

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Dr. Jacques Hirschler  
acting on behalf of himself and Jacqueline Hirschler

## **in re Accounts of Robert Hirschler and Jacques Hirschler**

Claim Numbers: 220928/EZ; 220929/EZ

Award Amount: 170,880.00 Swiss Francs

This Certified Award is based upon the claims of Dr. Jacques Hirschler (the “Claimant”) to the accounts of Jacques Hirschler (“Account Owner Jacques Hirschler”) and Robert Hirschler (“Account Owner Robert Hirschler”) at the Basel branches of the [REDACTED] (“Bank I”) and the [REDACTED] (“Bank II”).

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 two Claim Forms identifying Account Owner Jacques Hirschler as his paternal grandfather and Account Owner Robert Hirschler as his father. According to the Claimant, Jacques Hirschler was born on 18 June 1862 in Edigheim, Germany, and was married to Laure Hirschler, née Gormanns. The Claimant indicated that his grandfather, who was Jewish, lived in Strasbourg, France, where he was a grain wholesaler. The Claimant stated that his grandparents had two children, Robert Hirschler (the Claimant’s father) and André Hirschler (the Claimant’s uncle). The Claimant further stated that his grandfather died in Strasbourg in September 1939.

According to the Claimant, Robert Hirschler was born on 31 December 1904 in Strasbourg, and was married to Jaqueline Chauvin. The Claimant indicated that his father, who was Jewish, worked as a factory agent in Strasbourg until the outbreak of the Second World War, when his father, his grandmother and uncle fled to Nice, in the unoccupied part of France, and subsequently to Cuba six months later. The Claimant’s father, uncle and grandmother later settled in New York, New York, United States, where they died in 1953, 1990 and 1989, respectively. The Claimant asserted that his uncle never had any children and that he is the only living descendant of his father and grandfather. According to the Claimant, he was born on 7 April 1950 in New York.

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

The bank records of Bank I consist of a power of attorney form and an address form, both dated 17 September 1934 in Strasbourg. According to these records, the Account Owner was Jacques Hirschler who resided at 21, rue du Maréchal Joffre, Strasbourg, France. The Power of Attorney Holders to the account were Laure Hirschler née Gormanns, Robert Hirschler, and André Hirschler. The bank records indicate that the Account Owner held a custody account, numbered 39494-II and that the account existed after the occupation of France. The bank records do not show if or when this account was closed, or to whom it was paid, nor do these records indicate the value of the 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”) 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.

The bank record of Bank II consists of a registration card. According to this record, the Account Owner was Robert Hirschler who resided in Strasbourg. The bank records indicate that the Account Owner held a safe deposit box, which was opened on 30 August 1938 and was closed on 28 February 1941. The bank records do not show to whom the account was paid or the value of this account.

There is no evidence in the bank records that the Account Owners, their heirs or the Power of Attorney Holders closed the accounts and received the proceeds themselves.

## **The CRT’s Analysis**

### Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (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 Claimant’s two claims in one proceeding.

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The names of his paternal grandparents, father, and uncle match the published names of the Account Owners and the Power of Attorney Holders. Additionally, the published city of residence of Account Owner Jacques Hirschler matches the information provided by the Claimant. The Claimant also identified Account Owner Robert Hirschler’s city of residence, which matches unpublished information contained in the bank records.

### 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 that Account

Owner Jacques Hirschler's spouse and children (one of whom is Account Owner Robert Hirschler) fled France during its occupation by the Nazis.

### The Claimant's Relationships to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents, including a copy of his own birth certificate and his parents' marriage certificate, which demonstrate that he is the grandson of Account Owner Jacques Hirschler and the son of Account Owner Robert Hirschler.

### The Issue of Who Received the Proceeds

Based on its precedent and 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>1</sup> The CRT concludes in these cases that one or more of these presumptions applies and it is therefore plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holders 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 Owners were his father and grandfather, and that these relationships justify an Award. Finally, 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

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 and the average value of a safe deposit box account was 1,240.00 Swiss Francs. Consequently, the historical value of both of accounts was 14,240.00 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 170,880.00 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 these cases, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account values and 35% of these accounts award amount is 59,808.00 Swiss Francs.

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<sup>1</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

### Division of the Award

With regard to the custody account of Account Owner Jacques Hirschler, the Claimant, in addition to representing himself, requested to represent his mother and his aunt. Moreover, in a letter dated 21 July 2001, which was attached to the Claim Form, the Claimant stated that his family had agreed to distribute any funds of this account in equal shares among his mother, aunt and himself. Therefore, the CRT finds it appropriate to comply with the Claimant's request, and to apply the equity principal set forth in Article 33 of the Rules. Accordingly, the Claimant, his mother and his aunt, are each entitled to receive 52,000.00 Swiss Francs, representing one-third (1/3) of the present value of the custody account owned by Account Owner Jacques Hirschler.

With regard to the safe deposit account of the Account Owner Robert Hirschler, and according to the principles of distribution set forth in Article 29(2)(a) of the Rules, when a claimant has submitted the Account Owner's will, an award will provide for a division among the beneficiaries named in the will who have submitted claims to the account. The Claimant submitted the will of Account Owner Robert Hirschler, in which Account Owner Robert Hirschler bequeathed his estate to his spouse Jaqueline Hirschler, the Claimant's mother. However, the Claimant's mother has not submitted a claim to this account and is only being represented by the Claimant in the claim to Account Owner Jacques Hirschler. She is therefore not entitled to the proceeds of the safe deposit account held by Account Owner Robert Hirschler. The principles of distribution set forth in Article 29(1)(c) of the Rules entitle the Claimant to 14,880.00 Swiss Francs, representing the entire present value of the safe deposit account.

### **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).

### **Certification of the Award**

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

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## 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. "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 does not exist 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).