

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]

**in re Accounts of Friederike and Rosa Weiss**

Claim Number: 209168/PY<sup>1</sup>

Award Amount: 3,359,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Adolph Weiss.<sup>2</sup> This Award is to the accounts of Friederike Weiss and Rosa Weiss (the “Account Owners”) at the Zurich 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 Owners as her maternal great-aunts, Fritzi Weiss, who was born in 1887, and Rosalia or Regine Weiss, who was born on 25 August 1882. The Claimant stated that her great-aunts, who were Jewish, resided in Vienna. The Claimant stated that she believed Fritzi was a nickname for Frederica. The Claimant stated that, to her knowledge, Rosalia Weiss had been married, but by the early 1950s she had been a widow for many years, while Fritzi Weiss remained unmarried. According to the Claimant, Rosalia Weiss had been married to someone the Claimant knew only as “[REDACTED],” and they had no children. The Claimant stated that her great-aunts fled Vienna in around 1941 or 1942 for Lisbon, Portugal, where their brother, Adolph Weiss (the Claimant’s maternal grandfather), who had been the Austrian Consul General to Portugal, was residing. The Claimant stated that Adolph Weiss was married to [REDACTED]. The Claimant indicated that Adolph Weiss looked after his sisters and supported them throughout his life. The Claimant also indicated that her great-aunts remained in Portugal until their deaths. The Claimant stated that

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<sup>1</sup> The Claimant submitted additional claims to the accounts of [REDACTED], [REDACTED] and [REDACTED], which are registered under the Claim Numbers 209169, 209503 and 213678, respectively. The CRT will treat the claims to these accounts in a separate decision.

<sup>2</sup> The CRT will treat the claim to this account in a separate decision.

Rosalia Weiss died in around 1960, but she does not know when Fritzi Weiss died. The Claimant submitted a sample of her grandfather's signature.

The Claimant indicated that she was born on 3 February 1951 in Bridgeport, Connecticut, the United States.

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

The bank records consist of two account opening contracts dated 6 October 1931, one signed by *Fräulein* Friederike Weiss and the other by *Frau* Rosa Weiss, as well as three power of attorney forms and printouts from the Bank's database. Two of the power of attorney forms are dated 4 November 1931 and are signed by Rosa Weiss and Friederike Weiss, respectively. The third power of attorney form is dated 18 October 1925 and is signed by Rosa Weiss. Also contained in the bank records are two undated declarations, signed by Friederike and Rosa Weiss, confirming that Adolph Weiss had the right to access the accounts for his own purposes. In addition, the bank records consist of an acknowledgment of receipt of the Bank's rules pertaining to custody accounts, which was signed by Rosa Weiss on 5 September 1939 in Nice, France. The bank records contain a letter dated 25 September 1943 from the Bank to [REDACTED], who is stated to be the wife of Adolph Weiss, requesting the addresses of Rosa Weiss and Friederike Weiss. There is a subsequent letter from the Bank dated 11 January 1944, asking [REDACTED] to confirm that her husband, Rosa Weiss, and Friederike Weiss were still staying at the Grand Hotel in Monten Estoril, Portugal. Also included in the bank records is a note dated 13 August 1938, listing custody account fees in 1936 for the accounts held by Rosa Weiss, Friederike Weiss and a G.V. Salom, who also owned a custody account related to their accounts. The note indicates that the Account Owners were residing in Paris at that time and states that correspondence was to be addressed to Adolph Weiss, who resided at Place de l'Opéra, 12 Boulevard des Capucines, Paris. Lastly, there is a statement by Rosa Weiss, signed in Vienna in 1931, that she had been widowed for the preceding six years, and that it was therefore unnecessary for her to obtain the consent of her husband to the opening of a bank account in her name.

According to the bank records, the Account Owners were Friederike Weiss, who resided in Vienna II at Heinestrasse 2, and Rosa Weiss, who was a widow and resided in Vienna II, initially at Scholzgasse 7 and subsequently at Heinestrasse 11. The bank records indicate that Friederike and Rosa Weiss also lived in Paris, France. The bank records show that the Account Owners held two custody accounts, one numbered 33697 belonging to Rosa Weiss, and the other numbered 33698 belonging to Friederike Weiss. The bank records indicate that Rosa Weiss also owned an account of unknown type. The bank records indicate that the Power of Attorney Holder of the two custody accounts was Adolph Weiss, the Account Owners' brother, who also resided in Vienna II. The Power of Attorney Holder of the account of unknown type was Max Weiss, who resided at Scholzgasse 7, in Vienna II. The bank records show that French bonds (5% *Französische Rente von 1928*) with a principal value of 125,000.00 Swiss Francs and various securities of unspecified value were deposited in each of the custody 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” of 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, the Power of Attorney Holders, or their heirs closed the accounts and received the proceeds themselves.

## **The CRT’s Analysis**

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The names of her great-aunts substantially match the published names of the Account Owners, and the city of residence of her great-aunts matches the published city of residence of Account Owner Rosa Weiss and the unpublished city of residence of Friederike Weiss contained in the bank records. The Claimant’s grandfather’s name and city of residence match the unpublished name and city of residence of the Power of Attorney Holder. The Claimant stated that one of her great-aunts was a widow and the other was unmarried, which is consistent with unpublished information about the Account Owners contained in the bank records. The Claimant also stated that her grandfather, Adolph Weiss, and her great-aunts lived in Portugal during the Second World War, matches unpublished information about the Account Owners and the Power of Attorney Holder contained in the bank records. Furthermore, the Claimant stated that her grandfather was married to [REDACTED], which matches unpublished information contained in the bank records. Finally, the Claimant submitted a sample of her grandfather’s signature, which matches the signature sample of the Power of Attorney Holder contained in the bank records. Although the first names of her great-aunts provided by the Claimant, Frederica and Rosalia, are not exactly like the names of the Account Owners, the CRT finds that these names substantially match the published names of the Account Owners and that the matches between information provided by the Claimant and unpublished information about the Account Owners contained in the bank records establish the accuracy of the Claimant’s identification of her relatives as the Account Owners.

### Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they fled Austria in 1941 or 1942 to escape the Nazis.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Friederike Weiss, and indicates that she lived in Vienna II, 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 Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by providing a detailed family history demonstrating that the Account Owners are her great-aunts.

### The Issue of Who Received the Proceeds

Given the existence of Nazi confiscatory legislation in Austria at that time<sup>3</sup> and the application of Presumptions (h) and (j) contained in Appendix A,<sup>4</sup> the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, the Power of Attorney Holders, or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were her great-aunts, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holders, 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 with respect to the account of unknown type, the average value of the same or 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 an account of unknown type was 3,950.00 Swiss Francs. 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 amount of 47,400.00 Swiss Francs.

With respect to the two custody accounts, as indicated above, bank records indicate that each of these accounts had French bonds valued at 125,000.00 Swiss Francs in addition to various securities of unspecified value. In valuing these custody accounts, the CRT accepts the Bank record value for the French bonds, and will use the average value of custody accounts to value the remaining securities in each of the two accounts. Based on the ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs. As there were two custody accounts, the total value of the additional securities is 26,000.00 Swiss Francs. Therefore, the total value of the two custody accounts was 276,000.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12, in

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<sup>3</sup> As described in the expanded version of Appendix A (see II. A. 2), which appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

<sup>4</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

accordance with Article 37(1) of the Rules, to produce an award amount of 3,312,000.00 Swiss Francs for the two custody accounts.

Consequently, the total award amount for the custody accounts and unknown type of account is 3,359,400.00 Swiss Francs.

### Initial Payment

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 some of the account values, and the initial payment is therefore 3,233,610.00 Swiss Francs, which is comprised of 100% of the recorded values of the French bonds in the two custody accounts (3,000,000.00 Swiss Francs) plus 65% of the average values of the unknown account and the remainder of the contents of the two custody accounts (233,610.00 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

December 27, 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

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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, 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).