

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Denial**

to Claimant Marilyn Brigitte Kann  
also acting on behalf of Marie Hermine Kann and Peter Robert Kann

## **in re Accounts of Josef Breuer and Johanna Breuer**

Claim Number: 501724/HS

This Certified Denial is based upon the claim of Marilyn Brigitte Kann (the “Claimant”) to the accounts of Josef Breuer. This Denial is to the published accounts of Josef Breuer (“Account Owner Josef Breuer”) at the Zurich branch of the [REDACTED] (“Bank 1”), and the published and unpublished accounts of Johanna Breuer (“Account Owner Johanna Breuer”) (together the “Account Owners”), over which Josef Breuer, Robert Breuer (“Power of Attorney Holder Robert Breuer”), and Marie Breuer (“Power of Attorney Holder Marie Breuer”) (together the “Power of Attorney Holders”) held power of attorney, at the [REDACTED] (“Bank 2”) (together the “Banks”).<sup>1</sup>

All denials 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 Claimant**

The Claimant submitted a Claim Form identifying Account Owner Josef Breuer as her maternal uncle, Josef Breuer, and identifying Account Owner Johanna Breuer as her maternal grandmother, Johanna (Hanna) Breuer, née Brüll.

The Claimant stated that Johanna Breuer was born on 19 October 1883 in Vienna, Austria, and that she was married to Leopold Robert Breuer (Robert Breuer), who was born on 1 July 1869, also in Vienna. The Claimant explained that Johanna and Leopold Breuer had two children, Marie Kann, née Breuer (the Claimant’s mother), who was born on 30 August 1907 in Vienna; and Josef Breuer, who was born on 28 December 1913, also in Vienna. The Claimant stated that Josef Breuer, who was Jewish, was a medical doctor, and that he resided at Berggasse 3 in Vienna. According to the information provided by the Claimant, Robert Breuer died on 9 February 1936 in Vienna. The Claimant explained that Josef Breuer fled Austria for New York,

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<sup>1</sup> The CRT notes that on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Johanna Breuer (“Account Owner Johanna Breuer”) is indicated as holding one account. Upon careful review, the CRT has concluded that the bank records indicate that Account Owner Johanna Breuer actually held two accounts.

New York, on 5 July 1938 and that his sister Marie Breuer fled Austria in August 1938. According to the Claimant, Josef Breuer married Rachela Breuer, née Axtmeier, and the couple did not have any children.

The Claimant stated that Johanna Breuer died in 1965 and Joseph Breuer died on 30 January 1999, both in New York.

The Claimant submitted several documents in support of her claim, including:

- (1) the birth certificate of Marie Hermine Breuer, issued by the Jewish Community of Vienna, indicating that she was born on 30 August 1907 to Dr. Leopold Robert Breuer, who was a medical doctor, and Johanna Breuer, née Brüll, of Berggasse 3 in Vienna;
- (2) Joseph Breuer's certificate of naturalization as a United States citizen, dated 22 June 1944, and an accompanying certified document indicating that his name was changed from Josef to Joseph upon naturalization;
- (3) the Claimant's own birth certificate, indicating that Marilyn Brigitte Kann was born on 15 March 1948 in Princeton, New Jersey, the United States, to Robert Adolph Kann and Marie Kann, née Breuer;
- (4) a notarized document, in which Dr. Joseph Breuer identified Marie Kann as his sister and Peter Kann as his nephew;
- (5) the expired United States passport of Joseph Breuer, indicating that he was born on 28 December 1913 in Austria; and
- (6) the death certificate of Joseph Breuer, indicating that he died on 30 January 1999, that he was born on 28 December 1913 in Austria, and that his parents were Robert Breuer and Hannah Breuer, née Brüll.

The Claimant indicated that she was born on 15 March 1948 in Princeton. The Claimant is representing her mother, Marie Hermine Kann, née Breuer, who was born on 30 August 1907 in Vienna, and her brother Peter Robert Kann, who was born on 13 December 1942 in Princeton. The Claimant stated that she and represented parties Marie Hermine Kann and Peter Robert Kann are Joseph Breuer's only surviving relatives.

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

### **Bank 1**

Bank 1's record consists of a customer card. According to this record, the Account Owner was Dr. Josef Breuer, who resided in Vienna, Austria, and later in New York, New York, the United States. Bank 1's record indicates that the Account Owner held a custody account, numbered 58518, which was closed on 2 December 1938, and a demand deposit account that was closed on 20 December 1938.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of Bank 1 to obtain additional information about these accounts ("Voluntary Assistance"). Bank 1 provided the CRT with additional

documents. These documents consist of a custody account identification card (“*Leitkarte*”) and a custody account portfolio holding card (“*Depotvalorenkarte*”) for certain securities held within the custody account. These records indicate that on 24 May 1937, 55 ordinary shares of *Imperial Tobacco Co. (of Great Britain and Ireland) Ltd.* were transferred to custody account 58518 from another custody account, numbered 45082, the owner of which is not indicated. Bank 1’s records also indicate that these securities were sold on 30 November 1938.

## Bank 2

Bank 2’s record consists of a customer card. According to this record, the account owner was *Frau* (“Mrs.”) J. Breuer, also known as Johanna or Hanna Breuer, who originally provided Bank 2 with an address of Berggasse 3, Vienna. These records indicate that Account Owner Johanna Breuer held a custody account, numbered 37616, and a demand deposit account.

The record also indicates that Dr. Robert Breuer was originally a power of attorney holder over the accounts, but that Bank 2 was informed in a letter dated 27 February 1936 that he had passed away, and his name was subsequently crossed out on the card as a power of attorney holder. The card also indicates that Josef Breuer and *Frau Dr.* (the wife of a doctor) Marie Breuer held power of attorney over the accounts, including the right to access the accounts for their own benefit.

The record contains a notation indicating that on 3 October 1938, Bank 2 was notified that all correspondence relating to the accounts should be sent to Dr. Josef Breuer, in care of Mr. Alfred Jaretzki at 128 East 74th Street, New York.

Finally, Bank 2’s record indicates that these accounts were closed on 6 August 1943.

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

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 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Hanna (Johanna) Breuer, numbered 4765, as well as documents concerning the assets of Dr. Josef Breuer, numbered 7067.

The records pertaining to Hanna (Johanna) Breuer include her asset declaration, signed by her on 15 July 1938 in Vienna, and various correspondence. According to her asset declaration, Johanna Breuer was born on 19 October 1883, resided at Berggasse 3 in Vienna, and was the widow of Dr. Robert Breuer, who was a medical doctor. In her asset declaration, Johanna Breuer reported various Austrian and foreign securities, but did not indicate where these securities were held. The files pertaining to Johanna Breuer contain a form letter dated 3 August 1938 from the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (“*Vermögensverkehrsstelle*” or “*VVSt.*”) instructing her to offer her foreign currency-denominated securities for sale to the *Reichsbank* in Vienna within the week.

In a letter dated 6 December 1938 to the VVSt., Mrs. Breuer reported various changes in her assets caused by, among other reasons, a reduction in income (due to the death of her husband in 1936) and extra costs caused by her son's emigration on 5 July 1938 and her planned emigration for the beginning of 1939. She also noted that she had sold certain of her foreign-currency denominated securities. In a subsequent letter to the VVSt. dated 18 December 1938, Mrs. Breuer wrote that she had, through the lawyer Dr. Alfred Indra, requested that a special account be set up as a pledge for flight tax demands assessed against her. She noted that the amount of deposit requested had been based upon her original asset declaration and that it did not take into consideration the changes she noted in her 6 December 1938 letter. She also wrote that a special custody account (*Effekten-Pfand-Depot*) had been established for this purpose at *Bankhaus Krentschker & Co.* The files contain a statement from *Bankhaus Krentschker* regarding the "Jewish custody account" (*Jüdisches Depot*) established for *Frau Hanna Breuer*, showing the securities it contained as of 31 December 1938, some of which were pledged to cover flight tax assessed against her.

The files also contain a letter dated 7 February 1939 from the transport company *Dr. Franz Reitter* to *Frau Hanna Breuer* regarding her emigration to London. In this letter, the transport company stated that the total cost for her move to London would amount to RM 3,500.00. The files also contain a list compiled by Hanna Breuer dated 8 February 1939 and titled "Expenses until time of departure" (*Ausgaben bis zum Zeitpunkt der Ausreise*). The list includes costs for living expenses for one month, until the expected date of her departure. In another list dated the same day (8 February 1939) showing her actual assets, Mrs. Breuer listed various securities, including securities pledged to cover her flight tax, and noted that they were held in *Krentschker & Co.* The file also contains three flight tax assessments, the latest dated 22 April 1939, addressing both Johanna Breuer and her son, Dr. Josef Breuer. According to the last assessment, which notes that it took the place of the previous decision dated 31 March 1939, the mother and son were together assessed flight tax in the amount of RM 18,198.00 on assets totaling RM 72,793.00. The records pertaining to Hanna (Johanna Breuer) make no mention of assets held in a Swiss bank account.

The records pertaining to Dr. Josef Breuer contains his asset declaration, signed by him on 4 July 1938 in Vienna, a note to file, and various correspondence, including letters exchanged between the *Reichsbank* Main Office in Vienna and the VVSt. According to his asset declaration, Dr. Josef Breuer was born on 28 December 1913, was a medical doctor who worked as a trainee (*Hospitant*) at the Jewish Community Hospital (*Spital der Isr. Kultusgemeinde*), was unmarried, and resided at Berggasse 3 in Vienna. In his asset declaration, Josef Breuer reported that he held various Austrian and foreign securities, including 55 shares of *Imperial Tobacco Ltd.*, with a declared value of £ 371.25, or RM 4,608.00, but he did not indicate where these securities were held. The files pertaining to Josef Breuer also contain a form letter dated 3 August 1938 from the VVSt. instructing him to offer his foreign currency-denominated securities for sale to the *Reichsbank* in Vienna within the week.

In a letter from the *Reichsbank* office in Vienna to the VVSt. dated 22 May 1939, the *Reichsbank* noted that Josef Breuer's 55 shares of *Imperial Tobacco* were held at Bank 1 in Zurich and that Josef Breuer had not offered them for sale to the *Reichsbank* as instructed. It is not clear from the available records how Nazi authorities learned that the *Imperial Tobacco* shares were held at

Bank 1. In its 22 May 1939 letter to the VVSt., the *Reichsbank* noted that Josef Breuer had fled Austria in July of 1938. A subsequent internal VVSt. memorandum, dated 2 June 1939, indicates that the VVSt. had been informed by the *Reichsbank* that, despite repeated requests, Josef Breuer had not offered his securities for sale. The author of the 2 June 1939 VVSt. memorandum wrote that he planned on taking legal action against “the aforementioned Jew” (“*Ich beabsichtige unter Anwendung der gesetzlichen Bestimmungen gegen den vorgenannten Juden vorzugehen*”) and requested information on any assets Josef Breuer still possessed in Austria, particularly whether the securities in question were on deposit with a bank in Austria. Another internal VVSt. memorandum, dated 22 June 1939, indicates that inquiries had been made with the manager of the house where Josef Breuer formerly resided, and that the manager stated that Josef Breuer and his mother had already left the country. The 22 June 1939 VVSt. memorandum indicates that no further assets could be secured in Josef Breuer’s name.

Finally, a 29 June 1939 letter from the VVSt. to the *Reichsbank* indicates that Josef Breuer, who had been abroad for some time already, had “taken all of his assets with him” (“*Breuer...hat seine sämtlichen Vermögenswerte mitgenommen*”). The VVSt. indicated further that the 55 *Imperial Tobacco* shares that Josef Breuer held at Bank 1 must have escaped the attention of the authorities, as they were not repatriated to Austria before Josef Breuer fled the country.

## **The CRT’s Analysis**

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners and the Power of Attorney Holders. The Claimant’s maternal uncle’s name, city, and country of residence match the published name and city and country of residence of Account Owner Josef Breuer; the Claimant’s maternal grandmother’s name, city, and country of residence match the published name and city and country of residence of Account Owner Johanna Breuer; the Claimant’s mother’s name matches the published name of Power of Attorney Holder Marie Breuer; and the Claimant’s maternal grandfather’s name matches the published name of Power of Attorney Holder Robert Breuer. The Claimant also identified the Account Owners’ second city of residence and the Account Owners’ street address in Vienna, which matches unpublished information about the Account Owners contained in the Banks’ records.

In support of her claim, the Claimant submitted documents, including the expired United States passport of Joseph Breuer, the death certificate of Joseph Breuer, a notarized document signed by Joseph Breuer, the United States certificate of naturalization of Joseph Breuer with an accompanying certified document indicating that his name was changed from Josef to Joseph upon naturalization, and the birth certificate of Marie Hermine Breuer, providing independent verification that the persons who are claimed to be the Account Owners had the same names and resided in the same cities recorded in the Banks’ records as the names and cities of residence of the Account Owners.

The CRT notes that the other claim to these accounts was disconfirmed because that claimant provided a different country of residence than the country of residence of Account Owner Josef Breuer.

#### 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 both fled Austria for the United States after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”). In addition, the CRT notes that the Account Owners’ 1938 Census records indicate that the Account Owners were obliged to pay the Reich flight tax, and that some of Account Owner Johanna Breuer’s securities were seized to secure payment of the flight tax.

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

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting specific information and documents, demonstrating that Account Owner Josef Breuer was the Claimant’s maternal uncle, and that Account Owner Johanna Breuer was the Claimant’s maternal grandmother. These documents include her own birth certificate, indicating that Marilyn Brigitte Kann was the daughter of Robert Adolph Kann and Marie Kann, née Breuer; the birth certificate of Marie Hermine Breuer, indicating that she was the daughter of Dr. Leopold Robert Breuer and Johanna Breuer, née Brüll; the death certificate of Joseph Breuer, indicating that his parents were Robert Breuer and Hannah Breuer, née Brüll; and a notarized document, in which Dr. Joseph Breuer identified Marie Kann as his sister and Peter Kann as his nephew. There is no information to indicate that the Account Owners have other surviving heirs other than the parties that the Claimant is representing.

#### The Issue of Who Received the Proceeds

##### *Bank 1*

Bank 1’s records indicate that Account Owner Josef Breuer held a custody account at Bank 1 which was closed on 2 December 1938, and a demand deposit account that was closed on 20 December 1938. The records further indicate that the sole contents of the custody account were 55 shares of *Imperial Tobacco Co. Ltd.* As indicated above, the 1938 Census records for Josef Breuer indicate that he held 55 shares of *Imperial Tobacco* at Bank 1, and that he had been requested to sell those shares by the Reich. However, a 29 June 1939 letter from the VVSt. to the *Reichsbank* clearly states that Account Owner Josef Breuer had managed to flee Austria with his securities, including the 55 shares of *Imperial Tobacco*, and that the Reich had not been able to secure those shares before Josef Breuer fled Austria. The CRT further notes that by the time the securities were sold on 30 November 1938 and the custody account closed a few days later, a collection of different securities, belonging to Account Owner Johanna Breuer and on deposit in Austria, had already been pledged to pay the flight tax for both Account Owners. Therefore, the CRT concludes that Account Owner Josef Breuer sold the securities in the custody account on 30 November 1938 himself, and that he received the proceeds of his custody account at Bank 1.

With respect to Account Owner Josef Breuer's demand deposit account, given that it was closed within weeks of the custody account, that the 29 June 1939 letter from the VVSt. to the *Reichsbank* indicates that Account Owner Josef Breuer had "taken all of his assets with him" when he fled Austria, and that the VVSt. specifically also indicated that Josef Breuer was able to take with him the contents of his custody account at Bank 1, namely the shares of *Imperial Tobacco*, the CRT further concludes that Account Owner Josef Breuer also received the proceeds of his demand deposit account at Bank 1.

## *Bank 2*

Bank 2's record indicates that Account Owner Johanna Breuer held a custody account and a demand deposit account at Bank 2, which were closed on 6 August 1943.

The CRT notes that the records show that Account Owner Josef Breuer fled Austria for New York on 5 July 1938, and that Bank 2 was notified in October 1938 that correspondence regarding Account Owner Johanna Breuer's accounts was to be sent to Account Owner Josef Breuer in New York. The Claimant stated that Marie Breuer, who also held power of attorney over the account along with her brother Josef, fled Austria in August 1938. The CRT notes that Bank 2's records show that both Josef and Marie Breuer were authorized to access Account Owner Johanna Breuer's accounts for their own benefit. The CRT also notes that the documents in the 1938 Census files pertaining to Johanna Breuer show that she planned to leave Austria at the end of February or beginning of March 1939, and that she had definitely left Austria by 22 June 1939. These records also show that flight tax for her and her son had been paid by the time she left Austria. Therefore, given that Bank 2's record indicates that Account Owner Josef Breuer and Power of Attorney Holder Marie Breuer were authorized to access Account Owner Johanna Breuer's accounts for their own benefit; that Bank 2's record indicates that all correspondence regarding the accounts should be sent to Josef Breuer in New York as of October 1938; that Account Owner Johanna Breuer did not report her accounts at Bank 2 to the Reich in her 1938 Census declaration; that the accounts remained open after the Account Owners' flight tax had been paid and after their families had fled the Reich; and given that the accounts were only closed in August 1943, over four years after Account Owner Johanna Breuer and her children had fled Austria, the CRT concludes that Account Owner Johanna Breuer or one of her children (who both held power of attorney with disposition rights over the account) closed these accounts and received the proceeds themselves.

## Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules, the Claimant may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

### **Certification of the Denial**

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal  
17 December 2010