

# 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 Emil Zerner and Josefine Zerner**

Claim Number: 710388/UM<sup>1</sup>

Award Amount: 691,031.25 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Emil Zerner (“Account Owner Emil Zerner”) and Josefine Zerner (“Account Owner Josephine Zerner”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (“Bank I”) and the Zurich branch of the [REDACTED] (“Bank II”) (together the “Banks”).

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 an Initial Questionnaire (“IQ”) identifying Account Owner Emil Zerner as his maternal uncle, Emil Zerner, who was born on 24 January 1876. The Claimant stated that his uncle, who was Jewish, lived in Vienna until late 1938. The Claimant specified that his uncle resided at Hofzeile 17 in Vienna XIX. Moreover, the Claimant stated that his uncle was temporarily arrested by the Gestapo in 1938, and that after his release his uncle fled to Argentina, in early 1939. Finally, the Claimant stated that his uncle died in Buenos Aires, Argentina during the early 1960s.

The Claimant submitted his own birth certificate, identifying his mother as [REDACTED], née [REDACTED], and specifying that he was born in Vienna. In addition, the Claimant submitted a copy of the census form filled out by his uncle pursuant to a 26 April 1938 decree imposed by the Nazi Regime, which required all Jews who resided within the Reich, and/or who were

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<sup>1</sup> Claimant [REDACTED] did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered GER-0061-055, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 710388.

nationals of the Reich, including Austria, and who held assets above a specified level, to register all their assets, which is more fully described below. The Claimant indicated that he was born on 11 April 1912 in Vienna.

### **Information Available in the Banks' Records**

The auditors who carried out the investigation of these banks 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 report an account belonging to Emil Zerner and/or Josefine Zerner during their investigation of Bank I and Bank II.

### **Information Available from the Austrian State Archive**

As indicated above, by decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Emil Zerner, numbered 9752. According to his Census declaration, Emil Zerner was born on 24 January 1876, was married to Josefine Zerner, née Raschkes, and resided at Hofzeile 17 in Vienna XIX. Emil Zerner's asset declaration further shows that he was a director of *Victoria zu Berlin*, an insurance company, and that he and his wife, in addition to an extensive financial portfolio which included accounts at two Swiss banks, owned real estate located at Kölblgasse 20, valued at 52,000.00 Reichsmark ("RM") and an agricultural property worth RM 2,000.00. A document in the file indicates that the property at Kölblgasse 20 was sold in an aryanization proceeding for RM 50,000.00 on 13 June 1940, at which time Emil Zerner was living in Argentina. The record further indicates that on 23 June 1939 the Flight Tax Office (*Reichsfluchtsteuerstelle*) assessed flight tax (*Reichsfluchtsteuer*) of RM 36,691.00 on the combined taxable assets of Emil and Josefine Zerner of RM 146,765.00 (based on a total of RM 173,505.00 less RM 26,800 atonement tax). A handwritten notation (*in Ordnung*) on the document indicates that payment was made. The file further contains additional asset declaration forms submitted by Emil and Josefine Zerner, each signed 10 July 1939, and an internal handwritten summary, showing that the combined net assets of the couple, after deduction of Emil Zerner's capitalized pension rights, amounted to RM 153,104.00, and noting that the *Reichsfluchtsteuerstelle* had valued their assets at RM 173,505.00. The records also include account statements from Bank I and Bank II, as detailed below.

#### Bank I

The account statement from Bank I, which is dated 8 June 1938, indicates that the Account Owners were *Herr Direktor* (Director) Emil Zerner and *Frau* (Mrs.) Josefine Zerner. Bank I's record indicates that as of 27 April 1938 the Account Owners jointly held one custody account, numbered 30202, which contained a large portfolio of securities. as follows:

- 5% *Österreichische Abrechnungs-Schuldverschreibung, zweite Ausgabe* bonds with a

face value of 150.00 Pounds Sterling ("£"), for which no market value was specified, and in reference to which it was noted that the Viennese stock exchange was closed ("Wiener Börse geschlossen"); a hand written note made on the account statement indicates that the market value of this security was 1,138.00 Swiss Francs ("SF");

- 5% *Österr. Bundesschuldverschreibung von 1937* bonds with a face value of 250.00 Austrian Schillings, for which no market value was specified, and in reference to which it was noted that the Viennese stock exchange was closed; a handwritten note on the account statement indicates that the market value of this security was SF 200.00;
- 7% *Internationale Anleihe der Republik Österreich von 1930, Engl. Tr.* bonds with a face value of £ 100.00 and a market value of 824.00 Swiss Francs ("SF");
- 7% *Internationale Anleihe der Republik Österreich von 1930, Holl. Tr.* bonds, with a face value of £ 200.00 and a market value of SF 1,452.00;
- 4 ½ % *Ungarische Staatsanleihe von 1924, Völkerbundsanleihe Schweizer Tr., abgest.* bonds with a face value of SF 20,000.00 and a market value of SF 7,800.00;
- 6% *Stadt Wien von 1927 Ext. Loan Skg. Fd. Gold Bds. Per 1 Nov. 1952* bonds with a face value of 3,500.00 United States Dollars ("US \$") and a market value of SF 4,339.00;
- *Obl. Mit var. Zinsfuss Donau-Save-Adria Eisenbahngesellschaft von 1923* bonds without a specified face value and with a total market value of SF 925.00;
- 5% *Pfdr. Tirolische Landes-Hypothekenanstalt Innsbruck von 1937* bonds with a face value of 1,000.00 Austrian Schillings, for which no market value was specified, and in reference to which it was noted that the Viennese stock-market was closed; a handwritten note on the account statement indicates that the market value of this security was SF 800.00;
- 7 ½ % *Pfdr. Hungarian Land Mortgage Institute Serie A, 1926/61* bonds with a face value of £ 200.00 and a market value of SF 217.00;
- 7% *Deutsches Kalisyndicat G.m.b.H. Berlin 1925 Serie A., Schweiz. Tr.* bonds with a face value of £ 200.00 and a market value of SF 3,232.00;
- 7 ½ % *Tyrol Hydro-Electric Power 1 st. Mtge. Skg. Fd. Gold Bds. Per 1955* bonds with a face value of US \$ 1,000.00 and a market value of SF 1,392.00;
- 4% *Kanton Basel-Stadt von 1935* bonds with a face value of SF 2,000.00 and a market value of SF 2,090.00;
- 4% *Argentinische äussere Anleihe von 1935* bonds with a face value of SF 3,000.00 and a market value of SF 3,000.00;
- 4% *Dette Belge unifiée lére Série* bonds with a face value of 2,500.00 Belgian Francs and a market value of SF 338.00;
- 4% *Dänische Staatsanleihe v. 1912* bonds with a face value of £ 200.00 and a market value of SF 5,771.00;
- 4% *Norwegische Staatsanleihe v. 1911 mit Erklärung* bonds with a face value of £ 60.00 and a market value of SF 1,540.00;
- 6% *City of Budapest, ext. skg. fund gold* bonds per 1962 with a face value of US \$ 500.00 and a market value of SF 305.00;
- 7% *Marokkanische Eisenbahn-Gesellschaft von 1926* bonds with a face value of SF 1,040 and a market value of SF 1,175.00;
- 5 ½ % *Paris-Orléans Railroad Co. Ext. sink. Fund Gold Bonds per 1968* with a face value of US \$ 1,000.00 and a market value of SF 3,654.00;

- 47 privileged shares of *Société Nationale des Chemins de Fer Belges à bFr.500.-, Serie A Schweizer Tranche*, with a total market value of SF 4,112.00;
- 68 privileged shares of *Société Nationale des Chemins de Fer Belges, Bruxelles à bFr. 500.-, Belgische Tranche* with a total market value of SF 4,573.00; and
- 6 shares of *Crown Mines Limited, à sh. 10/- (Bearer)* with a total market value of SF 2,049.00.

In addition, a note made on the account statement indicates that the securities in this account had accrued interest of SF 1,400.00.

Thus, the total market value of the securities held in the custody account was SF 52,326.00 as of 27 April 1938.

This document also indicates that the Account Owners held a demand deposit account at Bank I. That account was closed on 1 April 1938. The balance of the demand deposit account is not indicated.

## Bank II

The account statement from Bank II indicates that Account Owner Emil Zerner was *Herr Direktor* (Director) Emil Zerner, who resided at Hofzeile 17, in Vienna XIX. Bank II's record indicates that Account Owner Emil Zerner held a custody account, numbered 25150. Bank II's record further indicates that the account contained securities identified as 4 ½% (7 ½%) *Obl. Königreich Ungarn von 1924* bonds with a face value of SF 2,000.00 and with a total market value of SF 816.50 as of 27 April 1938.

## **The CRT's Analysis**

### Identification of the Account Owners

The Claimant has plausibly identified Account Owner Emil Zerner. The Claimant's uncle's name matches the name of Account Owner Emil Zerner specified in both Bank I and Bank II's records. Moreover, the Claimant's uncle's city of residence and street address match the city of residence and street address of Account Owner Emil Zerner specified in Bank II's record. The CRT notes that Bank I and Bank II's records were submitted to Nazi authorities by Account Owner Emil Zerner as part of the 1938 Census, and that these records identify Account Owner Josefina Zerner as his wife. The CRT notes that there are no other claims to these accounts.

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

The Claimant has made a plausible showing that Account Owner Emil Zerner was a Victim of Nazi Persecution. The Claimant stated that Account Owner Emil Zerner was Jewish, that he was temporarily arrested by the Gestapo after the incorporation of Austria into the Reich in March 1938 (the "*Anschluss*"), and that he subsequently fled to Argentina in early 1939. The Claimant also submitted a copy of the 1938 Census form filed by Account Owner Emil Zerner,

demonstrating that he resided in Austria after the *Anschluss*.

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

The Claimant has plausibly demonstrated that he is related to Account Owner Emil Zerner by submitting specific information and documents, demonstrating that Account Owner Emil Zerner was the Claimant's maternal uncle. The CRT notes that the Claimant submitted a copy of his own birth certificate, which provides independent verification that the Claimant's relatives bore the same family name as the Account Owner and that they resided in Vienna, Austria, which supports the plausibility that the Claimant is related to Account Owner Emil Zerner, as he has asserted in his Claim Form. Finally, the CRT notes that the 1938 Census records establish that Account Owner Josefine Zerner was the wife of Account Owner Emil Zerner, which in turn establishes that the Claimant was also related to Account Owner Josefine Zerner. There is no information to indicate that the Account Owners have other surviving heirs.

### The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that the Account Owner reported the accounts in the 1938 Census; that the Account Owner was temporarily arrested by the Nazis in late 1938, and subsequently fled to Argentina; and given the application of Presumptions (d) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were his maternal uncle and aunt, and those relationships justify an Award. Third, 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

In this case, the Account Owners jointly held one demand deposit account and one custody account, and Account Owner Emil Zerner held one custody account.

With regard to the demand deposit account, pursuant to Article 29 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 current value of the account being awarded. Based on

the ICEP Investigation, in 1945 the average value of a demand deposit account account was 2,140.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 26,750.00.

With regard to the custody accounts, the account statements contained in the 1938 Census record, indicates that as of 27 April 1938 the total market value of the securities contained in the custody account at Bank I was SF 52,326.00, and that the total market value of the securities contained in the custody account at Bank II was SF 816.50. Accordingly, the total historic value of the two accounts is SF 53,142.50. The current value of the amount of the award is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules to produce an amount of SF 664,281.25. Consequently, the total award amount in this case is SF 691,031.25.

### **Scope of the Award**

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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  
31 March 2005