

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED 1],  
also acting on behalf of [REDACTED 2]  
represented by [REDACTED]

to Claimant [REDACTED 3],  
represented by von Trott zu Solz Lammek

to the Estate of Claimant [REDACTED 4],  
represented by *Hoerner Bank AG*

and to Claimant [REDACTED 5],  
also acting on behalf of [REDACTED 6]  
represented by *Hoerner Bank AG*

## **in re Account of Herbert von Gans**

Claim Numbers: 219334/RS; 401663/RS; 220004/RS; 219601/RS<sup>1,2</sup>

Award Amount: 1,209,219.13 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the accounts of Friedrich (Fritz) Ludwig von Gans; the claim of [REDACTED 3] (“Claimant [REDACTED 3]”) to the accounts of Herbert von Gans; the claim of [REDACTED 4] (“Claimant [REDACTED 4]”) to the accounts of Milton Seligman; and the claim of [REDACTED 5] (“Claimant [REDACTED 5]”) (together the “Claimants”) to the account of

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<sup>1</sup> [REDACTED 4] (“Claimant [REDACTED 4]”) submitted two Claim Forms, which were registered under the Claim Numbers 220167 and 220004. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 220004.

<sup>2</sup> [REDACTED 1] (“Claimant [REDACTED 1]”) submitted seven additional claims, which are registered under the Claim Numbers 401871, 401874, 402054, 402062, 402068, 402070, and 402071. In separate decisions, the CRT awarded the accounts of Richard Gans and Elfriede Gans and Leo Ludwig Gans to Claimant [REDACTED 1]. See *In re Accounts of Richard Gans and Elfriede Gans* (approved on 30 December 2004) and *In re Account of Leo Ludwig Gans* (approved on 4 April 2003). The CRT treated Claimant [REDACTED 1]’s claims to the account of Arthur Weinberg, Karl Weinberg, Philipp Reis, and Margarete Pick in decisions dated 6 August 2007, 8 August 2007, 14 September 2007, and 14 September 2007, respectively.

In separate decisions, the CRT awarded the accounts of Milton Seligman to Claimant [REDACTED 4]. See *In re Accounts of Milton Seligman* (approved on 5 September 2002) and *In re Account of Milton Seligman* (approved on 18 August 2004). In another decision, the CRT awarded the accounts of Henry Seligmann to [REDACTED 5] (“Claimant [REDACTED 5]”). See *In re Accounts of Henry Seligmann* (approved on 10 December 2004).

Henry Seligman.<sup>3</sup> This Award is to the published account of Herbert von Gans (the “Account Owner”) at the Geneva 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 claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

### **Information Provided by the Claimants**

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owner as his father, Herbert von Gans, and Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as Herbert von Gans, who was the cousin of her father, [REDACTED].

According to Claimants [REDACTED 1] and [REDACTED 3], Herbert von Gans was one of four children of [REDACTED]. In turn, [REDACTED] was one of two children of [REDACTED] and [REDACTED]. [REDACTED]’s brother was [REDACTED]; [REDACTED]’s son [REDACTED] married [REDACTED], and they had five children, one of whom is Claimant [REDACTED 1].

According to the Claimants, [REDACTED] (who was the great-grandfather of Claimants [REDACTED 1] and [REDACTED 3]) had a brother named [REDACTED], who was the maternal grandfather of Claimant [REDACTED 4] and the great-grandfather of Claimant [REDACTED 5]. According to Claimant [REDACTED 4], [REDACTED] had a daughter [REDACTED], who married [REDACTED]. [REDACTED] and [REDACTED] had two children: Claimant [REDACTED 4] and [REDACTED]. [REDACTED] had two children, Claimant [REDACTED 5] and his brother [REDACTED 6].

Claimants [REDACTED 1] and [REDACTED 3] explained that their great-grandfather [REDACTED] was one of the directors of *Leopold Cassella & Co.*, which was one of the founding companies of the *I.G. Farben (I.G. Farbenindustrie)* conglomerate.

Claimants [REDACTED 1] and [REDACTED 3] stated that Herbert von Gans was Jewish, that he was born in 1905, that he married [REDACTED], and that the couple had two children, Claimant [REDACTED 3] and [REDACTED], who was born in 1937 and died in 1941. Claimant [REDACTED 1] stated that Herbert von Gans later married [REDACTED], née [REDACTED]. Both Claimants [REDACTED 1] and [REDACTED 3] indicated that Herbert von Gans died in 1983.

Claimant [REDACTED 1] submitted copies of numerous documents, including:

- (1) the death certificate of [REDACTED], indicating that he died on 9 January 1963 in

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<sup>3</sup> The CRT did not locate an account belonging to Friedrich Ludwig (Fritz) von Gans in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

- Düsseldorf, and that he was born on 1 March 1897;
- (2) a court-issued certificate indicating that [REDACTED], who died on 9 January 1963, was one of the heirs of his grandfather, [REDACTED], who died on 14 July 1920 in Frankfurt am Main, where he last resided;
  - (3) a court-issued declaration indicating that among the heirs of [REDACTED], who died on 18 April 1915, was his son [REDACTED], who was born on 1 March 1897;
  - (4) correspondence from 1990 between herself and the Jewish Restitution Successor Organization, in which Claimant [REDACTED 1] requested information regarding Swiss assets held by [REDACTED];
  - (5) a list of banks at which members of the von Gans family held accounts prior to the Second World War, which Claimant [REDACTED 1] indicated came from her father's personal papers;
  - (6) a letter dated 11 October 1926 from the administrators of the estate of his Excellency [REDACTED] (*Exzellenz v. [REDACTED]*) ([REDACTED]) to [REDACTED], regarding that estate;
  - (7) a letter dated 4 July 1961 from [REDACTED] to an individual at *Michelis Bank A.G.*, Zurich, requesting assistance tracing accounts belonging to his grandfather, [REDACTED], and indicating that a visit to Zurich in an attempt to trace these accounts himself had proved unsuccessful;
  - (8) a copy of the last will of [REDACTED] and [REDACTED] of Frankfurt am Main, dated 18 August 1908, indicating that among their heirs were their grandsons Herbert Gans and [REDACTED];
  - (9) extracts from the book *Verstand und Schicksal*<sup>4</sup> relating to [REDACTED], who, according to the extracts, was the brother of [REDACTED], who was granted the noble title 'von' in 1912; indicating that [REDACTED] and [REDACTED] had another brother, [REDACTED], whose daughter [REDACTED] married [REDACTED]; and indicating further that [REDACTED] had a son named [REDACTED], who served as Hungarian Consul in Frankfurt am Main;
  - (10) her own birth certificate, indicating that [REDACTED 1] was born on 6 August 1947 in Melbourne, Australia, that her father was [REDACTED], who was a manager of a chemical factory, that her mother was [REDACTED 2], and that her parents had four other children; and
  - (11) a detailed family tree.

Claimant [REDACTED 1] previously submitted an ATAG Ernst & Young claim form ("ATAG Form") in 1998, asserting her entitlement to a Swiss bank account owned by [Friedrich (Fritz) Ludwig von Gans.

Claimant [REDACTED 1] indicated that she was born on 6 August 1947 in Melbourne, Australia. Claimant [REDACTED 1] is representing her mother, [REDACTED 2], who was born on 13 July 1915 in Vienna, Austria. Claimant [REDACTED 3] indicated that he was born in 1932.

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<sup>4</sup> Jens Ulrich Heine, *Verstand und Schicksal*. Die Männer der I.G. Farben Industrie A.G. in 161 Kurzbiographien (1990).

Claimant [REDACTED 5] submitted copies of documents, including:

- (1) his own birth certificate, indicating that [REDACTED 5] was born on 2 February 1948 in Oxford, England, and that his father was [REDACTED];
- (2) an extract from the Frankfurt am Main household registry, indicating that *Dr. jur.* (Doctor of laws) [REDACTED] was married to [REDACTED], née [REDACTED], and that their children included [REDACTED 4], who was born on 23 December 1904, and [REDACTED], who was born on 25 February 1909; and
- (3) the marriage certificate of [REDACTED] and [REDACTED], indicating that [REDACTED] was Jewish, that she resided in Frankfurt am Main, and that she was the daughter of Adolf [REDACTED] of Frankfurt am Main, and also indicating that factory owner [REDACTED] of Frankfurt am Main was a witness to the wedding.

Claimant [REDACTED 5] indicated that he was born on 2 February 1948 in Oxford, England. Claimant [REDACTED 5] is representing his brother, [REDACTED 6], who was born on 14 December 1953 in Oxford, England.

Claimant [REDACTED 4] submitted copies of documents, including:

- (1) her own birth certificate, indicating that [REDACTED 4] was born on 23 December 1904 in Frankfurt am Main, that she was Jewish, that her father was [REDACTED], and that her mother was [REDACTED], née [REDACTED];
- (2) the extract from the Frankfurt am Main household registry that was submitted by Claimant [REDACTED 5]; and
- (3) the marriage certificate of [REDACTED] and [REDACTED] that was submitted by Claimant [REDACTED 5].

Claimant [REDACTED 4] indicated that she was born on 23 December 1904 in Frankfurt am Main. In correspondence with the CRT, Claimant [REDACTED 4]'s daughter [REDACTED] stated that Claimant [REDACTED 4] passed away in June 2002.

### **Information Available in the Bank's Record**

The CRT notes that 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") did not report an account belonging to Herbert von Gans during their investigation of the Bank. The documents evidencing accounts belonging to Herbert von Gans were obtained from archival sources in Germany and are further described below.

### **Information Available from German Archival Records**

In the records of the Wiesbaden Archives (*Staatsarchive Wiesbaden*), Regional Office for Asset Control and Restitution (*Landesamt fuer Vermögenskontrolle und Wiedergutmachung*) there is a

file numbered 232-33 (1933) regarding criminal charges of violations of currency regulations brought against Herbert von Gans, who had a listed address of Forsthausstrasse 64, Frankfurt am Main, Germany.

The criminal case file (*Verwaltungsstrafsache wider Herbert von Gans wegen Devisenvergehens*) consists largely of correspondence between Herbert von Gans and the Frankfurt am Main branch of the Currency Rationing Office (*Devisenbewirtschaftungsstelle*), and between the Currency Rationing Office and the Federal Finance Ministry, and of memoranda prepared by the Currency Rationing Office regarding the Herbert von Gans case.

The earliest correspondence in the file is dated 19 April 1932, and consists of a letter from Herbert von Gans to the Frankfurt am Main branch of the Currency Rationing Office. In the letter, Herbert von Gans indicates that in the first half of 1931, he married and moved to Geneva, Switzerland, where he lived with his mother-in-law. He further stated that prior to his move to Switzerland, he held *I.G. Farbenindustrie* shares with a nominal value of 313,000.00 Reichsmark (“RM”), and *Deutsche Anleihe Ablösungsschulden einschl. 1/5 Auslösungsrechte* (German bonds) with a nominal value of RM 1,687.50, all of which were deposited, prior to his move to Switzerland, at *Lincoln Menny Oppenheimer* bank in Frankfurt. Following his move to Switzerland, Herbert von Gans transferred the *I.G. Farbenindustrie* shares to a Swiss bank, namely the Geneva branch of *Ferrier, Lullin & Cie.* (“*Ferrier, Lullin*”). *Ferrier, Lullin* granted Herbert von Gans a Swiss Franc-denominated line of credit which was covered by the *I.G. Farbenindustrie* shares which he had deposited at that bank.

Herbert von Gans further indicated that as of 19 April 1932, *Ferrier, Lullin* had cancelled part of the line of credit granted to him, and that he was now being forced to pay back the debt that he owed to that bank. Consequently, he requested permission from the Currency Rationing Office to send the *I.G. Farbenindustrie* shares back to Germany, so that a German bank might assume the debt that he owed *Ferrier, Lullin*, in exchange for control of the shares. He also indicated that because of new emergency financial regulations (*Notverordnung*), he was being forced to return permanently to Germany from Switzerland in order to avoid payment of flight tax (*Reichsfluchtsteuer*).<sup>5</sup>

The file contains an undated memorandum indicating that on 29 June 1932, it was established that Herbert von Gans, of the “well-known von Gans family of Frankfurt am Main” (*ein Mitglied der bekannten Frankfurter Familie von Gans*) had sent RM 23,000.00 of the *I.G. Farbenindustrie* shares that he held at *Ferrier, Lullin* to German bank *Heidingsfelder & Co.* (also referred to as *Bankhaus Heidingsfelder & Co.*) in Frankfurt am Main. The German bank sold the shares, and with the proceeds of that sale, Herbert von Gans purchased new German bonds with a nominal value of 7,000.00 United States Dollars (“US \$”). Herbert von Gans then deposited

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<sup>5</sup> “Flight tax,” or *Reichsfluchtsteuer*, was originally based upon the Fourth Decree of the Reichs President for the Maintenance of the Economy and Finances and the Protection of Domestic Peace (*die Vierte Verordnung des Reichspräsidenten zur Sicherung von Wirtschaft und Finanzen und zum Schutz des inneren Friedens*), dated 8 December 1931 (RGBl. I 699), Chapter III §§ 1-13. After the Nazis came to power, the law was used increasingly to target Jewish persons attempting to flee Germany. The *Reichsfluchtsteuer* was extended “until further notice” by a decree of 9 December 1942 (RGBl. I 682). *Reichsfluchtsteuer* was not officially eliminated in Germany until 23 July 1953 (BGBl. I 689). See [http://www.bundesarchiv.de/cocoon/barch/0100/k/k1951k/kap1\\_2/kap2\\_50/para3\\_8.html](http://www.bundesarchiv.de/cocoon/barch/0100/k/k1951k/kap1_2/kap2_50/para3_8.html) (last visited 27 November 2008).

those new German bonds at *Ferrier, Lullin* some time between 23 April 1932 and 23 May 1932. The memorandum indicates that Herbert von Gans was not thought to have committed any violation of the currency regulations through these transactions and transfers.

The file also contains a memorandum dated 2 July 1932 from the Finance Office (*Finanzamt*) in Bad Homburg indicating that Herbert von Gans had requested forbearance on taxes he owed, as he claimed that his assets were being held in Switzerland and were not being released from that country, and that he therefore did not have assets to pay his tax bill.

In the file is a further memorandum dated 13 August 1932, in which an auditor engaged by the Frankfurt Currency Rationing Office indicates that Herbert von Gans had inherited the RM 313,000.00 *I.G. Farbenindustrie* shares from his grandfather upon his twenty-fifth birthday.

The file contains further memoranda and correspondence indicating that ultimately, all of the *I.G. Farbenindustrie* shares in Herbert von Gans' account at *Ferrier, Lullin* were sold within a one-month period. The memoranda indicate that there was some debate between Herbert von Gans and the Currency Rationing Office as to who or what prompted the sale of the *I.G. Farbenindustrie* shares. Herbert von Gans claimed that *Ferrier, Lullin* notified him that the market value of the *I.G. Farbenindustrie* shares was declining, and that it requested that Herbert von Gans sell some of the *I.G. Farbenindustrie* shares and purchase new US Dollar-denominated bonds with the proceeds, in order to ensure that Herbert von Gans' 125,000.00 Swiss Francs ("SF") credit with their bank was properly covered. Herbert von Gans claimed in correspondence, and upon interrogation by government officials, that he had requested the Currency Rationing Office's permission to sell some of his *I.G. Farbenindustrie* shares, as required by German regulations regarding the sale of German shares. The Currency Rationing Office, however, noted that in fact *Ferrier, Lullin* began to sell off the *I.G. Farbenindustrie* shares that Herbert von Gans had deposited at that bank prior to Herbert von Gans' receipt of official permission from the Currency Rationing Office for the sale to occur. Consequently, the file indicates that the Currency Rationing Office soon considered Herbert von Gans to have violated existing currency regulations by selling German shares without permission from the German authorities.

An official fact report regarding the Herbert von Gans case indicates that on 30 June 1932, the last of Herbert von Gans' *I.G. Farbenindustrie* shares that he had deposited at *Ferrier, Lullin* were sold. With the proceeds of the sale of all of the shares, Herbert von Gans first repaid the SF 125,000.00 debt that he owed *Ferrier, Lullin*; he was then left with a credit of SF 110,715.30. The report indicates that *Ferrier, Lullin* sent the equivalent amount of US \$21,513.49 per check to the Geneva branch of the Swiss Bank at issue in this case to Herbert von Gans' attention. The report further indicates that with that final payment, Herbert von Gans' account at *Ferrier, Lullin* was "settled" (*Damit. . . ist das Konto v. Gans ausgeglichen*).

The authorities reported in a memorandum dated 27 October 1932 that Herbert von Gans had paid his German taxes owing with the money that he had received from the sale of the *I.G. Farbenindustrie* shares. The memorandum also indicates that through the sale of those shares, Herbert von Gans had paid back the entire debt owing on his line of credit from *Ferrier, Lullin*; in addition, Herbert von Gans had been able to purchase additional shares valued at US

\$60,000.00, using, in part, the proceeds of the sale of his *I.G. Farbenindustrie* shares. The memorandum indicates that Herbert von Gans had purchased the new shares through the Bank in Geneva, and that he later made a profit by selling some of those shares.

The German archival records indicate that Herbert von Gans held a custody account at the Bank in which the remaining shares were held.

Included in the file is a letter dated 1 March 1933 from Herbert von Gans' lawyer, Dr. Fritz Mertens of Frankfurt, indicating that the prosecutors' office had imposed a fine of RM 40,000.00 on Herbert von Gans for violations of currency regulations based on the above transactions; the lawyer indicated that the fine consisted of a base fine of RM 10,000.00, plus the allegedly ill-gotten profit of RM 28,000.00 that Herbert von Gans received from the sale of some of his bonds. The file contains a further letter dated 14 March 1933 from the office of the German Finance Minister (*Reichswirtschaftsminister*) to the Currency Rationing Office, indicating that the German Finance Minister had decided that the base fine of RM 10,000.00 was sufficient, and that a fine of RM 40,000.00 was not warranted in the case. A further undated memorandum in the file indicates that Herbert von Gans' failure to observe the regulations ordained by the Finance Ministry, and his violation of various other currency regulations, meant that the launching of a criminal case against Herbert von Gans was unavoidable.

A letter dated 17 March 1933 indicates that Herbert von Gans informed the Currency Rationing Office that as soon as he received the US Dollar interest payment on his US Dollar bonds from the Bank in Geneva, he would forward that interest payment directly to the Currency Rationing Office.

The file contains a further letter from Herbert von Gans, signed and dated in Frankfurt on 15 June 1933. In the letter, addressed to the Currency Rationing Office, Herbert von Gans indicated that he had met with a representative of that office regarding the use of his US Dollar-denominated bonds. Herbert von Gans indicated that he was in the process of launching a business in Germany that would provide employment for a number of German citizens, and that he consequently required funds. He further noted that the exchange rate on the US Dollar had declined, and that he therefore wished to exchange his US Dollar-denominated bonds for *I.G. Farbenindustrie* bonds denominated in Reichsmark. He indicated that he would prefer to exchange his holdings, and maintain them in his possession as *I.G. Farbenindustrie* bonds, which could later be sold at a more favorable market rate, rather than sell the US Dollar-denominated bonds at the current unfavorable exchange rate and subsequently offer at least some of the proceeds of the sale to the Reichsbank, as financial regulations required. Subsequent correspondence in the file indicates that this request was denied by the Currency Rationing Office on 4 July 1933.

In an undated letter to the Bank in Geneva, Herbert von Gans requested that the Bank send him the exact identification numbers of his US Dollar-denominated bonds held at the Bank. The correspondence in the file indicates that the Currency Rationing Office had requested the identification numbers of Herbert von Gans' securities. In his letter to the Bank, Herbert von Gans also requested that the balance of his account be sent to him in a check, and that as soon as any further credit was made to his account, that amount should also be sent to him as a check.

The file also contains an 8 September 1933 letter to the Finance Ministry from the unnamed clerk in the Currency Rationing Office who was responsible for the Herbert von Gans case. In the letter, the clerk indicated that he enclosed a copy of the decision on appeal of the court in the case against Herbert von Gans.<sup>6</sup> The clerk indicated that the court had ignored several of the points that the clerk had made in a report on the case. Specifically, the court had ignored charges of failure to offer to the Reich a dividend in the amount of SF 23,702.30 that Herbert von Gans had received, and the court had also ignored proposed charges of failure to offer to the Reich the *I.G. Farbenindustrie* shares prior to selling them. The clerk also noted that there was a vast discrepancy between the lower court's verdict of a fine of RM 40,000.00, and the appellate court's verdict of a fine of only RM 1,000.00. The clerk commented that the court seemed to have displayed in this case, as in many other similar currency violation cases, extreme unpredictability in its verdict; he consequently requested that the Ministry consider whether the verdict against Herbert von Gans could be changed.

The clerk further noted that in January 1933, Herbert von Gans had, without permission from the German authorities, exchanged some of his bonds for new bonds, in accordance with financial regulations issued on 23 June 1932. Specifically, Herbert von Gans exchanged the following bonds:

- *6% Preussenbonds 1952* with a face value of US \$12,000.00;
- *6½% Ver. Stahlwerke 1951 bonds*, with a face value of US \$3,000.00;
- *6½% Berl. El. Ges. 1956 bonds*, with a face value of US \$2,000.00; and
- *6% German Saving Bank 1947 bonds*, with a face value of US \$13,000.00;

for the following new bonds:

- *6% Gesfürel 1955 bonds*, with a face value of \$6,000.00;
- *6% Gelsenkirchen 1934 bonds*, with a face value of US \$6,000.00;
- *6% Rhein-Westfalen 1952 bonds*, with a face value of US \$6,000.00; and
- *6½% German Electric Power 1950 bonds*, with a face value of US \$4,000.00.

The clerk stated that the new bonds listed above had been deposited in Herbert von Gans' custody account at the Bank. The clerk also noted that Herbert von Gans' 15 June 1933 request that he be allowed to exchange the new bonds listed above for *I.G. Farbenindustrie* bonds had been denied on 4 July 1933. The clerk noted that Herbert von Gans had consequently been forced to sell, outside of Germany (*im Ausland*), all of the US Dollar-denominated bonds that he owned. The sale resulted in US \$21,934.20 in cash, the full amount of which Herbert von Gans sent to the Reichsbank main office (*Reichsbankhauptstelle*) through *Heidingsfelder & Co.* bank of Frankfurt. In addition, the clerk stated that Herbert von Gans also sent to the Reichsbank, through *Heidingsfelder & Co.*, the US \$912.50 profit that he had made in the January 1933 exchange of his bonds, and an additional US \$576.43 "residual amount" (*ein Restguthaben*).

The CRT notes that the German archival records do not indicate whether Herbert von Gans'

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<sup>6</sup> The CRT notes that the court decision is not actually attached to the 8 September 1933 letter, nor is it included elsewhere in the file.



account at the Bank was closed.

## **The CRT's Analysis**

### Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the four claims of the Claimants in one proceeding.

### Identification of the Account Owner

Claimant [REDACTED 1] and Claimant [REDACTED 3] have plausibly identified the Account Owner. Claimant [REDACTED 1]'s father's cousin's name, and Claimant [REDACTED 3]'s father's name, matches the published name of the Account Owner. Claimant [REDACTED] and Claimant [REDACTED] identified the Account Owner's city and country of residence, which matches unpublished information about the Account Owner contained in the German archival records.

In support of her claim, Claimant [REDACTED 1] submitted documents, including a copy of the last will of [REDACTED] and [REDACTED], providing independent verification that the person who is claimed to be the Account Owner had the same name recorded in the German archival records as the name of the Account Owner.<sup>7</sup>

The CRT notes that the name Herbert von Gans appears only once on the List of Account Owners Published in 2005 (the "2005 List").

The CRT notes that Claimant [REDACTED 1] filed an ATAG Form in 1998, asserting her entitlement to a Swiss bank account owned by [REDACTED], prior to the publication of the 2005 List. This indicates that Claimant [REDACTED 1] has based her present claim not simply on the fact that an individual identified on the 2005 List as owning a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the 2005 List. It also indicates that Claimant [REDACTED 1] had reason to believe that her relatives owned Swiss bank accounts prior to the publication of the 2005 List. This supports the credibility of the information provided by Claimant [REDACTED 1].

The CRT notes that Claimant [REDACTED 4] and Claimant [REDACTED 5] did not identify the Account Owner. However, the CRT notes that Claimant [REDACTED 4] and Claimant [REDACTED 5] did identify [REDACTED] and [REDACTED], and that Claimant

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<sup>7</sup> The CRT notes that [REDACTED]'s grandson is identified in his will as Herbert Gans, and that the will is dated August 1908. The CRT further notes that Claimant [REDACTED 1] indicated that [REDACTED] was not granted the use of the aristocratic name 'von' until 1912. Accordingly, the CRT concludes that in 1908, Herbert von Gans' name would have been Herbert Gans.

[REDACTED 1] indicated that the Account Owner was the grandson of [REDACTED], and the son of [REDACTED]'s nephew [REDACTED], and therefore determines that it is plausible that Claimant [REDACTED 4] and Claimant [REDACTED 5], who are related to [REDACTED] and [REDACTED], are also related to the Account Owner.

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

#### Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1] and Claimant [REDACTED 3] have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] and Claimant [REDACTED 3] stated that the Account Owner was Jewish, and that he resided in Nazi Germany. The CRT notes that the German archival records indicate that the Nazi regime was investigating Herbert von Gans because of alleged currency violations.

#### The Claimants' Relationships to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was her father's cousin. These documents include her own birth certificate; a court-issued certificate indicating that [REDACTED] was an heir of his grandfather [REDACTED]; a court-issued declaration indicating that among the heirs of [REDACTED] was his son [REDACTED]; a letter from [REDACTED] to *Michelis Bank A.G.*, requesting assistance tracing accounts belonging to his grandfather [REDACTED]; and a copy of the last will of [REDACTED] and [REDACTED], indicating that among their heirs were their grandsons Herbert Gans and [REDACTED]. The CRT notes that Claimant [REDACTED 1] indicated that she has other surviving relatives, other than the party whom she is representing, but that because they are not represented in her claim, the CRT will not treat their potential entitlement to the Account Owner's account in this decision.

Claimant [REDACTED 3] has plausibly demonstrated that he is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was Claimant [REDACTED 3]'s father. The CRT further notes that Claimant [REDACTED 3] identified unpublished information about the Account Owner as contained in the German archival records. 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 Claimant [REDACTED 3] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 3] is related to the Account Owner, as he has asserted in his Claim Form.

The CRT notes that Claimant [REDACTED 4] and Claimant [REDACTED 5] did not indicate that they are related to the Account Owner. However, Claimant [REDACTED 4] and Claimant [REDACTED 5] have submitted specific information, demonstrating that [REDACTED] was Claimant [REDACTED 4]'s grandfather's brother, and Claimant [REDACTED 5]'s great-grandfather's brother. The CRT notes that Claimant [REDACTED 1] submitted an extract from the book *Verstand und Schicksal*, which notes that [REDACTED] had a brother named

[REDACTED], whose daughter [REDACTED] married [REDACTED], and that Claimant [REDACTED 4] indicated that her mother was [REDACTED], née [REDACTED], and that her father was [REDACTED]; and that Claimant [REDACTED 5] indicated that his paternal grandmother was [REDACTED], née [REDACTED], and that her paternal grandfather was [REDACTED]. Consequently, the CRT concludes that Claimant [REDACTED 4] and Claimant [REDACTED 5] have plausibly demonstrated that they are also related to the Account Owner.

#### The Issue of Who Received the Proceeds

The CRT notes that, as indicated above, the German archival records indicate that Herbert von Gans' account at the Geneva branch of *Ferrier, Lullin* was "settled" on 30 June 1932, with the repayment of the debt that Herbert von Gans owed to that bank, and the payment to him of a check consisting of the balance on the account. Consequently, the CRT concludes that the German archival records indicate that Herbert von Gans received the proceeds of his account at *Ferrier, Lullin*.

The German archival records indicate that some time after 4 July 1933, Herbert von Gans was forced to sell, outside of Germany, all of the US Dollar-denominated bonds that he owned, and which he held in a custody account at the Bank; he was then forced to forward the proceeds of US \$21,934.20 to the Reichsbank, via *Heidingsfelder & Co.*, Frankfurt. He was also forced to send to the Reichsbank, via *Heidingsfelder & Co.*, the profit of US \$912.50 that he had made in the January 1933 exchange of bonds, as well as a "residual amount" of US \$576.43.

The CRT notes that the German archival records contain two letters from Herbert von Gans indicating that he requested that assets that he held at the Bank be forwarded to the German authorities. In a letter dated 17 March 1933, Herbert von Gans informed the Currency Rationing Office that as soon as he received the US Dollar interest payment on his US Dollar bonds from the Bank in Geneva, he would forward the interest payment directly to the Currency Rationing Office. In an undated letter to the Bank in Geneva, Herbert von Gans requested that the balance of his account at the Bank be sent to him in a check, and that as soon as any further credit was made to his account, the credit should be sent to him as a check.

Given that the German archival records indicate that the Account Owner was forced to sell the bonds that he held at the Bank and to forward the proceeds to the Reichsbank, and that he was forced to send other US Dollar assets to the Reichsbank; that there is no record of a date of closure of the Account Owner's account at the Bank; that the Account Owner and his heirs would not have been able to obtain information about his account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumption (h), 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 Owner or his 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 Claimant [REDACTED 3]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 3] has plausibly demonstrated that the Account Owner was his father, 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 account.

Further, the CRT notes that Claimant [REDACTED 3], as the Account Owner's son, has a better entitlement to the account than Claimant [REDACTED 1], the Account Owner's cousin's daughter; represented party [REDACTED 2] (the Account Owner's cousin's wife); Claimant [REDACTED 4] (the Account Owner's grandfather's brother's granddaughter); and Claimant [REDACTED 5] and represented party [REDACTED 6] (the Account Owner's grandfather's brother's great-grandsons).

### Amount of the Award

In this case, the German archival records indicate that the Account Owner held one custody account at the Bank, and that he forwarded three separate sums of money to the Reichsbank, via *Heidingsfelder & Co.*, some time before 8 September 1933:<sup>8</sup>

- (1) the US \$21,934.20 that he received after selling the US Dollar-denominated bonds that he held in a custody account at the Bank;
- (2) the US \$912.50 profit that he made when exchanging US Dollar-denominated bonds for other US Dollar-denominated bonds in January 1933;
- (3) a US \$576.43 "residual amount."

Together, these amounts total US \$23,423.13, which was equivalent in September 1933 to SF 96,737.53.<sup>9</sup>

The CRT notes that the German archival records indicate that the Account Owner informed the Currency Rationing Office that he would forward to them an interest payment made on the bonds that he held at the Bank as soon as he received it; he also requested that the Bank send him a check for the balance of his account, and that any further credits made to the account should also be forwarded to him as a check. The CRT further notes that it is plausible that the US \$576.43 "residual amount" (*Restguthaben*) that the Account Owner forwarded to the Reichsbank represented the balance of his account at the Bank, combined with other interest payments, which the Account Owner requested that the Bank forward to him.

The current value of the amount forwarded by the Account Owner to the Reichsbank, namely US \$23,423.13 or SF 96,737.53, is calculated by multiplying that amount by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 1,209,219.13.

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<sup>8</sup> The CRT notes that the memorandum in which the clerk at the Currency Rationing Office indicates the amounts of money that the Account Owner had already forwarded to the Reichsbank is dated 8 September 1933.

<sup>9</sup> The CRT uses official exchange rates when making currency conversions.

### Division of the Award

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Accordingly, Claimant [REDACTED 3] is entitled to the total award amount. As noted above, Claimant [REDACTED 1], represented party [REDACTED 2], Claimant [REDACTED 4], Claimant [REDACTED 5], and represented party [REDACTED 6] are not entitled to share in the award.

### **Scope of the Award**

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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  
18 December 2008