

# 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 Artur Kellner, Carl Moldauer  
and Else Moldauer**

Claim Numbers: 218201/KG, 218208/KG<sup>1</sup>

Award Amount: 49,375.00 Swiss Francs

This Certified Award is based upon the Claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Artur Kellner. This Award is to the published account of Artur Kellner (“Account Owner Kellner”), Carl Moldauer (“Account Owner Carl Moldauer”) and Else Moldauer (“Account Owner Else Moldauer”) (together the “Account Owners”) at the [REDACTED] (the “Bank”).

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 Claim Forms and several Initial Questionnaires (“IQ”s) identifying Account Owner Kellner as her paternal grandfather, Artur Kellner, who was born on 25 March 1881 in Celakovice, Czechoslovakia, and was married to Olga Katz on 10 March 1908 in Prague, Czechoslovakia. According to the Claimant, her grandfather had four children: [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (the Claimant’s father). The Claimant indicated that Artur Kellner owned property, including a farm, that his home address was V. Spice 5 in Pilzen, Czechoslovakia, and that his farm property was located in Podebrad and Litmeri, Czechoslovakia. In an email to the CRT, dated 8 May 2005, the Claimant stated that she remembered that her grandfather lived in Prague for a time as well as in Pilzen. The Claimant indicated that her grandmother often spoke of funds and assets that were frequently deposited by the family outside of Czechoslovakia. According to the Claimant, during the Second World War, her grandfather, who was Jewish, was forced to move into a ghetto, and was

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<sup>1</sup> The Claimant submitted additional claims to the accounts of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], which are registered under the Claim Numbers 218198, 218199, 218202, 208203, 218205, 218206, 218207, and 218209 respectively. The CRT will treat the claims to these accounts in separate determinations.

then deported to a concentration camp, where he perished in approximately 1943. The Claimant added that three of her grandfather's children, namely, [REDACTED], [REDACTED], and [REDACTED], all perished in concentration camps between 1944 and 1945, and that [REDACTED], née [REDACTED], and [REDACTED] emigrated to Ohio, the United States, where they died in 1978 and 1992 respectively. The Claimant stated that she fled Czechoslovakia in 1968, and that any documents her family had salvaged from the Second World War were probably destroyed in order to avoid persecution during or prior to the Communist regime in Czechoslovakia.

In support of her claim, the Claimant submitted documents, including her grandfather's marriage certificate, indicating that his name was Artur Kellner. The Claimant indicated that she was born on 21 December 1951 in Prague.

The Claimant previously submitted several IQs with the Court in 1999, asserting her entitlement to Swiss bank accounts owned by her relatives including by her paternal grandmother.

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

The Bank's records consist of printouts from the Bank's database. According to these records, the Account Owners were Artur Kellner, Carl Moldauer, and Else Modldauer. The Bank's records indicate that Account Owner Artur Kellner had an address at Taborska 128 in Prague, and that the other two Account Owners resided in Czechoslovakia. The Account Owners held a numbered account, the type of which is not indicated. The Bank's records do not show if or when the account at issue was closed, or to whom it was paid, nor do these records indicate the value of this 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" or the "ICEP Investigation") 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. There is no evidence in the Bank's records that the Account Owners or their heirs closed the account and received the proceeds themselves.

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

#### Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 two claims of the Claimant in one proceeding.

#### Identification of the Account Owner

The Claimant has plausibly identified Account Owner Kellner. The Claimant's grandfather's

name matches the published name of Account Owner Kellner. The Claimant also identified Account Owner Kellner's published country and city of residence.

The CRT notes that the Claimant did not identify Account Owner Carl Moldauer and Account Owner Else Moldauer. However, given that the Claimant was born in 1951 after the Second World War, that she escaped from Czechoslovakia in 1968 while still in her teens and that she never met her grandfather who perished in 1943, and may therefore not have full knowledge about all her grandfather's family members and associates in Czechoslovakia, and given that it is not clear whether or not Account Owner Carl Moldauer and Account Owner Else Moldauer were related to Account Owner Kellner, the CRT finds that this does not materially affect the Claimant's identification of Account Owner Artur Kellner.

In support of her claim, the Claimant submitted documents, including her grandfather's marriage certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name as the name recorded in the Bank's records as the name of the Account Owner.

The CRT notes that the Claimant filed several IQs with the Court in 1999, asserting her entitlement to a Swiss bank account owned by several relatives of her father, including Artur Kellner, prior to the publication in February 2001 of the list of list of accounts determined by 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 paternal relatives owned Swiss bank accounts prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

The CRT notes that there are no other claims to this account.

#### 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 was forced out of his home into a ghetto in Czechoslovakia before being deported to a concentration camp, where he perished in approximately 1943.

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

The Claimant has plausibly demonstrated that she is related to Account Owner Artur Kellner by submitting specific information demonstrating that she is his granddaughter. The CRT further notes that the Claimant filed IQs with the Court in 1999, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List. The CRT further notes that the Claimant submitted a copy of her grandfather's marriage certificate. The CRT notes that it is plausible that this document is a document which most likely only a family member would possess. 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.

There is no information to indicate that the Account Owner has other surviving heirs.

#### The Issue of Who Received the Proceeds

Given that Account Owner Kellner perished in a concentration camp in 1943; that there is no record of the payment of the Account Owners' account to them; that the Account Owners and their heirs would not have been able to obtain information about their 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), (i) 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 Owners 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 one of the Account Owners was her grandfather, and that relationship justifies 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 account.

According to the principles of distribution set forth in Article 31(2) of the Rules, because the joint account at issue here was claimed by a relative of only one of the joint Account Owners, the CRT presumes that the account was owned as a whole in equal shares by Account Owner Artur Kellner, whose share of the account was the only one claimed. Therefore, the Claimant is entitled to the entire award amount.

#### Amount of the Award

In this case, the Account Owners held one account, the type of which is not indicated. 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 an account, the type of which is not indicated, was 3,950.00 Swiss Francs ("SF"). The present 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 a total award amount of SF 49,375.00.

### **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  
21 September 2005