

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED 1]  
also acting on behalf of [REDACTED], [REDACTED]  
and [REDACTED],  
represented by [REDACTED] and [REDACTED]

and

to Claimant [REDACTED 2]  
also acting on behalf of [REDACTED] and [REDACTED]

## **in re Account of Gustav Fantl**

Claim Numbers: 221220/MD; 221949/MD

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together “the Claimants”) to the account of Gustav Fantl (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 Claimants**

The Claimants each submitted a Claim Form identifying the Account Owner as Gustav Fantl, who was born on 28 February 1881 in Vienna, Austria, and was married to [REDACTED]. Gustav Fantl’s parents were [REDACTED] and [REDACTED]. The Claimants stated that Gustav Fantl, who was Jewish, lived in Vienna, where he worked as a lawyer, and used the professional title “Dr.” The Claimants stated that Gustav and [REDACTED] Fantl did not have any children. The Claimants indicated that Gustav Fantl lived at Schubertstrasse in Vienna, and that his office was located at Mariahilfstrasse.

According to the family tree provided by the Claimant, Gustav Fantl had four siblings: Benno Fantl who was born in 1884; [REDACTED], who was born in 1877; [REDACTED], who was born in 1883; and [REDACTED], who was born in 1879 and died in 1923. The Claimants stated that [REDACTED]

and [REDACTED] perished in the Holocaust. Claimant [REDACTED 1] explained that [REDACTED], who died in 1923, had two daughters: [REDACTED 1] (Claimant [REDACTED 1]), who was born in 1919 in Vienna; and [REDACTED], who was born in 1920 in Vienna and died in 2000 in Bad Ischgl, Austria. Claimant [REDACTED 2] explained that he and [REDACTED], née [REDACTED], whom he represents, are the children of [REDACTED], and that [REDACTED], whom Claimant [REDACTED 2] also represents, is the wife of [REDACTED]. Claimant [REDACTED 2] was born on 22 October 1947, and [REDACTED] was born on 5 February 1946. The Claimants indicated that [REDACTED] is the daughter of Benno Fantl, and that she was born in 1923 in Zilina, Czechoslovakia. The Claimants stated that [REDACTED] had two children, [REDACTED], who was born in 1907, and [REDACTED], who was born in 1903 in Istanbul, Turkey, and died in 1987 in Zilina. The Claimants indicated that [REDACTED] is the daughter of [REDACTED] and that she was born in 1924.

The Claimants stated that Gustav Fantl died in Vienna in 1932. According to the Claimants, their relative left a will, which presently cannot be found. The Claimants stated that in his will, Gustav Fantl bequeathed one-half of his estate to his wife, and the other half to his nieces and nephews: Claimant [REDACTED 1], [REDACTED], [REDACTED], [REDACTED], and [REDACTED 2]. According to the information provided by the Claimants, [REDACTED] died in Innsbruck, Austria in 1965. The Claimants provided numerous documents, including birth, marriage, and death certificates of their relatives as well as signature samples of Gustav Fantl.

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

The bank records consist of an opening contract and printouts from the Bank's database. According to these records, the Account Owner was Dr. Gustav Fantl who was an attorney and who resided at 55 Neustiftgasse in Vienna. The bank records indicate that the Account Owner held a custody account that was opened on 28 January 1926.

The bank records do not show when the account at issue was closed, or to whom it was paid, nor do these records 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 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**

#### 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 CRT's discretion. In this

case, the CRT determines it appropriate to join the claims of Claimant [REDACTED 1] and Claimant [REDACTED 2] in one proceeding.

#### Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The name of their relative as well as his place and country of residence match published information about the Account Owner. Further, the Claimants stated that their relative held the professional title “Dr.” and that he was an attorney, which matches unpublished information about the Account Owner contained in the bank records. Additionally, Claimant [REDACTED 1] provided samples of the signature of her relative Gustav Fantl, which signature matches the Account Owner's signature in the bank documents. While the street addresses provided by the Claimants do not match the address contained in the bank records, the CRT notes that the above information provided by the Claimants confirms that the Gustav Fantl identified by the Claimants is the same person as the Account Owner.

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

The Claimants have made a plausible showing that the Account Owner's heirs, who were the beneficial owners of the account, were Victims of Nazi Persecution. The Claimants indicated that the Account Owner was Jewish and that he died in Vienna in 1932. According to the information provided by the Claimants, the Account Owner left a will that named his heirs as his wife and his nieces and nephews: Claimant [REDACTED 1], [REDACTED], [REDACTED], [REDACTED], and [REDACTED 2]. These heirs of the Account Owner, with the exception of his wife [REDACTED], were Jewish and lived in Nazi-controlled Austria. The Claimants stated that two of the Account Owner's siblings, [REDACTED] and [REDACTED], perished in the Holocaust.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Benno Fantl, and indicates that his date of birth was 1884, which matches the information about the Account Owner's heir provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

#### The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents, including their relatives' birth, marriage, and death certificates, demonstrating their family relationships to the Account Owner. The Claimants showed that the Account Owner was the uncle of [REDACTED], [REDACTED], Claimant [REDACTED 1], and the great-uncle of [REDACTED], [REDACTED], and Claimant [REDACTED 2]. Further, Claimant [REDACTED 2] demonstrated that [REDACTED] is the wife of the Account Owner's late nephew, [REDACTED 2].

## The Issue of Who Received the Proceeds

Given the fact that the Account Owner died in 1932, the existence of Nazi confiscatory legislation in Austria,<sup>1</sup> and the application of Presumptions (h) and (j) contained in 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 Governing the Claims Resolution Process (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 Claimants. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that they and the relatives whom they represent, with the exception of [REDACTED], are descendants of the Account Owner's parents, 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

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 value of a custody account was 13,000.00 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 156,000.00 Swiss Francs.

## Division of the Award

According to Article 29(1)(d) of the Rules, if neither the Account Owner’s spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner’s parents who have submitted a claim, in equal shares by representation. Accordingly, Claimant [REDACTED 1], Claimant [REDACTED 2], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] shall be entitled to an award as descendants of the Account Owner’s parents. The CRT notes that [REDACTED] is related to the Account Owner by marriage, and is therefore not entitled to share in the award amount.

Therefore, [REDACTED], who is the daughter of the brother of the Account Owner, [REDACTED], is entitled to one-third of the award. [REDACTED], who is the daughter of the sister of the Account Owner, [REDACTED], and [REDACTED], who is the granddaughter of [REDACTED] and daughter of [REDACTED], are each entitled to one-sixth of the award. Claimant [REDACTED 1], who is the daughter of the brother of the Account Owner, Rudolf Fantl, is entitled to one-ninth of the award. Claimant [REDACTED 2] and [REDACTED], who are the grandchildren of Rudolf Fantl and the children of [REDACTED], are each entitled to one-ninth of the award.

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<sup>1</sup> As described in the expanded version of Appendix A (see II. A. 2), which appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

### 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, however, because Claimant [REDACTED 1], [REDACTED], [REDACTED], and [REDACTED] are age 75 or older, they are entitled to receive 100% of their respective portions of the total award amount. Accordingly, the initial payment amount is 143,866.67 Swiss Francs, which is comprised of 100% of [REDACTED]'s (52,000.00 Swiss Francs), [REDACTED]'s (26,000.00 Swiss Francs), [REDACTED]'s (26,000.00 Swiss Francs), and Claimant [REDACTED 1]'s (17,333.33 Swiss Francs) portions of the award, and 65% of Claimant [REDACTED 2]'s (11,266.67 Swiss Francs) and [REDACTED]'s (11,266.67 Swiss Francs) portions of the award.

### **Scope of the Award**

The Claimants 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

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>

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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

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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).