

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

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

### **in re Accounts of Felix David**

Claim Number: 753545/MBC<sup>2</sup>

Award Amount: 653,500.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED] (the “Claimant”) to the published accounts of Felix David (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).<sup>3</sup>

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 an ATAG Ernst & Young claim form in 1998 identifying the Account Owner as her husband’s paternal uncle, Felix David, who was married to [REDACTED]. The Claimant stated that Felix and [REDACTED] David, who were Jewish, had a son, [REDACTED]. The Claimant stated that Felix David owned a retail and wholesale hardware store in Breslau, Germany, (now Wroclaw, Poland), and that he and his family resided in Breslau at Friedrich-Wilhelmstrasse 26 until September 1939, when they moved to Mommsenstrasse in Charlottenburg, Berlin, Germany. According to the Claimant, Felix David, [REDACTED], and

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<sup>1</sup> The CRT notes that the Claimant passed away on 13 May 2003.

<sup>2</sup> The Claimant did not submit a CRT Claim Form. However, in 1998 he submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-NYC-80-213-103-219, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 1994, the Court ordered that claims submitted to by not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (December 30, 2004). The Claimant’s ATAG Form was forwarded to the CRT and has been assigned claim number 753545.

<sup>3</sup> The CRT notes that on the February 2001 published list of accounts determined by the ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Felix David is indicated as having four accounts. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of only three accounts.

[REDACTED] were forced to perform slave labor in Berlin, were deported to Theresienstadt in approximately 1942, and that they subsequently perished. The Claimant indicated that she was born on 6 December 1910.

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

The Bank's records consist of a customer card; the transcript of the interrogation of August Dörflinger, a Bank employee who acted as a spy for Nazi Germany, conducted by the State Prosecutor of Basel on 2 December 1942; a letter from August Dörflinger to the Bank dated 15 February 1950; and a printout from a database of accounts blocked in the 1945 freeze of assets held in Switzerland by citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze"), which was created by 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").

According to these records, the Account Owner was Felix David, a businessman (*Kaufmann*), who resided at Friedrich-Wilhelm-Strasse 26 in Breslau, Germany. The Bank's records indicate that the Account Owner held two demand deposit accounts, one of which was opened on 10 February 1930 and a custody account, which was opened on 17 October 1930.

The Bank's records indicate that August Dörflinger reported the existence of the Account Owner's accounts to Nazi authorities prior to December 1942. These records further indicate that the accounts still existed at the time of the criminal investigation conducted against August Dörflinger by the State Prosecutor of Basel. According to the Bank's records, as of 2 December 1942, the value of the custody account was 48,000.00 Swiss Francs ("SF") and the total combined balance of the two demand deposit accounts was SF 660.05.

The auditors who carried out the ICEP Investigation reported that the Account Owner's assets were blocked in the 1945 Freeze. According to the Bank's records, the custody account was closed on 15 October 1959, and one of the demand deposit accounts was closed on 31 January 1960. The Bank's records indicate that the other demand deposit account was closed on an unknown date.

There is no evidence in the Bank's records that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

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

#### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's husband's uncle's name and country of residence match the published name and country of residence of the Account Owner. The Claimant identified the Account Owner's profession, city of residence, and street address, which match unpublished information about the Account Owner contained in the

Bank's records.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Felix David and indicates that his date of birth was 28 September 1875 and his address before deportation was Mommsenstrasse, Charlottenburg, Berlin, 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 CRT notes that the Claimant filed an ATAG Ernst & Young claim form in 1998 asserting her entitlement to a Swiss bank account owned by her relative, Felix David, 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. The CRT notes that the other claim to this account was disconfirmed because that claimant provided a different city of residence than the city of residence of the Account Owner.

#### 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 forced to perform slave labor in Berlin, that he was deported to Theresienstadt in approximately 1942, and that he subsequently perished. The Claimant stated that the Account Owner's wife and son shared the same fate.

As noted above, a person named Felix David was included in the CRT's database of victims.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information, demonstrating that the Account Owner was the Claimant's husband's uncle. The CRT notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records; that the Claimant filed an ATAG Ernst & Young claim form in 1998, identifying the relationship between the Account Owner and the Claimant, prior to the publication in February 2001 of the ICEP List; and that the Claimant also identified information which matches information contained in the Yad Vashem records. 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 the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as she has asserted in her Claim Form.

## The Issue of Who Received the Proceeds

Given that in 1933 the Nazis embarked on a campaign to seize the domestic and foreign assets of its Jewish nationals through enforcement of discriminatory tax and other confiscatory measures, including confiscation of assets held in Swiss banks; that the accounts at issue were reported by an employee of the Bank to the Nazi authorities; that the Account Owner, his spouse, and his only child perished during the Second World War; that there is no record of the payment of the accounts to the Account Owner or his heirs, nor any record of a date of closure for one of the accounts; that the remaining two accounts were closed on 15 October 1959 and 31 January 1960, after the death of the Account Owner; that the heirs of the Account Owner would not have been able to obtain information about the accounts after the Second World War from the Bank due to Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (b), (h), and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended ("the Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was her husband's uncle, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

## Amount of the Award

In this case, the Account Owner held one custody account and two demand deposit accounts. According to the records of the interrogation of August Dörflinger by the State Prosecutor of Basel, the amounts in the custody account and the combined demand deposit accounts were SF 48,000.00 and SF 660.05, respectively, as of 2 December 1942.

With regard to the two demand deposit accounts, according to Article 29 of the Rules, in the absence of plausible evidence to the contrary, if the amount in a demand deposit account was less than SF 2,140.00, the amount in the demand deposit account shall be determined to be SF 2,140.00. In this case, the amounts in the accounts were recorded in the transcript of the interrogation of Dörflinger. The CRT notes that, because he was being prosecuted for turning over account information to the Nazis, Dörflinger would have had an interest to understate the value of the accounts he reported. Accordingly, the CRT does not consider the values as stated in the transcript to be evidence sufficient to rebut the provisions of Article 29. Accordingly, the value of each demand deposit account is determined to be SF 2,140.00.

The total value for all three accounts is therefore SF 52,280.00. The current value of this amount

is determined by multiplying the historic value and the values determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount is SF 653,500.00.

### **Scope of the Award**

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on her claims 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  
10 August 2005