

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to the Estate of Claimant [REDACTED]<sup>1</sup>  
represented by [REDACTED]

## **in re Accounts of Ascher Bank**

Claim Number: 753051/JW<sup>2</sup>

Award Amount: 83,943.75 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (“Claimant Grossfeld”) to the accounts of Ascher Bank and Ella Bank.<sup>3</sup> This award is to the accounts of Ascher Bank (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).<sup>4</sup>

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.

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<sup>1</sup> In an email to the CRT on 1 March 2006, the Claimant’s daughter informed the CRT that the Claimant died on 28 September 1999.

<sup>2</sup> The Claimant did not submit a CRT Claim Form. However, in 1997 she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-NYC-D-70-918-062-924, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned Claim Number 753051.

<sup>3</sup> The CRT will treat the claim to the accounts of Ella Bank in a separate determination.

<sup>4</sup> The CRT notes that the name Ascher Bank was published as part of the Swiss banks’ 1962 survey of dormant accounts belonging to foreigners or stateless persons believed to be victims of persecution on racial, religious, or political grounds (the “1962 Survey”) and again on a February 1997 list of 53 Polish account owners whose accounts were transferred from the Swiss Unclaimed Assets Fund and were paid to the Polish National Bank. The Unclaimed Assets Fund was established by the Swiss Government to identify dormant assets belonging to heirless non-Swiss citizens who were the victims of racial, religious, or political persecution. The CRT notes that, on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP list”), Ascher Bank was included in the section “Account Owner - Institution.” Upon careful review, the CRT has concluded that the Bank’s records indicate that Ascher Bank should have been included under the section for “Account Owner - Person.”

## Information Provided by the Claimant

The Claimant submitted an ATAG Ernst & Young claim form in 1997 identifying the Account Owner as her brother-in-law, Ascher Bank, who was married to her sister, [REDACTED], née [REDACTED]. The Claimant indicated that Ascher Bank, who was Jewish, was a Polish citizen, and that he had previously resided in Tarnow, Poland, before moving to Berlin, Germany, where he manufactured garments. The Claimant indicated that Ascher and [REDACTED] told her before she left Germany in 1939 that she was the beneficiary of their Swiss bank account. The Claimant indicated that she last heard from Ascher and [REDACTED] around 1940.

In support of her claim, the Claimant submitted copies of: (1) a letter dated 12 January 1966 from the *Meldestelle für Vermögen verschwundener Ausländer* (Registration Office for Assets of Missing Foreigners, the “Registration Office”), in Bern, Switzerland, regarding her claim received on 28 December 1965 to an account belonging to Ascher Bank of Tarnow;<sup>5</sup> (2) a letter dated 24 October 1967 from the Registration Office, regarding her claim to this account, and requesting that she provide official documentation confirming that she was the heir of Ascher Bank; (3) a letter dated 12 December 1997 from the Polish Ministry of Finance, stating that the value of Ascher Bank’s account was 2,489.60 Swiss Francs (“SF”); and (4) a translation of the birth certificate issued by the Office of Birth Certificates in Berlin of her daughter [REDACTED], indicating that she was born on 20 August 1936, and that [REDACTED]’s maiden name was [REDACTED].

The Claimant indicated that she was born on 15 January 1917 in Poland.

## Information Available in the Bank’s Records

The Bank’s records consist of a list of accounts and printouts from the Bank’s database. The Bank’s records also contain a protocol, dated 2 December 1942, from a meeting of a prosecutor, a representative of the Bank, policemen, and August Dörflinger, an employee of the Bank, who was accused of acting as a spy for the Nazis and violating bank secrecy laws by reporting seventy-four account holders to the authorities in Nazi Germany.<sup>6</sup> The name Ascher Bank

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<sup>5</sup> The German text reads: “Wir teilen Ihnen mit, dass uns eine schweizerische Bank ein Guthaben von einigen wenigen tausend Franken auf den Namen Herrn Ascher Bank, Krakowska 47, 3 Pietro, Tarnow/ Polen, angemeldet hat.”

*Gemäss Art. 5 ff. Des Bundesbeschlusses vom 20.12.62 sind für die angemeldeten Guthaben die vom Gesetz vorgeschriebenen Massnahmen durchzuführen (Errichtung der Beistandschaft, Eröffnung und Durchführung des Erbganges etc.). Diese Vorkehrungen werden geraume Zeit beanspruchen, so dass vorläufig mit der Herausgabe des Vermögens an die legitimierten Berechtigten nicht gerechnet werden kann. Beweisurkunden irgenwelcher Art sind erst auf unser ausdrückliches Verlangen einzureichen.”*

<sup>6</sup> According to the files, August Dörflinger was suspected of having betrayed a total of 85 account relationships (“Kundenbeziehungen”) to Nazi authorities. Of these, 74 account relationships, including the one at issue here, were included on a list of those that Dörflinger admitted having reported to Nazi authorities. An additional nine account relationships were identified as suspected of having been reported to Nazi authorities by Dörflinger, and an additional two account relationships were identified, based on the files, as being associated with Dörflinger (“Aufgrund der Aktenlage in den Zusammenhang mit A. Dörflinger zu stellen”). The total 1942 value of these 85 accounts was 1,581,809.05 Swiss Francs (“SF”), which, using a factor of 12.5 to adjust to present day value, is equivalent to SF 19,772,613.13 today.

appears on the list of accounts in this protocol entitled “Existing Accounts and Depots” (*Bestehende Konti & Depots*), which were reported to the Nazis.

According to these records, the Account Owner was Ascher Bank, who was of Polish nationality and who resided at Neue Jakobstrasse 7 in Berlin, Germany. The Bank’s records indicate that the Account Owner held an account, the type of which is not indicated, which was valued at 219 British pounds (“£”), 15 schillings and 10 pence (£ 219.15.10),<sup>7</sup> as of 2 December 1942.

Based on the fact that the account was reported to Nazi authorities, 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”) determined that it was probable that the entire amount in the account, or a part of it, had been paid to the Nazi authorities. There is no evidence in the Bank’s records that the Account Owner or her heirs closed the account and received the proceeds themselves.

### **Information Available in the Swiss Federal Archive**

By Federal Decree of 20 December 1962 (the “Federal Decree”), the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious, or political persecution (“the 1962 Survey”). In the records of the Swiss Federal Archive in Bern, Switzerland, there are documents concerning the assets of Ascher Bank, numbered 405. According to these records, the Account Owner was Ascher Bank, who resided at Krakowska 47, 3 Pietro, in Tarnow, Poland.

These records indicate that the Account Owner had a demand deposit account in British Pounds at the Bank. The records further indicate that as of 1 September 1963, this account contained £ 205.00.00, which was approximately equivalent to 2,460.00 Swiss Francs (“SF”). The records indicate that the assets were reported by the Bank as a “doubtful case” (“*Zweifelsfall*”) in the course of the 1962 Survey.

Furthermore, according to the bank records, the account at issue was reported by the Bank to the registration office for assets of missing foreigners at the Swiss Federal Justice Department on 28 February 1964 under the Federal Decree of 1962, and on 17 September 1965 it was reported by the Justice Department to the Cantonal Guardianship Authority of Basel-City (*Vormundschaftsbehörde Basel-Stadt*). The records of the Swiss Federal Archive also include correspondence between the Cantonal Guardianship and the Claimant, dated 12 January 1966, 30 August 1966, and 24 October 1967, in which the Cantonal Guardianship asked for additional official documentation from the Claimant, including a death certificate and last will, in order to prove her right to inheritance.

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<sup>7</sup> Before the decimalization of the British Pound in 1971, values in Pound Sterling were expressed in terms of pounds, shillings and pence. The CRT has converted the account balance to the decimal value for the purposes of calculating the current value of this account. In decimal terms, one shilling is equivalent to £ 1/20 and one penny is equivalent to £ 1/240.

These records also indicate that the sum of SF 2,486.40 was deposited on 8 March 1972 into the unclaimed assets fund, which was created under the account name “Heirless Assets” (*Erblose Vermögen*) in accordance with the 1962 Federal Decree, in order to collect and distribute unclaimed assets. The records do not contain information about the ultimate disposition of this account.

### **Information Published by the Press Office of the Polish Ministry of Finance**

In the publication entitled *Nasze finanse*, published by the Press Office of the Polish Ministry of Finance, number 25, dated February 1997, there is information concerning the assets of Ascher Bank, numbered 405. According to these records, the Account Owner was Ascher Bank, who resided in Tarnow, Poland. These records indicate that, as of 23 January 1964, the Account Owner held a demand deposit account at the Basel branch of the Bank worth £ 205.00, equivalent to SF 2,460.00. These records further indicate that this account was transferred to the Polish National Bank on 15 August 1975, when it was valued at SF 2,489.60.

### **The CRT’s Analysis**

#### Identification of the Account Owner

The Claimant’s brother-in-law’s name and cities and countries of residence match the published name and cities and countries of residence of the Account Owner. In support of her claim, the Claimant submitted documents, including her correspondence with the Registration Office in 1967 regarding the account of Ascher Bank, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town on the list published by the Polish Ministry of Finance as the name and city of residence of the Account Owner.

The CRT notes that the Claimant filed an ATAG Ernst & Young claim form in 1997, asserting her entitlement to a Swiss bank account owned by Ascher Bank, prior to the publication in February 2001 of the list of accounts determined by ICEP (the “ICEP List”) to be probably or possibly those of Victims of Nazi Persecution. This indicates that the Claimant has based their present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name and cities of residence as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

The CRT notes that there are no other claims to these accounts. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

### 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, that he lived in Nazi Germany during the Second World War, and that he and his wife were never heard from again after 1940.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's brother-in-law. These documents include the Claimant's correspondence with the Registration Office, which indicate that she was the sister-in-law of the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT further notes that the Claimant filed an ATAG Ernst & Young claim form in 1997, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List, and that the Claimant also identified information which matches information published by the Polish Ministry of Finance. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form.

### The Issue of Who Received the Proceeds

In this case, the Account Owner held one demand deposit account and one account, the type of which is not indicated. The Bank's Records indicate that the account of unknown type was reported by August Dörflinger to the authorities in Nazi Germany. Based on the fact that the account was reported to Nazi authorities, the auditors of the ICEP Investigation determined that it was probable that the entire amount in the account, or a part of it, had been paid to the Nazi authorities.

The CRT notes that the records of the Swiss National Archive and the Polish Ministry of Finance indicate that the Account Owner also held one demand deposit account at the Basel branch of the Bank that was valued at £ 205.00. The CRT notes that the Polish - Swiss Compensation Agreement of 25 June 1949 (the "Agreement") called for the payment of dormant assets held in Swiss banks by Polish nationals to the government of Poland in return for compensation to Swiss banks and Swiss life insurance companies that had suffered financial loss as a result of nationalizations in Poland. The records of the Polish Ministry of Finance indicate that the account was paid to the Polish National Bank on 15 August 1975 as part of this Agreement. The CRT notes that this account was paid to the Polish National Bank in 1975, even though the Account Owner's heir contacted the Registration Office and claimed the account almost ten years previously, in 1966.

In its Memorandum and Order of February 19, 2004, the United States District Court for the Eastern District of New York specifically addressed the practice of Swiss banks fending off inquiries about Holocaust-era accounts under the pretext of protecting property rights and banking secrecy, while abandoning these principles when it served their own economic interests, as in the case of the Polish-Swiss agreement:

It is important to reiterate that the Swiss banks' devotion to secrecy and their repeated acts of stonewalling were not based on principles - they were profit-driven. Put differently, "the banks' rhetorical efforts to uphold the existing 'legal system,' guarantee the [v]iability of the law and protect 'property rights' on the basis of banking secrecy" were merely that - rhetoric. As the Bergier Commission found, "it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of banking secrecy and a clear preference for continuity in private law. Over the many years of such rejections, a large number of accounts were reduced to zero or almost." Where economics counseled against upholding secrecy, private law and property rights, however, the banks were quick to abandon their supposedly entrenched values.

A particularly telling example of profits being placed over "banking secrecy" is the secret post-war deals reached by the Swiss with Poland and Hungary to loot unclaimed accounts belonging to Holocaust Victims. "[T]he primary aim of [these deals] was to favour Swiss interests in the wake of nationalization of assets in Poland and Hungary." The Bergier Commission was conservative when it wrote that this was "the primary aim" of the deals. What actually happened was that money was taken from dormant accounts of murdered Polish and Hungarian citizens and transferred to Swiss citizens to ameliorate the claims these citizens were raising against the Polish and Hungarian governments after their assets had been nationalized. And yet, "[t]he agreement[s] got no or very little publicity. It was therefore virtually impossible even for heirs living abroad to assert their claims." Gerhard Weinberg, an eminent historian of the Nazi era, explained the deal with Poland as follows:

[I]n 1949 the Swiss government signed a secret agreement with the Communist government of Poland under which the Swiss government with the agreement of the regime in Warsaw located the accounts in Swiss financial institutions of those Polish citizens who had been murdered and who either had no heirs or whose heirs had been stonewalled. The proceeds of this looting operation were then paid over to Swiss citizens who had claims on Poland arising out of the nationalization and / or confiscation of their property in Communist Poland.

The deal with Hungary was similar in operation. While the "primary aim" of "favour[ing] Swiss interests" through these deals is clear, it is hard to imagine what secondary aim there could have been.

What is most striking about these secret agreements is that, as the Bergier Commission pointed out, "[s]urprisingly, it was now apparently possible to conduct an internal investigation so that a list of dormant accounts relating to these countries could be drawn up." Indeed, "[n]either private property rights nor banking secrecy

had been a barrier to the release of these assets.” Dr. Weinberg explained: [A]ccounts which previously have been announced in diplomatic negotiations as either not existing or incapable of being located, and which have been withheld from the heirs either for those reasons or because the heirs cannot produce documents acceptable to the financial institutions, can suddenly be identified, their contents removed, and legal title to the assets transferred to Swiss citizens whose claims against Poland or Hungary might hinder future profitable Swiss trade with those countries. The United States opposed the agreement with Poland because “such an agreement would be inconsistent with the declarations previously made by Swiss officials regarding the disposition of heirless assets found in Switzerland.” But its opposition was to no avail. Again, the banks’ focus was on profits, and the deals went forward.<sup>8</sup>

### 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 Governing the Claims Resolution Process (the “Rules”). Second, the Claimant has plausibly demonstrated that the Account Owner was her brother-in-law and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

### Amount of the Award

In this case, the Account Owner held one demand deposit account and one account, the type of which is not indicated. The Bank’s records indicate that the value of the account of unknown type as of 2 December 1942 was £ 219.15.10, equivalent to SF 3,795.77.<sup>9</sup> According to Article 29 of the Rules, if the amount in an account of unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount for this account is SF 49,375.00.

The CRT notes that the records of the Swiss National Archive and the Polish Ministry of Finance indicate that the Account Owner also held one demand deposit account that was valued as of 1 September 1963 at £ 205.00, equivalent to SF 2,480.50.<sup>10</sup> In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 285.00, which reflects standardized bank fees charged to the demand deposit account between 1945 and 1963. Consequently, the adjusted balance of the account at issue is SF 2,765.50. The current value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award value for this account of SF 34,568.75.

Therefore, the total award amount for the two accounts is SF 83,943.75.

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<sup>8</sup> *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 59, (E.D.N.Y. 2004), *amended*, 319 F. Supp. 2d 301 (E.D.N.Y. June 1, 2004) (internal cites omitted).

<sup>9</sup> In calculating the historic value of the account in Swiss Francs, the CRT uses official exchange rates.

<sup>10</sup> *Id.*

### **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 their 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  
15 November 2007