

# 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 Johanna Rosskamm**

Claim Number: 204725/MBC

Award Amount: 298,416.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Johanna Rosskamm (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 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 late husband’s aunt, Johanna Rosskamm, who was born in the mid- to late 1870s in Germany to [REDACTED] and [REDACTED] and was never married. The Claimant indicated that Johanna Rosskamm had a brother named [REDACTED], who was the Claimant’s husband’s father. The Claimant stated that Johanna Rosskamm’s relatives and family were horse traders, and that Johanna Rosskamm lived in Germany her entire life. According to the Claimant, Johanna Rosskamm never had any children and died sometime in the 1930s in Germany. The Claimant indicated that her husband’s father, [REDACTED], died in Germany in 1938, and that her husband died in New York in 1996. The Claimant further stated that she is the only living relative of Johanna Rosskamm. The Claimant submitted copies of her husband’s naturalization certificate, a notice of her husband’s name change from “[REDACTED]” to “[REDACTED],” and his death certificate. The Claimant also submitted copies of photos of her husband at the graves of his aunt, Johanna Rosskamm, his father, [REDACTED], and his grandparents, [REDACTED] and [REDACTED].

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

The bank records consist of printouts from the bank's database. According to these records, the Account Owner was Fraulein Johanna Rosskamm<sup>1</sup> of Untermainkai 34, Frankfurt am Main, Germany. The bank records indicate that the Account Owner held two accounts of unknown type that were open as of 1945 and were included in the 17 February 1945 freeze of German assets deposited in Swiss banks. The bank records indicate that the amount of the first account as of 17 February 1945 was 19,585.00 Swiss Francs. The bank records indicate that the amount of the second account on the same date was 5,253.00 Swiss Francs. The bank records do not show if or when the accounts at issue were closed, or to whom they were paid. 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 Owner or her heirs closed the account and received the proceeds themselves.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her husband's aunt's name matches the published name of the Account Owner and the Claimant correctly identified the last name as the Account Owner's maiden name, even though it was mispublished as the Account Owner's married name. Further, the country of residence the Claimant identified for her husband's aunt matches the published country of residence of the Account Owner contained in the bank documents.

### 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 lived in Nazi- controlled Germany prior to her death.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that the Account Owner's brother was the Claimant's father-in-law. There is no information to indicate that the Account Owner has other surviving heirs.

### The Issue of Who Received the Proceeds

Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether Account Owners or their heirs received the

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<sup>1</sup> The CRT notes that although the Account Owner was published as "*Frau* Johanna Rosskamm," the information contained in the bank records indicates that the Account Owner was actually "*Fraulein* Johanna Rosskamm."

proceeds of their accounts. These presumptions are contained in Appendix A.<sup>2</sup> In this case the Account Owner never married and died without issue in the 1930s. Her only sibling died in 1938. The account was frozen in 1945 and was later closed at an unknown date. The CRT concludes in this case that presumption (j) applies, and it is plausible that the account proceeds were not paid to the Account Owner's heirs after the War.

### 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her husband's aunt, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

### Amount of the Award

The bank records indicate that the value of the first account as of 17 February 1945 was 19,585.00 Swiss Francs and that the value of the second account as of 17 February 1945 was 5,253.00 Swiss Francs. In accordance with Article 37(1) of the Rules, these amounts are each increased by adjustments of 15.00 Swiss Francs, which reflects standardized bank fees charges to the accounts between 1 January 1945 and 17 February 1945. There was no interest paid to the accounts. Consequently, the adjusted balance of the accounts at issue are 19,600.00 Swiss Francs and 5,268.00 Swiss Francs, respectively. The present value of the amounts are determined by multiplying the adjusted balances by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 298,416.00 Swiss Francs.

### **Scope of the Award**

The Claimant should be aware that, pursuant to Article 25 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

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<sup>2</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

## 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 and Moravia,

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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).