollars numbered 84561 and the demand deposit account in Canadian Dollars numbered 84560 were transferred, remains open and dormant.

With respect to the demand deposit accounts denominated in United States Dollars referred to as the "ordinary blocked account," "special account 1815 blocked," and "special account 1815 General Ruling 6/17 blocked" and to the 5% *Commonwealth of Australia 1944* bonds, which were located at the Bank's New York branch but administered by its Basel branch, the Bank's records indicate that the assets were blocked and confiscated by the Office of Alien Property of the United States Department of Justice in Washington pursuant to a vesting order dated 5 June 1951, and delivered to the Federal Reserve Bank of New York. The CRT notes that, under the agreement with the United States authorities, it was the Bank's responsibility to certify that accounts held at its New York branch did not belong to enemy aliens. In this case, because the Bank's records indicate that the assets were delivered to the Federal Reserve Bank of New York, and because there is no other information in the Bank's records to indicate that these assets were

ever released back to the custody of the Bank and/or paid to the Account Owner's heirs, it appears that the Bank failed to deliver such certification, and the proceeds were likely incorporated into the United States War Claims Fund.

With respect to the securities located at the Bank's London branch, the Bank's records indicate that the securities were confiscated as German property by the Custodian of Enemy Property in London on or before 9 July 1953. There is no indication in the Bank's records that these securities were ever released back to the Bank or to the Account Owner's heirs.

With respect to the remaining accounts, given that there is no record of the payment of the Account Owner's accounts to her or her heirs, nor any record of their dates of closure; that the Bank considered registering the Account Owner's accounts in the 1962 Survey; that the Account Owner or her heirs would not have been able to obtain information about her accounts 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 (f), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process (the "Rules"), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holders, 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 Owner was her father's cousin's wife, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

#### Amount of the Award

In this case, the Account Owner held one custody account and nine demand deposit accounts.

The Bank's records indicate that the value of the custody account numbered 84555-II/84555 as of 16 February 1945 was 6,926.00 Swiss Francs. According to Article 29 of the Rules, if the amount in a custody account was less than 13,000.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 13,000.00 Swiss Francs. The current value of the amount of the custody account is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total sum of 162,500.00 Swiss Francs.

Seven of the nine demand deposit accounts have recorded values of less than 2,140.00 Swiss Francs. First, with respect to the demand deposit account denominated in Swiss Francs numbered 84555, the Bank's records indicate that its value as of 31 December 1946 was

1,619.00 Swiss Francs. Second, with regard to the demand deposit account denominated in United States Dollars referred to as the “ordinary blocked account,” the Bank’s records indicate that its value as of 31 December 1946 was 70.50 United States Dollars (then equivalent to 301.74 Swiss Francs). Third, with regard to the demand deposit accounts denominated in United States Dollars referred to as the “special account 1815 blocked,” the Bank’s records indicate that its value as of 31 December 1946 was 72.25 United States Dollars (then equivalent to 309.23 Swiss Francs). Fourth, with regard to the demand deposit account denominated in United States Dollars referred to as “special account 1815 General Ruling 6/17 blocked,” the Bank’s records indicate that its value as of 31 December 1946 was 122.75 United States Dollars (then equivalent to 525.37 Swiss Francs). Fifth, with regard to the demand deposit account denominated in Pound Sterling referred to as the “£ Sterling, Custodian reported account, reg. 8 Nr 368”, the Bank’s records indicate that its value as of 31 December 1951 was 10.12.8 Pound Sterling (then equivalent to 120.00 Swiss Francs). Sixth, with regard to the demand deposit account denominated in Pound Sterling referred to as the “£ Sterling blocked account CUKSA Nr 2890,” the Bank’s records indicate that its value as of 31 December 1951 was 52.13.3 Pound Sterling (then equivalent to 656.26 Swiss Francs). Seventh, with regard to the demand deposit account denominated in United States Dollars numbered 84561, the Bank’s records indicate that its value as of 27 October 1988 was 10.90 United States Dollars (then equivalent to 15.96 Swiss Francs). For these seven accounts, according to Article 29 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the demand deposit account shall be determined to be 2,140.00 Swiss Francs. The current value of the demand deposit account is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a sum of 26,750.00 Swiss Francs for each account, with a total of 187,250.00 Swiss Francs for all seven accounts.

With regard to the demand deposit account denominated in Canadian Dollars numbered 84560, the Bank’s records indicate that its value as of 20 December 1962 was 520.60 Canadian Dollars (then equivalent to 2,079.80 Swiss Francs). In accordance with Article 31(1) of the Rules, this amount is increased by 270.00 Swiss Francs, which reflects standardized bank fees charged to the demand deposit account between 1945 and 20 December 1962. Consequently, the adjusted balance of the demand deposit account is 2,373.22 Swiss Francs. The current value of the demand deposit account is determined by multiplying the historic balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a sum of 29,665.25 Swiss Francs.

With regard to the demand deposit account denominated in Pound Sterling referred to as “the “£ Sterling suspense blocked account,” the Bank’s records indicate that it held a negative balance of -9.00 Pound Sterling as of 31 December 1949. As the Bank’s records do not provide a balance before 1945, and as the records indicate that the Account Owner had not been heard from since 1938, the CRT finds that the negative balance is the result of bank fees imposed on the account between 1938 and 1949, and thus disregards the negative balance in calculating the value of the account. For the purposes of calculating the value of this account, the CRT is treating this demand deposit account as an account of unknown value. 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 ICEP Investigation, in 1945 the average value of a demand deposit

account was 2,140.00 Swiss Francs. 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 26,750.00 Swiss Francs.

The total Award amount is determined by adding the current value of all the accounts held by the Account Owner. Consequently, the total Award amount is 406,165.25 Swiss Francs.

### **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  
18 August 2004