

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimants Francois Jean Andre Laubray  
and Martine Adrienne Messawer  
both represented by Denis Delcros and Christophe Aubrun

## **in re Accounts of André Lévy and Marcelle Lévy**

Claim Numbers: 220326/PY; 220327/PY; 220328/PY; 220329/PY

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claims of Francois Jean Andre Laubray (“Claimant Laubray”) and Martine Adrienne Messawer née Laubray (“Claimant Messawer”) (together “the Claimants”) to the accounts of André Lévy and Marcelle Lévy, née Zivy (the “Account Owners”) at the Basel branch of the [REDACTED] (the “Bank”).

All awards are published. Where the claimants have not requested confidentiality, as in this case, none of the Claimants have, only the name of the bank has been redacted.

## **Information Provided by the Claimants**

Claimant Laubray submitted two Claim Forms identifying the Account Owners as his mother, Marcelle Lévy, née Zivy, who was born on 26 May 1904 in Paris, France, and his father, André Lévy, who was born on 14 May 1889 in New York, New York, the United States. Claimant Laubray stated that his mother and father were both Jewish and were married on 4 May 1925 in Paris. After their marriage they resided at 80 Boulevard Flandrin in Paris. Claimant Laubray stated that his family travelled regularly to Switzerland to spend their vacations in the mountains. He also stated that his father was an administrator of the department stores *France-Mode* and *Prisunic* in Paris. Claimant Laubray added that his father committed suicide on 19 October 1940, having been deprived of all his civil rights and stripped of his post as administrator because he was Jewish. Claimant Laubray stated that his mother, Marcelle Lévy, was a nurse with the Red Cross Society. According to the Claimant Laubray, Marcelle Lévy left Paris in September 1939 together with her children, her parents and parents-in-law and went into hiding in a villa in Pau, France until the end of 1943 or the beginning of 1944, when they left Pau, having been warned that the Gestapo were coming. He stated further that his mother then sent his sister, Claimant Messawer with her Swiss nanny to Switzerland, while the rest of the family went into hiding in the village of Taron, France, with identity cards that were forged by Marcelle Lévy that stated that their last names were Leclerc and Laubray, instead of Lévy. He added that

his mother remained in Taron until 1945, when she returned to Paris, where she remained until her death on 12 December 1999. In support of his claims, Claimant Laubray submitted his birth certificate and an extract from his parents' family book, which indicated that his parents were André and Marcelle Lévy, as well as his parents' marriage certificate. He also submitted his father's death certificate, which indicates that André Lévy was residing at 80, Boulevard Flandrin, at the time of his death. Claimant Laubray indicated that he was born on 19 January 1927 in Paris.

Claimant Messawer submitted two Claim Forms also identifying the Account Owners as her parents, Marcelle Lévy, née Zivy, who was born on 26 May 1904 in Paris, France, and, André Lévy, who was born on 14 May 1889 in New York, New York, the United States, who were married on 4 May 1925 in Paris. She provided the same information and supporting documents as Claimant Laubray. Claimant Messawer indicated that she was born on 4 November 1936, also in Paris.

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

The bank records consist of two account opening cards and printouts from the Bank's database. According to these records, the Account Owners were André Lévy and his wife, Marcelle Lévy, née Zivy, who resided at 80, Boulevard Flandrin in Paris. The bank records indicate that the Account Owners held a joint demand deposit account numbered 32014 and a joint custody account, also numbered 32014, both of which were opened on 26 March 1926.

The bank records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts. 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 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. There is no evidence in the bank records that the Account Owners or their heirs 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 four claims of the Claimants in one proceeding.

### Identification of the Account Owner

The Claimants have both plausibly identified the Account Owners. Their parents' names and city of residence match the published names and city of residence of the Account Owners. The Claimants identified their parents' street address in Paris, which matches unpublished information about the Account Owners contained in the bank records. The Claimants also stated that André Lévy and Marcelle Lévy, née Zivy were married to each other, which also matches unpublished information about the Account Owners contained in the bank records.

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

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish, and that their father committed suicide after having been deprived of all his rights, while their mother was forced to go into hiding in Pau and Taron until the end of the Second World War.

### The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting their birth certificates and an extract from their parents' family book.

### The Issue of Who Received the Proceeds

Given the application of Presumption (j) contained in Appendix A<sup>1</sup>, 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owners were their parents, 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 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 demand deposit account was 2,140.00 Swiss Francs while the average value of a custody account was 13,000.00 Swiss Francs, producing a total in this case of 15,140.00 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).

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 181,680.00 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 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account values, and 65% of the total award amount is 118,092.00 Swiss Francs.

#### Division of the Award

According to Article 29 of the Rules, children of Account Owners who have submitted a claim are entitled to equal shares of the Award. Accordingly, Claimant Laubray and Claimant Messawer are entitled to one-half of the Award each.

#### **Scope of the Award**

The Claimants should be aware that, pursuant to Article 25 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  
October 24, 2002

## 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, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia

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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).