

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]  
acting on behalf of herself and [REDACTED] and [REDACTED]

**in re Account of Heinrich Wertheimer**

Claim Number: 209446/AA

Award Amount: 45,425.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Heinrich Wertheimer (the “Account Owner”) at [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 father, Heinrich Wertheimer, who was born on 21 September 1892 in Künzelsau, Germany, and was married to [REDACTED] (née [REDACTED]) on 5 August 1920 in Schweinfurt, Germany. The Claimant stated that she is the daughter of the Account Owner and that she was born on 15 May 1925 in Frankfurt am Main, Germany. According to the Claimant, [REDACTED] and [REDACTED] had three children, the Claimant, and her two sisters, [REDACTED] and [REDACTED], who were born in Schweinfurt on 18 December 1921 and 1 January 1929, respectively. The Claimant explained that her father was a merchant in Frankfurt and lived on Friedrichstrasse and Altkönigstrasse. The Claimant stated that her father lived in Frankfurt from 1933 to approximately 1939, when he was able to escape Germany and fled to London, where he lived until 1945. Eventually, the Claimant’s father moved to New York and lived there until his death on 2 July 1948. The Claimant’s mother died on 1 August 1980 in New York. In support of her claim, the Claimant submitted her father’s birth, marriage, and death certificates, her mother’s birth and death certificates, and her and her sisters’ birth certificates, which shows that the Account Owner was the Claimant’s father.

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

The bank records consist of an audit report created by the audit firm investigating this account and correspondence written by the bank concerning this account. According to these records, the Account Owner was Heinrich Wertheimer of Frankfurt am Main. The bank 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 Tribunal's Analysis**

### Identification of the Account Owner

The Tribunal notes that the bank records do not contain any specific information about the Account Owner other than his name and city and country of residence. Thus, the additional information provided by the Claimant cannot be compared with the bank information. The Claimant, however, submitted her father's *Polizeiliches Führungszeugnis*, which was a certificate of good conduct issued by the German government, proving that her father lived in Frankfurt am Main.

### 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 Germany during the Second World War. The Claimant stated that her father lived in Germany until 1939, when he was able to escape to England.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents including her birth certificate, which names the Account Owner as her father. There is no information before the Tribunal to indicate that the Account Owner has other surviving heirs. The credibility of other information provided by the Claimant gives the Tribunal no basis to question the veracity of this information concerning her relationship to the Account Owner.

### The Issue of Who Received the Proceeds

Since the Claimant would not be entitled to an award if the account at issue was paid to the Account Owner or his heirs, the Tribunal must consider the question of what happened to the funds in this case.

The historical evidence developed by the Independent Committee of Eminent Persons during its investigation of Swiss banks (the "ICEP Investigation") demonstrates that the funds of Nazi victims in Swiss banks were disposed of in various ways. In some cases, the account owners and/or their families withdrew and received the funds. In other cases, Nazi authorities coerced account owners to withdraw the balances in their Swiss accounts and transfer the proceeds to banks designated by the Nazi authorities, and the funds fell into Nazi hands. For other accounts, no transfers occurred, but account values were consumed by regular and special bank fees and charges, which resulted ultimately in closure without any payment to the account owners. In still other cases, particularly after a period of inactivity or dormancy, the proceeds were paid to bank profits. Thus, since the funds in this case apparently were not paid to the Account Owner, or his family, there is a substantial likelihood that these funds went to the Nazis or to the Bank.

Although the Tribunal cannot determine with certainty who received the proceeds of the account, the Tribunal concludes that it is plausible that neither the Account Owner nor his heirs received the proceeds.<sup>1</sup> The application of confiscatory laws by the Nazi Regime during the 1930s, as described in more detail in footnote one below, makes it unlikely that the Account Owner received the proceeds himself. Specifically, Nazi legislation would have prevented the Account Owner from accessing his account before fleeing to London in 1939. In addition, the Claimant's father died in 1945, which supports the conclusion that he could not have accessed his account after the end of the Second World War.

In regards to the Account Owner's wife, who lived until 1980, following the War, Swiss banks adopted a policy, which became official in the mid-1950s, of rejecting inquiries into accounts that were held by victims of Nazi persecution.<sup>2</sup> The final report of the Bergier Commission concluded: "Throughout the post-war period the banks relied on a combination of discreetly playing down the problem and erecting barriers to investigation: time and time again they would bring banking secrecy into play in order to legitimise their reluctance to provide information while at the same time charging high search fees for conducting investigations."<sup>3</sup> Thus, even if the heirs of the Account Owner had contacted the Bank in an effort to close the account and withdraw the proceeds, it is plausible that they would not have been able to do so, because the Bank would not have informed them of the existence of the account. The Tribunal's conclusion that it is plausible that the Account Owner's heirs did not receive the proceeds of the account is also supported in this case by the fact that there is no evidence in the bank records suggesting that the Account Owner or his heirs either contacted the Bank or closed the account and received the proceeds.

### Basis for the Award

The Tribunal 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 father, and that relationship justifies an Award. Finally, the Tribunal has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

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<sup>1</sup> In reaching this conclusion, the Tribunal is relying in part on research cataloguing more than forty different laws, acts, and decrees used by the Nazi Regime to confiscate Jewish assets abroad. Although some of these laws were promulgated before the Nazis came into power, and although many of the laws were facially non-discriminatory, the Nazi Regime increasingly enforced these laws on a discriminatory basis against Jewish asset holders. These laws included, for example, increasingly stringent registration and repatriation requirements for assets held outside Germany and special confiscatory taxes for emigrants who wished to flee Germany. Until 1937, the laws generally did not explicitly target Jews, although in practice the laws were enforced more stringently against Jews. Over the course of 1937, however, the spoliation process became increasingly wholesale and systematic and Nazi expropriations of Jewish assets held in Swiss banks and elsewhere became widespread. A decree dated 26 April 1938 required Jews to register their assets, and subsequent to that date the Nazi Regime began to enact legislation and orders to repatriate and confiscate foreign assets both for Jews who sought permission to flee the Reich and for those unable to flee. A listing of the principal laws invoked by the Nazi Regime in specific confiscatory situations appears at the CRT-II website, [www.crt-ii.org](http://www.crt-ii.org).

<sup>2</sup> See Final Report of the Independent Commission of Experts Switzerland--Second World War, at 446; see also Independent Committee of Eminent Persons Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks; Annex 5: Treatment of Dormant Accounts of Victims of Nazi Persecution, paragraphs 3 and 4.

<sup>3</sup> Final Report of the Independent Commission of Experts Switzerland--Second World War, at 446.

### 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 an account was 3,950.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 11.5, in accordance with Article 37(1) of the Rules, to produce a total award amount of 45,425.00 Swiss Francs.

In cases where the value of an account is based on the presumptions of Article 35 of the Rules, or where the Tribunal has determined that an account may be subject to later competing valid claims, claimants shall receive an initial payment of 35% of the total award amount. After all claims are processed, subject to approval by the Court, claimants may receive a subsequent payment of up to the remaining 65% of the total award amount. In this case, the value of the account at issue is based in part on the Article 35 presumptions and there is the possibility of other competing claims. In this instance, 35% of the total award amount is 15,898.75 Swiss Francs.

### Division of the Award

The Claimant is representing her two sisters, [REDACTED] (née [REDACTED]) and [REDACTED] (née [REDACTED]) in these proceedings. According to Article 29 of the Rules, each of her sisters is entitled to receive one-third of any payment made to the Claimant.

### **Scope of the Award**

The Claimant should be aware that, pursuant to Article 25 of the Rules, the Tribunal 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**

At this point in the Claims Resolution Process, the Tribunal has identified a number of cases in which a particular claimant has made out a plausible case for entitlement to an award, but at this stage it is not possible for the Tribunal to have clear assurance that no additional claimants to the same account will be forthcoming. Articles 37(3)(a) and (b) of the Rules provide that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, and/or the Tribunal determines that an account may be subject to later competing claims, the initial payment to the claimant shall be 35% of the Certified Award, and the claimant may receive a second payment of up to 65% of the Certified Award when so determined by the Court. Thus, the Rules instruct and require the Tribunal to certify and recommend an initial 35% payment in awards submitted for Court approval in particular cases where either the Tribunal has used the value presumptions of Article 35 or it has determined that the account may be subject to later competing claims, or both.

In this case, the Tribunal has used the value presumptions of Article 35 of the Rules to calculate the account value and is of the opinion that the account at issue may be subject to later

competing claims. On this basis, the Tribunal certifies this Award for approval by the Court and for payment by the Special Masters in accordance with Article 37(3) of the Rules.

03 May 2022  
Date

Dov Rubinstein  
Dov Rubinstein  
Resident Claims Judge