

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award Amendment**

to Claimant [REDACTED 1]

to Claimant [REDACTED 2]

to Claimant [REDACTED 3]

to the Estate of Claimant [REDACTED 4]<sup>1,2</sup>

## **in re Account of Fritz Berger**

Claim Numbers: 221494/MBC; 601247/MBC;<sup>3</sup> 734422/MBC; 670030/MBC;<sup>4</sup>  
734645/MBC; 789286/MBC<sup>5</sup>

Original Award Amount: 47,400.00 Swiss Francs

Award Amendment Amount: 24,687.50 Swiss Francs

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<sup>1</sup> Claimant [REDACTED 4] died in April 2000.

<sup>2</sup> On 11 March 2003, the Court approved an award to Claimant [REDACTED 1] (“Claimant [REDACTED 1]”), Claimant [REDACTED 2] (“Claimant [REDACTED 2]”), and Claimant [REDACTED 3] (“Claimant [REDACTED 3]”) for the account of Fritz Berger (the “March 2003 Award”), which is the subject of this Award Amendment.

<sup>3</sup> Claimant [REDACTED 1] submitted a claim, numbered B-01581, on 1 December 1998, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601247.

<sup>4</sup> Claimant [REDACTED 2] did not submit a Claim Form to the CRT. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered OTH 0002 184, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 734422. Claimant [REDACTED 2] also submitted an insurance claim, numbered I-01915, on 27 July 1999 to the HCPO. This claim was forwarded to the CRT on 5 July 2004. The CRT has assigned this insurance claim the Claim Number 670030.

<sup>5</sup> Claimant [REDACTED 3] and Claimant [REDACTED 4] did not submit Claim Forms to the CRT. However, in 1999 they submitted Initial Questionnaires (“IQ”), numbered OTH 0007 057 and ENG 0802 018, respectively, to the Court in the United States. Although these IQs were not Claim Forms, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQs were forwarded to the CRT and have been assigned claim number 734645 and 789286, respectively. Claimant [REDACTED 3] also submitted two additional IQs, which were numbered ENG 0506 016 and ENG 732 161, and the CRT has assigned claim numbers 782866 and 788518, respectively. The CRT has determined that claim numbers 782866 and 788518 are duplicate claims and is treating them under the consolidated Claim Number 734645.

This Certified Award Amendment is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the published account of Fritz Berger, the claims of [REDACTED 2] (“Claimant [REDACTED 2]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) to an account of Fritz Berger, and the claim of [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) to accounts of [REDACTED 4] and Fritz Berger.<sup>6</sup> This Award Amendment is to the published account of Fritz Berger at the Biel branch of the [REDACTED] (the “Bank”).

All award amendments 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.

### **Procedural History**

On 11 March 2003, the Court approved an Award to Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] for the Account Owner’s account (the “March 2003 Award”). In this Award Amendment, the CRT adopts and amends its findings to address the entitlement of Claimant [REDACTED 4]. The CRT notes that although Claimant [REDACTED 4] had filed a timely claim to the awarded account, his claim was not considered in the March 2003 Award. Subsequent review of Claimant [REDACTED 4]’s claim indicates that he is entitled to share in the original award amount, as detailed below.

### **The March 2003 Award**

In the March 2003 Award, the CRT determined that the Account Owner owned one account of unknown type. The CRT further determined that Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] plausibly identified the Account Owner, that they plausibly demonstrated that they are related to the Account Owner, and that they made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Additionally, the CRT determined that it is plausible that the Account Owner did not receive the proceeds of his account of unknown type. The CRT noted that the Bank’s records indicated the value of the accounts, but pursuant to Article 29 of the Rules, because the account values were below the average value of the same or a similar type of account in 1945, the CRT determined that the value of the account was 3,950.00 Swiss Francs (“SF”), and that the March 2003 Award amount was SF 47,400.00. Finally, the CRT determined that Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] were each entitled to one-third of the award amount.

### **Information Provided by Claimant [REDACTED 4]**

Claimant [REDACTED 4] submitted an Initial Questionnaire (“IQ”) identifying the Account Owner as his brother, Fritz Berger. In a telephone conversation with the CRT on 23 August

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<sup>6</sup> The CRT will treat the claim to the account of [REDACTED 4] in a separate determination.

2005, Claimant [REDACTED 4]'s daughter indicated that her uncle, who was Jewish, was born in 1904 in Vienna, Austria, that Fritz Berger married [REDACTED] in Vienna, that Fritz Berger was a furrier in Vienna until the Nazis arrested him during the *Kristallnacht* in 1938, and that Fritz Berger and his family fled from Vienna to Shanghai, China in 1938. Furthermore, Claimant [REDACTED 4]'s daughter indicated that her uncle died in October 2004. Claimant [REDACTED 4] indicated he was born on 23 June 1906 in Vienna.

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

As detailed in the March 2003 Award, the Bank's records indicate the name of the Account Owner. The records indicate that the Account Owner held one account of unknown type, which was transferred to a suspense account on 28 February 1977.

### **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 six claims of the Claimants in one proceeding.

#### Claimant [REDACTED 4]'s Identification of the Account Owner

Claimant [REDACTED 4]'s brother's name matches the published name of the Account Owner. The CRT notes that the Bank's records do not contain any specific information about the Account Owner other than his name.

The CRT notes that Claimant [REDACTED 4] filed an IQ in 1999, asserting his entitlement to a Swiss bank account owned by Fritz Berger, 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 Claimant [REDACTED 4] has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Claimant [REDACTED 4] had reason to believe that his relatives owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 4].

The CRT further notes that the relative of Claimant [REDACTED 1], Claimant [REDACTED 2], Claimant [REDACTED 3], and the relative of Claimant [REDACTED 4] are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Bank's records; that there is no additional information in the Bank's records which would provide a basis for the CRT to make any further determinations

as to the identity of the Account Owner; and that there were no other claims to this account, the CRT finds that Claimant [REDACTED 1], Claimant [REDACTED 2], Claimant [REDACTED 3], and Claimant [REDACTED 4] have each plausibly identified the Account Owner.

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

Claimant [REDACTED 4] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 4] and Claimant [REDACTED 4]'s daughter stated that the Account Owner was Jewish, that the Nazis arrested Fritz Berger during the *Kristallnacht*, and that he and his family were forced to flee from Vienna to China in 1938.

#### Claimant [REDACTED 4]'s Relationship to the Account Owner

Claimant [REDACTED 4] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was his brother. The CRT notes that Claimant [REDACTED 4] filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 4], prior to the publication in February 2001 of the ICEP List. 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 4] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 4] is related to the Account Owner, as he has asserted in his IQ. There is no information to indicate that the Account Owner has other surviving heirs.

#### The Issue of Who Received the Proceeds

As detailed in the March 2003 Award, the CRT has concluded that the account's proceeds were not paid to the Account Owner or his heirs.

#### Basis for the Award Amendment

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 4]. First, Claimant [REDACTED 4]'s claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 4] has plausibly demonstrated that he is the Account Owner's nephew, and that relationship justifies an Award. Third, the CRT determined in the March 2003 Award that neither the Account Owner nor his heirs received the proceeds of the account.

#### Amount of the March 2003 Award

As detailed in the March 2003 Award, the Account Owner held one account of unknown type. Pursuant to Article 29 of the Rules, when the value of an account is less than the average value of the same or similar type of account, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based upon the investigation conducted by the Independent Committee of Eminent

Persons (“ICEP” or “ICEP Investigation”), in 1945 the average value of an account of unknown type was SF 3,950.00.

According to Article 31 of the Rules, account values are multiplied by an adjustment factor to bring award amounts up to current value. At the time of the March 2003 Award, the adjustment factor was 12, and the resulting award amount was SF 47,400.00.

Since the March 2003 Award, the adjustment factor has been raised to 12.5.

#### New Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each group of Claimants has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3], are entitled to share one-half of the Award amount, and Claimant [REDACTED 4] is entitled to one-half of the Award amount. As stated in the March 2002 Award, Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 3] will equally share in the award, and therefore they will each share in one-sixth of the total award amount.

With respect to Claimant [REDACTED 1]’s, Claimant [REDACTED 2]’s, and Claimant [REDACTED 3]’s share of the award amount, in the March 2003 Award, the CRT determined that Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 3] were equally entitled to their share of the award amount. Accordingly, Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] are each entitled to one-sixth of the total award amount.

#### Amount and Division of the Award Amendment

The CRT recognizes that Article 31(1) of the Rules adjusts account values based upon the length of time that has passed since 1945 and the awarding of the account. In this case, even though Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] were awarded in March 2003, Claimant [REDACTED 4], who is the subject of this award amendment, was not. Therefore, the CRT finds that the adjustment factor of 12.5, not 12, is the more appropriate factor to bring the value of his share of the awarded account to current value.

Recognizing that almost three years have passed since the March 2003 Award, and that there is no indication that Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] were aware that another equally entitled person had filed a claim, the CRT determines that Claimant [REDACTED 4] is entitled to a payment from the Settlement Fund equaling his share of the award amount. As noted above, the total 1945 value of the Account Owner’s account was SF 3,950.00. Claimant [REDACTED 4] is entitled to one-half of this amount, or SF 1,975.00. The current value of this amount is calculated by multiplying it by a

factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an Award Amendment amount of SF 24,687.50.

Claimant [REDACTED 4] is entitled to the full amount of the Award Amendment.

### **Scope of the Award Amendment**

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 Amendment**

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

Claims Resolution Tribunal  
6 May 2006