

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]  
represented by Erez Bernstein

## **in re Accounts of Emmerich Kalman**

Claim Number: 501806/WT

Award Amount: 1,850,231.25 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the published accounts of Emmerich Kalman (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).<sup>1</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 a Claim Form identifying the Account Owner as her father, Emmerich (Imre) Kalman, who was born on 24 October 1882 in Siofok, Hungary, and was married to [REDACTED] ([REDACTED]) in Vienna, Austria. The Claimant indicated that her father, who was Jewish, was a famous composer who lived in Vienna, Austria, and that after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), her family was able to leave Austria because her father had retained his Hungarian citizenship. The Claimant indicated that her family fled to Paris, France, and subsequently to Portugal and Mexico, and arrived in the United States in 1940. The Claimant indicated that her two aunts remained in Europe and were deported to concentration camps, where they perished. The Claimant further indicated that after the Second World War, her parents returned to Paris, where her father died on 30 October 1953.

In support of her claim, the Claimant submitted copies of: (1) her father’s 1938 asset declaration, submitted by him pursuant to Nazi legislation, and which is further described below; (2) a monograph entitled, *A Survey of the Operettas of Emmerich Kalman*, by Jessie Wright Martin,

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<sup>1</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”), Emmerich Kalman is indicated as having four accounts. Upon careful review, the CRT has determined that the Bank’s records evidence the existence of only two accounts.

documenting the life and works of Emmerich Kalman and indicating that his daughter was [REDACTED]; and (3) her own birth certificate, issued by the Jewish religious community of Vienna (*Israelitische Kultusgemeinde Wien*), indicating that [REDACTED] was born on 31 August 1937 to Emmerich Kalman and [REDACTED], both of whom lived at Hasenauerstrasse 29, Vienna.

The Claimant indicated that she was born on 31 August 1937 in Vienna.

### **Additional Information Obtained by the CRT**

In the process of resolving this case, the CRT conducted additional research into the Claimant's family history. This research yielded the following information.

Emmerich Kalman (1882 - 1953) was a founding composer of the "Silver Age" of Viennese operetta. Following his first major success, "Autumn Maneuver" (*Tatárjárás*), Emmerich Kalman, who was Hungarian by birth, moved to Vienna, where he achieved international fame with his operettas "The Gypsy Virtuoso" (*Der Zigeunerprimas*), "The Gypsy Princess" (*Die Csárdásfürstin*), "Countess Mariza" (*Gräfin Mariza*), and "The Circus Princess" (*Die Zirkusprinzessin*).<sup>2</sup>

Despite being Jewish, Emmerich Kalman was one of Hitler's favorite composers, and after the *Anschluss*, Hitler instructed a general to approach Emmerich Kalman with an offer for the composer to be allowed to remain in Vienna as an "honorary Aryan." As recounted by his daughter [REDACTED], who is the Claimant, when Emmerich Kalman asked how this could be guaranteed, the general replied: "I guarantee it with my life," to which Emmerich Kalman replied: "But who can guarantee your life?"<sup>3</sup> Emmerich Kalman fled Vienna with his wife and children, first to Paris and then to the United States. His works were banned in Germany as "Degenerate Music" (*Entartete Musik*), their performance forbidden throughout the Reich. Emmerich Kalman suffered a heart attack upon learning that his two sisters perished in the Holocaust.

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

The Bank's records consist of two customer cards. According to these records, the Account Owner was Emmerich Kalman, a composer (*Komponist*) who resided in Vienna, Austria, and in Ischl (Bad Ischl), Austria. The Bank's records indicate that the Account Owner held a custody account, numbered L57126, and a demand deposit account. The Bank's records indicate that the custody account was closed on 5 May 1938, and that the demand deposit account was closed on 30 April 1938. The amount in the accounts on their dates of closure is unknown. There is no evidence in the Bank's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

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<sup>2</sup> See [http://www.josefweinberger.de/downloads/Kalman\\_Druckversion.pdf](http://www.josefweinberger.de/downloads/Kalman_Druckversion.pdf) (last visited 20 November 2008).

<sup>3</sup> See [http://www.lyricoperasandiego.org/resource\\_library/PeopleKalman.htm](http://www.lyricoperasandiego.org/resource_library/PeopleKalman.htm) (last visited 20 November 2008).

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts (“Voluntary Assistance”). The Bank provided the CRT with additional documents. These documents contained a custody account identification card (*Leitkarte*) and custody account portfolio holding cards (*Depotvalorenkarten*) for each security held within the custody account.

These documents indicate that at the time the Account Owner was deemed to have lost control over the custody account, it contained the following securities:

- 4% *Eidgenössische Staatsanleihe von 1933* bonds with a face value of 77,000.00 Swiss Francs (“SF”), which were transferred out of the account on 30 April 1938; and
- 4% *Schweizerische Bundesbahnen von 1931* bonds with a face value of SF 60,000.00, which were transferred out of the account on 30 April 1938.

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

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, 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 Emmerich Kalman, numbered 45955.

According to these records, Emmerich Kalman was a Hungarian citizen who was born on 24 October 1882 and lived at Hasenauerstrasse 29 in Vienna with his wife, [REDACTED], who was also Jewish. The records indicate that Emmerich Kalman was a composer.

These records are signed and dated Vienna, 25 June 1938. These records make no mention of assets held in a Swiss bank account.

### **The CRT’s Analysis**

#### Identification of the Account Owner

The Claimant has plausibly identified 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 identified the Account Owner’s occupation and one of the Account Owner’s cities of residence, which match unpublished information about the Account Owner contained in the Bank’s records.

In support of her claim, the Claimant submitted documents, including her father’s 1938 Census records and her own birth certificate, which provide independent verification that the person who is claimed to be the Account Owner had the same name and resided in one of the same cities

recorded in the Bank's records as the name and one of the cities of residence of the Account Owner.

The CRT notes that the name Emmerich Kalman appears only once on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of victims of Nazi persecution ("ICEP" or the "ICEP List"). The CRT notes that there are no other claims to these accounts.

#### 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, that he fled Austria after the *Anschluss* in 1938, and that his two sisters remained in Europe and perished in the Holocaust. The CRT notes that the Account Owner was required to register his assets pursuant to the 1938 Census.

#### 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 a monograph, *A Survey of the Operettas of Emmerich Kalman*, and her own birth certificate, indicating that [REDACTED] is the daughter of Emmerich Kalman. The CRT notes that the Claimant indicated that she may have other surviving relatives, but that because they are not represented in the Claimant's claim, the CRT will not treat their potential entitlement to the Account Owner's accounts in this decision.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner 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 Account Owner, as she has asserted in her Claim Form.

#### The Issue of Who Received the Proceeds

The Bank's records indicate that the Account Owner held one custody account, numbered L57126, and one demand deposit account. The Bank's records further indicate that the custody account was closed on 5 May 1938, and that the demand deposit account was closed on 30 April 1938.

Given that the Account Owner resided in Austria after the *Anschluss*; that there is no record of the payment of the Account Owner's accounts to him; that the accounts were closed after the *Anschluss*; 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 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 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 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

According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, the market value of bonds shall be awarded if that value was above the face value on the date the account owner is deemed to have lost control over the account.

According to the additional information from the Bank, the Account Owner held a custody account numbered L57126, with the following securities:

- *4% Eidgenössische Staatsanleihe von 1933* bonds with a face value of SF 77,000.00. These bonds were of good quality and were trading at 107.05% when transferred on 30 April 1938. As the bonds were of good quality and had market values above the face value, the market value will be used to determine the value of this asset. The total market value of these bonds was SF 82,428.50;<sup>4</sup> and
- *4% Schweizerische Bundesbahnen von 1931* bonds with a face value of SF 60,000.00. These bonds were of good quality and were trading at 105.75% when transferred on 30 April 1938, for a total market value of SF 63,450.00.<sup>5</sup>

Therefore, the Bank’s records indicate that the total value of the custody account numbered L57126 in April 1938 was SF 145,878.50.

With regard to the 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 (the “ICEP Investigation”), in 1945 the average value of a demand deposit account was SF 2,140.00.

Thus, the combined value of the two accounts is SF 148,018.50. The current value of this amount is determined by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total Award amount of SF 1,850,231.25.

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<sup>4</sup> The market value for this security was obtained from *Zürcher Kursblatt*, 30 December 1938.

<sup>5</sup> The market value for this security was obtained from *Zürcher Kursblatt*, 30 December 1938

### **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 December 2008