

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Denial**

to Claimant [REDACTED]

**in re Accounts of Kaufmann & Willet**<sup>1</sup>

Claim Number: 215490/MC<sup>2</sup>

This Certified Denial is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the published account of *Kaufmann & Willet* (the “Account Owner”), over which Bernhard Frank (the “Power of Attorney Holder”), among others, held power of attorney, at the Zurich branch of [REDACTED] (the “Bank”).

All denials are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

### **Information Provided by the Claimant**

The Claimant submitted a Claim Form identifying the Account Owner as a company, *Kaufmann & Willet*, and identifying the Power of Attorney Holder as Bernhard Frank, an agent of the company, whose client was her maternal grandfather, [REDACTED]. The Claimant stated that her grandfather was born on 27 February 1879 in Falticeni, Romania and was married to [REDACTED], née [REDACTED]. The Claimant explained that her grandfather, who was Jewish, was an industrialist who owned *Fabrica de Cherestea Marcu Weintraub*, a lumber mill and wood processing plant located in Ismail, Bessarabia, Romania (today the Ukraine). The Claimant stated that her grandfather traveled extensively to Switzerland, and that between 1934 and 1940 he held accounts and invested money with *Kaufmann & Willet*, and that *Kaufmann & Willet* appointed individuals, including Bernhard Frank, to handle her grandfather’s financial transactions.

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<sup>1</sup> In an effort to locate any and all accounts that might have belonged to the relatives of [REDACTED] (the “Claimant”), the CRT has reviewed and analyzed all accounts whose owners’ or power of attorney holders’ names are the same as that of the Claimant’s relatives, even if the Claimant could not identify the owner of the account as her relative.

<sup>2</sup> The Claimant submitted one additional claim, which is registered under the Claim Number 200697. In a separate decision, the CRT treated the Claimant’s claim to the account of Marcu Weintraub.

The Claimant stated that after the Soviet Union annexed Bessarabia in 1940, her grandfather was arrested, and that when German troops invaded the region in 1941, her grandfather was deported to a concentration camp in the Ukraine, where he perished in 1942.

In support of her claim, the Claimant submitted copies of documents, including:

- (1) her grandfather's passport, dated 19 October 1938, indicating that [REDACTED] was a citizen of Romania;
- (2) her mother's passport, indicating that [REDACTED], née [REDACTED], was born on 25 June 1910, and resided in Galati, Romania; and
- (3) a certificate from the probate court of Essex, Massachusetts, indicating that [REDACTED] is the daughter and sole heir of [REDACTED], who died on 17 February 1988.

The Claimant also submitted several letters from her grandfather, dated between 1938 and 1941 and written in Romanian (partial translations provided by the Claimant), some of which are written on letterhead of the company *Fabrica de Cherestea Marcu Weintraub, Ismail*, which the Claimant asserts contain encrypted references to Swiss bank accounts. For example, the Claimant enclosed a letter dated 15 July 1939 from [REDACTED], on factory letterhead, to [REDACTED] and [REDACTED] of Bucharest. According to the Claimant's translation and summary of the letter's contents, the letter "makes specific reference to a possible deal with the German military and German competitors asking stepfather [REDACTED] to approach the Germans. There is also cryptic reference to Swiss account(s) on page 2 in a description of a flexible measuring tape for wood, a commonly found product that was available in abundance at his factory." The Claimant's translation of the portion of the letter at issue reads: "[REDACTED] please inquire if you can find one measuring tape for the measurement of wood in lengths to 30 meters, not made of metal, comes in a leather case; here is the shape, (a circle is drawn with the words "Konto Schweiz" and a small arrow at the base of the circle pointing to the words Konto Schweiz). It can be found in stores that sell technical articles for lumber. Advise me the price, if not available it can be ordered; if not available in 30 meters length, perhaps you can find it in 20 meters length. However, I would prefer 30 meters...." The Claimant added a note to the translation that reads: "My note: This letter definitely refers to the Swiss accounts and to Grandfather's worry that the Germans and Romanian government would try to locate and confiscate the accounts and valuables in safe deposit boxes. He employed a code in mentioning the 'tape measure' lengths."

The Claimant indicated that she was born on 15 September 1930 in Galati, Romania.

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

The Bank's records consist of an excerpt from an account ledger; a letter from *Kaufmann & Willet* to the Bank, dated 14 December 1937; signature samples from authorized signatories; and an internal memorandum of the Bank. According to these records, the Account Owner was *Kaufmann & Willet*, a company located in Vienna, Austria. The record identifies the names of two partners of the company, the name of an officer of the company who was authorized to sign on the company's behalf, and the names of three persons who could only sign on behalf of the

company in conjunction with the officer specifically authorized to sign for the company, one of whom was Dr. Bernhard Frank.

## **The CRT's Analysis**

### Identification of the Account Owner and Power of Attorney Holder Bernhard Frank

The name of the company for which the Claimant's grandfather's business associate worked matches the published name of the Account Owner, and the Claimant's grandfather's business associate's name matches the published name of the Power of Attorney Holder. The Claimant identified the location of the company for which her grandfather's business associate worked, which matches published information about the Account Owner contained in the Bank's records.

In support of her claim, the Claimant submitted specific biographical information and documents, including letters written between 1938 and 1941 by her grandfather, referring to a bank account held in Switzerland and referring to an individual named Bernhard, providing independent verification that the person who is claimed to be the Power of Attorney Holder had the same first name as Power of Attorney Holder Bernhard Frank.

The CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner and Power of Attorney Holder Bernard Frank.

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

The CRT notes that the Claimant has not provided any information as to whether the Account Owner or the Power of Attorney Holder were Victims of Nazi Persecution. However, the Claimant has made a plausible showing that her grandfather, who was the Account Owner's client and the alleged beneficial owner of funds in the account, was a Victim of Nazi Persecution. The Claimant stated that her grandfather was Jewish and that he was deported to a concentration camp in the Ukraine, where he perished in 1942.

### The Claimant's Relationship to the Account Owner and the Power of Attorney Holder

The CRT notes that the Claimant plausibly identified the Power of Attorney Holder as an associate of the company of which her relative was a client. The CRT notes that the Claimant's grandfather was not the Account Owner or one of the individuals listed in the Bank's records as holding power of attorney over the account, but rather a client of the Account Owner.

There is no evidence to suggest that the Claimant's grandfather held a beneficial interest in the Account Owner, or that he was related to the Power of Attorney Holder. Furthermore, there is no information to indicate that the Power of Attorney Holder was the owner or otherwise held a beneficial interest in the Account Owner. In fact, the Bank's records specifically indicate that Bernhard Frank was solely permitted to act as power of attorney over the accounts in conjunction with the authorized signing officer of the company.

The CRT also notes that, under Swiss law, a power of attorney holder is not considered to be the owner of an account. After a power of attorney holder dies, his or her powers in an account no longer exist, and they do not pass to his or her heirs. Thus, where a claimant has identified the power of attorney holder, but not the account owner, as his or her relative, the claimant is not entitled to the account unless there is evidence in the Bank's records that the power of attorney holder and the account owner were related, or that, where the account owner is a company, as is the case here, the power of attorney holder owned or otherwise held a beneficial interest in the account owner. In this case, no such evidence exists. Thus, even if the Claimant were related to the Power of Attorney Holder (which she does not claim to be), she would not be entitled to the claimed accounts.

The CRT notes that the Claimant submitted several letters written by her grandfather, which she says contains encrypted references to assets he owned in Switzerland. However, none of the documents submitted by the Claimant demonstrate the existence of a Swiss bank account held by her grandfather. According to Article 17 of the Rules, the CRT shall use the records and files available from the Account History Database, the Account Dossiers, and the Total Accounts Database, the information submitted by the claimants, and to the extent that the CRT deems relevant, other sources of information to determine whether an award is justified. Although the CRT has previously awarded accounts to claimants when the ICEP Investigation failed to locate an account belonging to their relative (an account not included in the Account History Database, the Account Dossiers, and the Total Accounts Database), the evidence submitted by these claimants falls into very limited categories. Article 17 of the Rules lists certain categories of evidence that the CRT has used to justify an award when an account is not identified in the ICEP Investigation. These categories include Austrian State Archives Records and other government records, records of the New York State Holocaust Claims Processing Office, and any other historical and factual material available to the CRT. Examples of facially reliable evidence submitted by claimants include actual bank documents, documents submitted to an official governmental agency, and official letterhead indicating a connection to a Swiss bank.

While the CRT bears in mind the difficulties of proving the existence of an account after the destruction of the Second World War, it has determined in this case that the letters submitted by the Claimant are insufficient to establish the existence of an account owned by her grandfather. The documents submitted are personal letters, not bank records, and contain no verifiable reference to an account held at a Swiss bank. Therefore, the CRT is unable to recommend an award based upon these documents.

#### 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  
30 August 2010