

# CLAIMS RESOLUTION TRIBUNAL

---

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

## **Certified Award**

to Claimant [REDACTED]

**in re Account of Arthur Bauer**

Claim Number: 220872/SJ<sup>1</sup>

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Arthur Bauer (the “Account Owner”) at the Zurich 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 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 her father, Arthur Bauer, who was born on 27 July 1909 in Erlangen, Germany, and was married to [REDACTED], on 20 April 1948 in Philadelphia, Pennsylvania. The Claimant stated that her father was a real estate professional in Germany, in the family business of *Gebrüder Bauer Immobiliengeschäft*. The Claimant also stated that her father, who was Jewish, lived in Munich, Germany until he was arrested during the *Kristallnacht* (“Night of Broken Glass”) pogrom in November 1938, and imprisoned in Dachau. The Claimant indicated that upon his release from Dachau in 1939, her father fled to Switzerland and stayed there from March 1939 until June 1939, at which time he emigrated to the United States. The Claimant stated that her father served in the United States Army from 1942 through 1945 and was honorably discharged as a Private First Class.

In support of her claim, the Claimant provided a wealth of information, including a comprehensive family tree, signature samples of Arthur Bauer, as well as the Nazi identity card issued to Arthur Bauer, his United States green card, and his United States Army discharge papers. Furthermore, the Claimant provided a copy of Arthur Bauer’s last will and testament,

---

<sup>1</sup> The Claimant submitted additional claims to the accounts of Simon Bauer, [REDACTED], [REDACTED] and [REDACTED], which are registered under the claim numbers 220727, 220694, 220875, 220882, and 221099. The CRT will treat the claims to these accounts in separate decisions.

letters to Arthur Bauer from the German legal firm of *Engel & Stern* regarding the property of Simon Bauer and [REDACTED] (Arthur Bauer's uncle and father, respectively) and numerous personal pictures and letters from and between family members of Arthur Bauer. The Claimant also provided a copy of the letter, dated 5 July 1996, received from the "Contact Office for the Search of Dormant Accounts Administered by Swiss Banks" in response to her family's request for information regarding Swiss bank accounts. This letter stated that they would need more information in order to complete further investigations and that the Contact Office charged a fee of 300.00 Swiss Francs for the investigation of their records. Finally, the Claimant stated that on a visit to Switzerland in 1972, her father was repeatedly informed by the Bank that without a death certificate, no search of the records would be possible. The Claimant indicated that she was born on 23 February 1950 in Philadelphia.

The Claimant previously submitted an Initial Questionnaire with the Court in 1997 asserting her entitlement to a Swiss bank account owned by Arthur Bauer, and the company *Gebruder Bauer*, in which she mentions Simon Bauer, the uncle of Arthur Bauer.

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

The bank record consists of a printout from the Bank's database. According to this record, the Account Owner was Arthur Bauer and the Power of Attorney Holder was Simon Bauer, who resided in Erlangen, Germany. The Power of Attorney form was signed by Simon Bauer in 1930. The bank records indicate that the Account Owner held an account of unknown type. The bank record does not show when the account at issue was closed, or to whom it was paid, nor does this record indicate the value of this account.

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 find this account in the Bank's system of open accounts, and therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the bank record that the Account Owner, the Power of Attorney Holder or their heirs closed the account and received the proceeds themselves.

### **The CRT's Analysis**

#### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her father's name matches the published name of the Account Owner and her great-uncle's name matches the published name of the Power of Attorney Holder. The Claimant identified her father's home in Erlangen, Germany, which matches published information about the Account Owner contained in the bank record. In support of her claim, the Claimant submitted numerous documents, including a family tree, letters to and from the Claimed Account Owner, a response, dated 5 July 1996, from the "Contact Office for the Search of Dormant Accounts Administered by Swiss Banks" to her family's request for information regarding Swiss bank accounts, and a statement that, on a visit

to Switzerland in 1972, the Account Owner was informed by the Bank that without a death certificate no search of the bank records would be possible.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999 asserting her entitlement to a Swiss bank account owned by Arthur Bauer, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her 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 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.

Finally, the CRT notes that there are three other claims to the account of Arthur Bauer, but all three claims were disconfirmed given that none of the Claimants could provide a connection to Erlangen, Germany or the Power of Attorney Holder, Simon Bauer.

#### 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 was arrested on the *Kristallnacht* and imprisoned at Dachau. The Claimant also provided a copy of his Nazi-issued identification card.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that the Account Owner is her father. There is no information to indicate that the Account Owner has other surviving heirs.

#### The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which account owners are interned in the Dachau concentration camp for a relatively short time, and then, near the time of their release, Swiss accounts held by the account owners are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, the CRT determines that it is not plausible that the Account Owner would have had the opportunity to obtain the funds while he was in Switzerland for three months following his release from Dachau. Given the CRT's precedent, the fact that the Bank rejected the Claimant's family's inquiry regarding accounts held by Arthur Bauer, and the application of Presumptions (e), (h) and (j) contained in Appendix A,<sup>2</sup> the CRT concludes that it is plausible that the account proceeds in this case were not paid to the Account Owner or his heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies

---

<sup>2</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

presumptions to assist in determining 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 Governing the Claims Resolution Process (the "Rules"). Second, the Claimant has plausibly demonstrated that the Account Owner was her father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder nor their 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 account value of unknown type was 3,950.00 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 47,400.00 Swiss Francs.

### Initial Payment

Article 37(3)(a) of the Rules provides 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 30,810.00 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 her 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

December 27, 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>1</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>2</sup>
- 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>3</sup>

---

<sup>1</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>2</sup> See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

<sup>3</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).