

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimants [REDACTED 1] and [REDACTED 2]

### **in re Account of Alexandre Kagan**

Claim Number: 601508/MBC<sup>1</sup>

Award Amount: 248,020.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] and [REDACTED 2], née [REDACTED], (together the “Claimants”) to the account of Alexandre Kagan (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

### **Information Provided by the Claimants**

The Claimants submitted a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owner as their father, Alexandre (or Abraham) Kagan. The Claimants stated that their father was born in Mohilev, Russia, on 15 May 1893, and that he married [REDACTED] (or [REDACTED]) [REDACTED] (or [REDACTED]) on 10 September 1928. The Claimants stated that their father, who was Jewish, studied in Zurich, Switzerland, and became an engineer. The Claimants stated that their father was an independent businessman and that he also was an economic analyst for Swiss newspapers. The Claimants indicated that their father lived in Lausanne, Switzerland, from 1914 until 1928 and in Paris, France, after 1928. The Claimants further indicated that their father frequently traveled to Switzerland, for business as well as pleasure. According to the Claimants, their father was in regular contact with several Swiss residents, including a person named Dr. [REDACTED], whose address was Aeschenvorstadt 4 in Basel, and his lawyers, [REDACTED], at Bahnhofstrasse 5 in Zurich, and [REDACTED] at Bahnhofstrasse 31 in Zurich.

According to the Claimants, when the Second World War began, their father placed his valuable possessions, including, for example, paintings by Poussin and Van Dyck, in safe deposit boxes in

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<sup>1</sup> The Claimants submitted a claim, numbered B-01477, on 9 November 1998, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601508.

Switzerland. The Claimants specifically referred to a safe deposit box, numbered 248, that was held by their father in the Basel branch of the Bank. The Claimants submitted two letters dated 1939 and 1940, asserting that their father owned paintings from the above-mentioned painters and that they were placed in a safe deposit box in Lausanne. According to these letters, the Claimants' father intended to eventually transfer these paintings to a safe deposit box in Zurich for more safety. The Claimants indicated that their father died in Paris on 4 June 1940. In support of their claim, the Claimants provided a copy of their own birth certificates as well as copies of their father's birth and death certificates. Furthermore, the Claimants provided copies of various letters referring to their father's business and his assets, as well as various documents that refer to their father as "Dr. Kagan."

The Claimants indicated that after the Second World War, their mother made several unsuccessful inquiries with respect to their father's Swiss bank accounts. The Claimants also indicated that in 1950, their mother commissioned Dr. [REDACTED] to search for their father's assets in Swiss banks. The Claimants indicated that Dr. [REDACTED] reported that branches of foreign banks in Switzerland had located traces of accounts in their father's name, but that they contained no significant balances at that time. In January 1997, the Claimants paid a 300.00 Swiss Franc fee to the Swiss Ombudsman for information related to their father's account. In May 1997, the Swiss Ombudsman reimbursed the Claimants 200.00 Swiss Francs of the fee.

Claimant [REDACTED 1] indicated that he was born in Neuilly sur Seine, France, on 11 November 1933, and that he has three siblings: [REDACTED], [REDACTED] and [REDACTED]. Claimant [REDACTED 2] indicated that she was born in Neuilly sur Seine on 14 October 1932.

Claimant [REDACTED 1] previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Alexandre Kagan.

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

The bank records consist of two account-opening cards. According to one of these account-opening cards, the Account Owner was Dr. Alexandre Kagan, who resided in Paris. The record indicates that the Account Owner held three accounts: a demand deposit account that was opened on 6 February 1933 and closed on 15 June 1941; a demand deposit account in a foreign currency that was opened sometime in 1933 and closed on an unknown date; and a custody account, numbered H11209, that was opened on 21 January 1933. 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") reported that the custody account was also closed on 15 June 1941. The amount in the accounts on the dates of their closure is unknown. The records do not indicate to whom the proceeds of the accounts were paid.

According to the other account-opening card, the Account Owner was Dr. Alexandre Kagan, who resided in Paris at boulevard Hausmann 95 and later at rue Cambon 51. There is a typewritten notation on the card indicating that the Account Owner died on 4 June 1940. The

bank record indicates that the Account Owner held a demand deposit account numbered 32131 and a safe deposit box numbered 248. There is a handwritten notation on the card that indicates that the Account Owner did not have any securities (“*pas de titres*”) in the account. The demand deposit account was closed on 6 April 1943. The amount in the account on the date of its closure is unknown, and the bank documents do not show to whom it was paid. There is a typewritten notation on the card that indicates that the contract for the safe deposit box was with a person named *Monsieur* (Mr.) [REDACTED] (“*Safe No. 248. Contrat chez M. [REDACTED]*”). There is no indication if or when the safe deposit box was closed, the value of its contents or to whom it was paid.

There is no evidence in the bank records that the Account Owner or his heirs closed any of these accounts and received the proceeds themselves.

## **The CRT’s Analysis**

### Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their father’s name as well as his city and country of residence match the Account Owner’s published name as well as his city and country of residence. The Claimants identified their father as “Dr. Kagan,” which matches unpublished information about the Account Owner contained in the bank records. Moreover, the Claimants indicated that their father held a safe deposit box numbered 248 at the Basel branch of the Bank, which matches unpublished information contained in the bank records.

The CRT notes that the Claimants filed an HCPO claim form in November 1998 and that Claimant [REDACTED 1] filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Alexandre Kagan, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”). This indicates that the Claimants have based their 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 their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that the Claimants had reason to believe that their relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants.

### Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that their father was Jewish and that he lived in France during the Nazi occupation.

### The Claimants’ Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by

submitting their birth certificates, showing that they are the Account Owner's children.

#### The Issue of Who Received the Proceeds

With regard to the demand deposit account and the custody account closed 15 June 1941 and the demand deposit account closed 6 April 1943, given the application of Presumptions (a), (e), (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 account proceeds were not paid to the Account Owner or his heirs.

With regard to the demand deposit account and safe deposit account closed on an unknown date, given the application of Presumptions (e), (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 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.

#### Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, 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

In this case, the Account Owner held five accounts: three demand deposit accounts, one custody account and one safe 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 present 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 average value of a custody account was 13,000.00 Swiss Francs, and the average value of a safe deposit box was 1,240.00 Swiss Francs. The total value for the three demand deposit accounts, one custody account and one safe deposit box was 20,660.00. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an award amount of 247,920.00 Swiss Francs. As indicated in Claimants' submissions, the Claimants paid the Swiss Ombudsman 300.00 Swiss Francs to research their father's account. They were subsequently refunded only 200.00 Swiss Francs of this amount. Therefore, the Claimants are entitled to the remaining 100.00 Swiss Francs, to produce a total award amount of 248,020.00 Swiss Francs.

### Division of the Award

In accordance with Article 23 of the Rules, each of the Claimants is entitled to one-half of the award.

### **Scope of the Award**

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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  
April 1, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS  
(AS AMENDED)**

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