

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimants [REDACTED 1],  
and [REDACTED 2],  
represented by [REDACTED 3]

## **in re Account of Dr. Franz Bial**

Claim Numbers: 202289/MBC; 221201/MBC<sup>1</sup>

Award Amount: 211,560.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 2] (“Claimant Neurath”) and [REDACTED 1] (“Claimant Hedges”) (collectively, the “Claimants”) to the accounts of Dr. Franz Bial (the “Account Owner”) at the [REDACTED] (“Bank I”), at the Zurich branch of [REDACTED] (“Bank II”), and at the Zurich branch of the [REDACTED] (“Bank III”).

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 Claimants**

### Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form and supporting documents indicating that Franz Bial was his maternal grandfather, that he was born on 31 August 1875 in Pilsnitz, Schlesien (which is now a part of Wroclaw, Poland) and that he married Kaethe Knopf. Documents submitted by Claimant [REDACTED 2] indicate that Franz and Kaethe Bial had two children, [REDACTED] and [REDACTED], who were both born in Berlin, Germany on 16 August 1911 and 20 November 1912, respectively. Claimant [REDACTED 2] also provided documents indicating that on 3 June 1936 [REDACTED] married [REDACTED] in Vienna, and that they had one child, Claimant [REDACTED 2]. According to information provided by Claimant [REDACTED 2], [REDACTED] immigrated to the United States by January 1938 and thereafter married again to [REDACTED].

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<sup>1</sup> The CRT notes that Claimant [REDACTED 1] also has filed claims that were registered under the Claim Numbers 202286, 202287 and 202288. The CRT will treat these claims in separate decisions.

Claimant [REDACTED 2] identified Franz Bial as a Doctor of Chemistry who lived in Berlin until 1928, and later moved to Vienna, where he lived at 92 Weimarerstrasse, Vienna 19. Claimant [REDACTED 2] submitted documents indicating that Franz Bial died on 27 December 1937 in Vienna. Claimant [REDACTED 2] stated that according to his mother, [REDACTED], one of her parents or grandparents was Jewish. Claimant [REDACTED 2] asserted that Franz Bial refused to return to Germany after Hitler came to power and that as a consequence, the Nazis confiscated his assets. Claimant [REDACTED 2] added that during the years following the Second World War his mother, [REDACTED], tried unsuccessfully to get compensation for these confiscated assets. This information is consistent with a restitution claim form that was submitted by [REDACTED] and [REDACTED] in Germany in 1965, which was provided to the CRT by Claimant [REDACTED 2].

Claimant [REDACTED 2] stated that his grandmother, Kaethe Bial lived at 17 Herderstrasse, Berlin Zehlendorf, Germany between 1937 and 8 May 1945. However, according to the documents he submitted, Kaethe Bial still lived in Vienna at the beginning of 1938. Claimant [REDACTED 2] stated that Kaethe Bial lived in North Carolina after the Second World War and died prior to 1948. Further, Claimant [REDACTED 2] submitted documents indicating that his mother, [REDACTED], died on 11 July 1989 in Seattle, Washington, United States, and that his uncle, [REDACTED], who remained unmarried, died without issue in October 1985.

#### Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form and supporting documents indicating that Franz Bial, who was Jewish, was her uncle. Claimant [REDACTED 1] stated that Franz Bial was born on 31 August 1875 in Breslau, Prussia (now Wroclaw, Poland) and was married to Kaethe Knopf. Further, Claimant [REDACTED 1] stated that Franz Bial had two children, [REDACTED] and [REDACTED].

Claimant [REDACTED 1] identified Franz Bial as a Doctor of Chemistry who lived at, among other addresses, 17 Hedorfstrasse, Berlin Zehlendorf, Germany. Claimant [REDACTED 1] stated that to the best of her knowledge, prior to 1936 her uncle moved to Vienna, Austria, where he died before the annexation of Austria into the Reich in March 1938. Claimant [REDACTED 1] also stated that after the annexation of Austria, her aunt, Kaethe Bial, tried to escape but was captured by the Nazis and sent to a prison in Berlin. Claimant [REDACTED 1] stated that she had no knowledge of what happened to her aunt and her aunt's children thereafter.

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

#### Bank I

According to the bank records, which consist of a customer card, the sole Account Owner, Dr. Franz Bial, who lived at Weimarerstrasse 92, Vienna 19, held five bank accounts at Bank I.

These records indicate that Dr. Franz Bial owned a custody account, numbered 20902, and that the Power of Attorney Holders for this account were Frau Kaethe Bial, neé Knopf, and Dr.

Hermann Dukas. The bank records also show that Dr. Hermann Dukas, who lived in Zurich, Switzerland, had a limited power of attorney and that Frau Kaethe Bial lived, among other addresses, at Herderstrasse 17, Berlin Zehlendorf, Germany. The bank records indicate that the custody account was closed on 10 April 1938. The customer card also includes a notation that correspondence should not be sent to Berlin, but to Dr. Hermann Dukas. The bank records do not show to whom the custody account was paid, nor do they indicate its value.

A notation on the customer card shows that Dr. Franz Bial also held a passbook account and a demand deposit account at Bank I. The bank records do not show if or when these accounts were closed, or to whom they were paid, nor do these records indicate the value of these accounts.

The records also indicate that the Account Owner held two other passbook/savings accounts. The bank records do not show if or when these accounts were closed, or to whom they were paid, nor do these records indicate the value of these accounts.

There is no indication in the records that the Account Owner or the Power of Attorney holders closed the accounts and received the proceeds themselves.

## Bank II

The bank records consist of a ledger card with account numbers and their closure dates, and several printouts from Bank II's database. According to these records, the sole Account Owner was Dr. Franz Bial, who lived in Berlin. The bank records indicate that Dr. Franz Bial had numerous accounts at Bank II, and all but four of them were closed before 1933.

The bank records indicate that the Account Owner held two demand deposit accounts that were closed on 12 June 1933. One of these accounts had a balance of 107,087.50 Swiss Francs as of 1932. The bank records do not indicate the value of the other. These records do indicate that the Account Owner held two additional demand deposit accounts that were closed on 8 September 1936. One of these accounts had a balance of 942.00 Swiss Francs as of 1933. The other had a balance of 550.00 Swiss Francs as of 1935. The bank records do not show to whom any of these four demand deposit accounts were paid.

There is no indication in the records that the Account Owner closed the accounts and received the proceeds himself.

## Bank III

The bank record consists of a balance sheet from 1935 entitled *Konto-Korrent-Debitoren mit Deckung* (Demand-Deposit-Account-Debtors with security). According to this record, the sole Account Owner was Dr. Franz Bial, who lived in Vienna. The bank record shows that the Account Owner held a demand deposit account with a credit line, with a negative balance of 12,011.00 Swiss Francs as of 1935. The auditors who carried out the investigation of this bank indicated that this account was closed prior to 1946. The bank record does not show who closed

this account. There is no indication in the bank record that the Account Owner closed the account and received the proceeds himself.

### **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 two persons named Dr. Franz Bial in one file, numbered 35703. Three documents refer to a Dr. Franz Bial who resided at Weimarerstrasse 92, Vienna XIX, which matches the address of the Account Owner contained in the records of Bank I. These documents do not include a completed census form, which can be explained by the fact that the Account Owner passed away in December 1937 before the *Anschluss*.

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

#### Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the discretion of the CRT. In this case, the CRT determines it appropriate to join the claims of Claimant [REDACTED 2] and Claimant [REDACTED 1] in one proceeding.

#### Identification of the Account Owner

Both Claimants have plausibly identified the Account Owner. The Claimants stated that their relative held a Doctor of Chemistry degree, and this information matches the Account Owner's title contained in the unpublished records of all three banks. Further, Claimant [REDACTED 2] has provided the precise street addresses of his grandparents in Berlin and Vienna before the Second World War, which match exactly the unpublished addresses of the Account Owner contained in the records of Bank I. Claimant [REDACTED 1] has provided a precise street address of her uncle and aunt in Berlin before the Second World War, which matches the unpublished address of the Account Owner contained in the records of Bank I. Moreover, both Claimants stated that their relative moved from Berlin to Vienna prior to 1936, which matches information contained in the bank records of Bank I and which is consistent with the Account Owner's unpublished city of residence (Vienna) in 1935 contained in the records of Bank III. The Claimants also provided information consistent with the Account Owner's published city of residence (Berlin), contained in the records of Bank II.

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

The Claimants have plausibly shown that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that the Account Owner, her uncle, was Jewish. While it is not clear until what date the Account Owner lived in Germany, according to Claimant [REDACTED

2]'s statement and supporting documentation, the Nazi regime confiscated the Account Owner's assets.

### The Claimants' Relationship to the Account Owner

Claimant [REDACTED 2] has plausibly shown that the Account Owner is his grandfather by providing documentation, including an inheritance certificate of Dr. Franz Bial, a restitution form that was submitted by [REDACTED] and [REDACTED] to Germany in 1965, and Claimant [REDACTED 2]'s birth certificate. Claimant [REDACTED 1] has plausibly shown that the Account Owner is her uncle, by providing documentation, including a form of the Interior Department of the United States in which the names of her father and his brothers are listed.

### The Issue of Who Received the Proceeds

With respect to the five accounts at Bank I, given the fact that the Account Owner died in 1937, the custody account was closed in 1938, evidence exists that the Nazis confiscated the Account Owners assets, and the application of Presumptions (h) and (j) contained in Appendix A,<sup>2</sup> the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs. Even if the Swiss intermediary received the proceeds of the accounts, it is still plausible that the heirs of the Account Owner themselves did not receive the proceeds. 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.

With respect to the two demand deposit accounts at Bank II that were closed on 12 June 1933 and the two demand deposit accounts at Bank II that were closed on 8 September 1936, the CRT has decided not to reach a decision at this time, pending further consideration as to whether or not the Account Owner or his heirs received the proceeds of these accounts.

With respect to the demand deposit account at Bank III, because this account had a negative balance in 1935, the CRT presumes that the Bank was able to recover the deposit balance, and no amount will be awarded to the Claimant with respect to this account.

### Basis for the Award

The CRT has determined that an Award may be made for the following reasons. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimant [REDACTED 2] and Claimant [REDACTED 1] have plausibly demonstrated that the Account Owner was Claimant [REDACTED 2]'s grandfather and Claimant's [REDACTED 1] uncle, which are relationships that justify an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of five of the eight accounts at issue.

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

### Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here with the custody account, passbook and passbook/savings accounts, and demand deposit account at Bank I, 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 demand deposit account was 2,140.00 Swiss Francs, the average value of a custody account was 13,000.00 Swiss Francs, the average value of a passbook or passbook/savings account was 830.00 Swiss Francs, giving a 1945 total account value of 17,630.00 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 211,560.00 Swiss Francs.

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 137,514.00 Swiss Francs.

### Division of the Award

Under Article 29(c) of the Rules, Claimant [REDACTED 2], who is the grandson of Account Owner, Franz Bial, and thus a direct descendant, has a better entitlement to an award than Claimant [REDACTED 1], who is the niece of the Account Owner. Consequently, pursuant to Article 29 of the Rules, Claimant [REDACTED 2] is entitled to 100% of the Award.

### **Scope of the Award**

Claimants [REDACTED 2] and [REDACTED 1] should be aware that, pursuant to Article 25 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**

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

Claims Resolution Tribunal  
October 24, 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>

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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*

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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).