

# 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 Gustav Baum**

Claim Number: 221113/MBC

Award Amount: 105,288.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Gustav Baum (the “Account Owner”) at [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 great-uncle, Gustav Theodor Baum, who was born in approximately 1880 in Lwow, Poland, and was married to Nelly Baum. The Claimant stated that before 1940, his great-uncle lived at Volodievkiego 6 in Bielsko (now Poland). In two telephone conversations with the CRT on 14 and 18 February 2002, the Claimant stated that his great-uncle possibly was a businessman and that he might have had a university degree.

The Claimant stated that his great-uncle was Jewish, and that the Claimant’s family never heard from him and his wife after 1941.

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

The bank records consist of a customer card and numerous documents relating to a freeze of the account on the basis of a Swiss federal decree of 16 February 1945 concerning accounts belonging to German account owners. According to these records, the sole Account Owner was Dr. Gustav Baum from Biellitz, Germany, and the Power of Attorney Holder was Nelly Baum, the Account Owner's wife. The bank records do not contain any further biographical details with respect to the Account Owner and the Power of Attorney Holder.

The bank records indicate that the Account Owner initially held a custody account which was opened on 10 December 1930. According to the bank records, the account became dormant in 1936. The bank records further indicate that the account balance on 30 August 1945 was 8,774.00 Swiss Francs. As noted above, the bank documents indicate that the account was frozen pursuant to a Swiss federal decree dated 16 February 1945, based on the fact that the assets belonged to a German citizen. Pursuant to the freeze, the banks were obliged to report and transfer any German assets greater than 5,000.00 Swiss Francs in value to the *Schweizerische Verrechnungsstelle* (Swiss Compensation Office). According to the bank records, in 1950, the Bank transferred 3,986.90 Swiss Francs to the *Schweizerische Verrechnungsstelle*, and transferred 5,000.00 Swiss Francs (from a cashed bond contained in the custody account) to a newly opened demand deposit, which the Bank, by law, was obliged to keep frozen. According to the bank records, in 1953, the amount of 3,986.90 Swiss Francs was re-transferred to the Bank, and the freeze of the demand deposit, which replaced the custody account, was lifted. The bank records show that the total account balance on 16 July 1953 was 9,113.25 Swiss Francs. According to the bank records, the account was subject of an internal survey of dormant accounts conducted by the Bank in 1959. Hence, the account was still open and dormant at the time of the survey.

The bank records do not show if or when the account at issue was closed, or to whom it was paid. 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 they 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 records that the Account Owner or his 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. His great-uncle’s name matches the published name of the Account Owner, and his great-aunt’s name matches the published name of the Power of Attorney Holder. The Claimant stated that his great-uncle lived in Bielsko (in German, Bielitz) which matches published information about the Account Owner’s place of residence contained in the bank documents. In addition, the Claimant stated that it is possible that his great-uncle had a university degree. This information about the Claimant’s great-uncle is consistent with the unpublished information contained in the bank records that the Account Owner held the title “Dr.”

### 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 and that he disappeared in 1941. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Gustav Baum and indicates that his date of birth was 7 May 1880, which 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.

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

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting biographical data concerning the account owner, such as his place of birth and his street address, demonstrating that the Account Owner was his father's uncle. There is no information to indicate that the Account Owner has other surviving heirs.

### The Issue of Who Received the Proceeds

Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.<sup>1</sup> The CRT concludes in this case that Presumptions (h), (i), and (j) apply, and it is therefore plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder, or their heirs.

### 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 great-uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

### Amount of the Award

The bank records indicate that the value of the custody account as of 1945 was 8,774.00 Swiss Francs. The present value of the amount of the award is determined by multiplying this amount by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 105,288.00 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 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).

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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).

**Certification of the Award**

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

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## APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;<sup>2</sup>
- i) the Account 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 or their heirs received the proceeds of the Account.<sup>3</sup>

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<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

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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).