

# CLAIMS RESOLUTION TRIBUNAL

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In re Holocaust Victim Assets Litigation

Case No. CV96-4849

## **Certified Award**

to Claimant [REDACTED]

## **in re Account of Natalie Baczewski**

Claim Number: 217944/MD

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Natalie Baczewski (the “Account Owner”) at the [REDACTED] (the “Bank”).

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

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

The Claimant submitted a Claim Form identifying the Account Owner as his paternal grandmother. The Claimant stated that his grandmother, who was born in Zauchtel, Austria-Hungary, in 1883 as Natalie Steinhaus, married a patent attorney, Dr. [REDACTED], in 1907. They had one child, [REDACTED], who is the Claimant’s father. The Claimant stated that his grandmother lived at 4 Waltergasse in Vienna, Austria, from approximately 1910 until 1938. According to the information provided by the Claimant, Natalie Baczewski was Jewish and was relocated by the Nazis to the Vienna ghetto in 1938. The Claimant stated that she was subsequently deported to the ghetto in Minsk, where she perished in 1942. The Claimant further stated that [REDACTED], Natalie’s husband, died in September 1938, and that [REDACTED], Natalie’s son, was interned in the concentration camp in Buchenwald from May 1938 until January 1939, when he was released. [REDACTED] subsequently emigrated to the United State of America.

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

The bank record consists of the Bank’s customer card. According to this record, the sole Account Owner was Mrs. Natalie Baczewski from Vienna. The bank records indicate that the Account Owner held a custody account that was closed on 15 June 1939. The bank record does not show to whom it was paid, nor does this record indicate the value of this account.

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

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Natalie Baczewski. These documents, numbered 34589, indicate that Natalie Baczewski was born on 9 August 1883, that she was married to Dr. [REDACTED], that she was a housewife, and that she resided at Waltergasse 4, in Vienna IV, Austria. According to these documents, Natalie Baczewski registered with the Nazi authorities that she owned: a one-half interest in a house in the suburbs of Vienna, with her part worth 26,000.00 Reichmarks; capital claims worth about 6,900.00 Reichmarks; insurance policies worth about 5,900.00 Reichmarks (including an insurance policy in United States dollars at the [REDACTED] worth approximately 5,869.00 Reichmarks); as well as other valuables worth about 2,700.00 Reichmarks. The records also indicate that [REDACTED] died on 19 November 1938.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. He identified the unpublished city of residence of the Account Owner, Vienna, and provided documents, including birth certificates for himself and his relatives, demonstrating that Natalie Baczewski was his grandmother. Although the bank records do not contain any specific information about the Account Owner other than her name and city of residence, the Account Owner's street address and spouse's name, which were provided by the Claimant, match the information in the Austrian State Archives.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Natalie Baczewski, and indicates that she was born in Zauchtel in 1883. This information matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

### 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 she was relocated by the Nazis to the ghettos in Vienna and Minsk, and that she perished in Minsk. Moreover, as noted above, the CRT's database of victims includes the Account Owner's name.

## The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, including his and his father's birth certificates, demonstrating that he is the grandson of the Account Owner. The Claimant stated that the Account Owner's husband, [REDACTED], predeceased her, and that her only son, [REDACTED], died in 1983. There is no information to indicate that the Account Owner has other surviving heirs.

## The Issue of Who Received the Proceeds

Given the application of Presumptions (a), (h), and (j) contained in Appendix A,<sup>1</sup> the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

## Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his grandmother and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

## Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was 13,000.00 Swiss Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Article 37(3)(a) of the Rules provide that where the value of an award is calculated using the value presumptions provided in Article 35 of the Rules, the initial payment to the claimant shall be 65% of the Certified Award, and the claimant may receive a second payment of up to 35% of the Certified Award when so determined by the Court. In this case, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account value and 65% of the total award amount is 101,400.00 Swiss Francs.

## **Scope of the Award**

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to

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<sup>1</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

which he might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

**Certification of the Award**

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal

November 26, 2002

## APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:<sup>2</sup>

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;<sup>3</sup>

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<sup>2</sup> See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); see also Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

<sup>3</sup> See Bergier Final Report at 443-44, 446-49; see also ICEP Report at 81-83.

- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.<sup>4</sup>

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<sup>4</sup> As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, *see Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, *see Bergier Final Report* at 450 -51, and possibly Romania as well, *see Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries* (1997), and (iii) that were retained by Swiss Banks for their own use and profit. *See Bergier Final Report* at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." *Id.* at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; *In re Holocaust Victim Asset Litig.*, 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. *See In re Holocaust Victim Asset Litig.*, 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); *Reilly v. Natwest Markets Group, Inc.*, 181 F.3d 253, 266-68 (2d Cir. 1999); *Kronisch v. United States*, 150 F.3d 112, 126-28 (2d Cir. 1998).