

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimants Steven Landon and Nellie Salm

### **in re Accounts of Chiel Liebermann**

Claim Numbers: 209058/ES; 212321/ES

Award Amount: 337,680.00 Swiss Francs

This Certified Award is based upon the claims of Steven Landon (“Claimant Landon”) and Nellie Salm, née Liebermann, (“Claimant Salm”) (together the “Claimants”) to the accounts of Chiel Liebermann (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

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 Claimants**

The Claimants each submitted a Claim Form, identifying the Account Owner as their father, Chiel Liebermann, who was born on 9 August 1890 or 1891 in Frystak, Austria (later Poland) and was married to Malka Liebermann, née Strezower, in 1913 or 1914 in Rzeszow, Austria (later Poland). The Claimants stated that their father, who was Jewish, was a businessman and an entrepreneur who dealt in linen and diamonds. The Claimants stated that their father moved to Berlin, Germany after the First World War, where he resided at Schoenhavserallee. He fled to Amsterdam, Holland between 1937 and 1939. The Claimants stated that their father resided at Boticelli Straat 34 in Amsterdam until 1940, and at Millet Straat 43 in Amsterdam until he was arrested by the Nazis in 1943. He was taken to the Bergen-Belsen concentration camp in 1944, where he perished. In a telephone conversation with the CRT, Claimant Landon recalled that he had traveled with his father to Switzerland, where they went to the Basel branch of the Bank.

Claimant Landon indicated that he was born on 21 March 1920 in Berlin, and Claimant Salm indicated that she was born on 4 April 1925 in Berlin.

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

The bank records consist of a customer card and a list of demand deposit accounts at the Basel branch of the Bank, dated 20 January 1940. According to these records, the Account Owner was

Chiel Liebermann who resided in Amsterdam, Holland. The bank records indicate that the Account Owner held two custody accounts, numbered B14022 and L14022, and one demand deposit account.

The custody account numbered B14022 was closed on 26 April 1939. The custody account numbered L14022 was closed on 15 August 1946. The demand deposit account was closed on 31 August 1946. The bank records do not show the amounts in the accounts on the dates of their closure, and they do not indicate who closed the accounts. There is no evidence in the bank records that the Account Owner or his 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 two claims of the Claimants in one proceeding.

### Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. Their father's name matches the published name of the Account Owner. The Claimants identified their father's city of residence as Amsterdam, which matches unpublished information in the bank records. Finally, the Claimant Steven Landon identified his father's bank and branch in Switzerland, which match unpublished information about the Account Owner 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 Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and that he perished in the Bergen-Belsen concentration camp.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Chiel Liebermann and indicates that his date of birth was 9 August 1891 and place of birth was Frystak, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

### The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner. Claimant Landon submitted his birth certificate, demonstrating that he is the son of Chiel

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

### The Issue of Who Received the Proceeds

The Account Owner, an Austrian national, lived in Germany after the First World War until he fled to Amsterdam between 1937 and 1939. Germany invaded the Netherlands in May of 1940. The Account Owner was arrested by the Nazis in 1943, and he died in a concentration camp. Regarding the custody account that was closed on 26 April 1939, given the existence and vigorous discriminatory application of Nazi confiscatory legislation to German and Austrian Jews in Germany at this time,<sup>1</sup> the persecution of Jews and confiscation of Jewish assets during the War, the Account Owner's arrest by the Nazis in Amsterdam, and the application of Presumptions (a) and (j) contained in Appendix A,<sup>2</sup> 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.

Regarding the custody account and demand deposit account that were closed in August of 1946, given the application of Presumptions (h) and (j), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

### Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 23 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 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 investigation done by the Independent Committee of Eminent Persons, in 1945 the average value of a custody account was 13,000.00 Swiss Francs and the average value of a demand deposit account was 2,140.00 Swiss Francs. The present value of these three accounts is calculated by multiplying their total by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 337,680.00 Swiss Francs.

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

<sup>2</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

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, the Claimants are each entitled to one-half of the amount of the Award.

### Initial Payment

In this case, the Claimants are age 75 or older and are therefore entitled to receive 100% of the total award amount.

### **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

November 26, 2002

## APPENDIX A

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)

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(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).