

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]  
also acting on behalf of [REDACTED], [REDACTED],  
[REDACTED], [REDACTED], [REDACTED], [REDACTED]

**in re Accounts of Dr. Alexander Fazekas,  
Adrienne Fazekas and Berta Herz**

Claim Number: 214499/ME

Award Amount: 213,360.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Dr. Alexander Fazekas (“Account Owner Dr. Fazekas”), Adrienne Fazekas (“Account Owner Mrs. Fazekas”), and Berta Herz (“Account Owner Herz”) (together, the “Account Owners”) at the Bern and the Zurich branches 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 Claimant**

The Claimant submitted a Claim Form identifying the Account Owner as her father’s cousin, Alexander Fazekas, who was born in 1888 in Miskolc, Hungary, and was married to Adrienne Fazekas née [REDACTED], with whom he had no children. The Claimant stated that her relative was the general director of *Coburgwerke Slovakei*, a company located in Bratislava, Czechoslovakia. According to the information provided by the Claimant, her relative resided at Erkelgasse 12 in Bratislava, Czechoslovakia. The Claimant stated that her relative, who was Jewish, committed suicide on 4 November 1938 as a result of Nazi Persecution. Furthermore, the Claimant stated that her relative’s wife died on 22 December 1939 in Kosice, Czechoslovakia. Finally, the Claimant stated that she, and the other persons represented by her, are the sole surviving heirs of her relative, as Alexander and Adrienne Fazekas did not have children.

In a telephone conversation with the CRT, the Claimant further stated that Berta Herz, née [REDACTED], was the sister of Alexander Fazekas, and was married to [REDACTED]. The Claimant stated that Berta Herz lived in Bratislava, Czechoslovakia, and Budapest, Hungary, and

that she died in the early 1990s. The Claimant submitted numerous documents, including the death certificates of Alexander and Adrienne Fazekas, as well as two documents that verify that Alexander Fazekas' last name was changed from Ferbstein to Fazekas before 1918. The Claimant indicated that she was born on 27 March 1922 in Plavnica.

The Claimant is representing [REDACTED], née [REDACTED], her sister, who was born on 24 July 1926 in Plavnica. The Claimant, her sister, and the other relatives whom the Claimant represents, are all related to the Account Owner through his paternal aunt, [REDACTED]. The Claimant and her sister are the daughters of [REDACTED]'s son [REDACTED]. The Claimant's cousins, [REDACTED]ova, née [REDACTED], who was born on 4 August 1922 in Velka Lomnica, and [REDACTED], née [REDACTED], who was born on 29 July 1926 in Maly Slavkov are the children of [REDACTED]'s son [REDACTED]. The Claimant's cousins, [REDACTED], who was born 7 May 1940 in Kosice, [REDACTED], née [REDACTED], who was born on 8 December 1942 in Kosice, and [REDACTED], née [REDACTED], who was born on 27 March 1947 are the granddaughters of [REDACTED]'s son [REDACTED].

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

The bank records consist of a central registry card and a bank ledger from the Bern branch of the Bank. According to these records, the Account Owner was Dr. Alexander Fazekas, who resided at Erkelgasse 12, Bratislava, Czechoslovakia. The bank records indicate that the Account Owners held a savings account numbered 50039. The bank records further indicate that the savings account was originally numbered 5004, and that the account number was changed to 50039 on 14 December 1963. The savings account was transferred to a suspense account on or before 16 December 1963. The amount in the account on the date of its transfer is unknown. According to the bank records, the account was closed on or before 1 January 1995.

Additional bank records include a list of customers who held custody accounts at the Zurich branch of the Bank through 31 December 1941. According to this record, the Account Owner was Dr. Alexander Fazekas who resided in Bratislava. The bank record indicates that the Account Owner held a custody account numbered 11291, which was opened on 4 July 1931. The account was closed on 3 April 1939. The amount in the account on the date of its closure is unknown.

Moreover, the bank records include an extract from the Bank's numbered account database. According to this record, the Account Owners were General Director Dr. Alexander Fazekas, who resided in Bratislava, Adrienne Fazekas who resided in Bratislava, and Berta Herz who resided in Budapest, Hungary. This bank record indicates that the Account Owners held an account of unknown type with the number 8529. The account balance is unknown. 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 record that the Account Owners or their heirs closed any of these accounts and received the proceeds themselves.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. The Account Owners' names, city and country of residence match the published names, city and country of residence of the Account Owners. The Claimant identified Account Owner Dr. Fazekas' street address, as well as Account Owner Herz's alternate city and country of residence, which match unpublished information about the Account Owners contained in the bank records. In support of her claim, the Claimant submitted documents, including Account Owner Dr. Fazekas' and Account Owner Mrs. Fazekas' death certificates.

### Status of the Account Owners as a Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish who lived in the Nazi Hungary and Czechoslovakia, and that Account Owner Dr. Fazekas committed suicide as a result of Nazi Persecution in 1938.

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

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting documents demonstrating that Account Owner Dr. Fazekas and Account Owner Herz were her father's cousins.

### The Issue of Who Received the Proceeds

Regarding the savings account at Bank I, the bank records indicate that the account was transferred to a suspense account and was later closed.

Regarding the custody account number 11291, given the application of Presumptions (a), (f), and (j) contained in Appendix A,<sup>1</sup> 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 Owner or his heirs received the proceeds of their accounts.

Regarding the account of unknown type, given the application of Presumptions (h), (i), and (j) contained in Appendix A, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners or their heirs.

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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).

### 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 Owners were her relatives, and the respective relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

### 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 savings account was 830.00 Swiss Francs, the average value of a custody account was 13,000.00 Swiss Francs, and the average value of an account of unknown value was 3,950.00 Swiss Francs. Consequently, the total value of the three accounts was 17,780.00 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 213,360.00 Swiss Francs.

### Division of the Award

According to Article 29 (1)(e), if neither the Account Owner's spouse nor any descendants of the Account Owner's parents have submitted a claim, the award shall be in favor of any descendants of the Account Owner's grandparents who have submitted a claim, in equal shares, by representation. The Claimant and her six relatives, whom she represents, are each entitled to one-seventh (1/7) of the Award amount.

### 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 the Claimant, [REDACTED], [REDACTED] and [REDACTED] are age 75 or older, they are entitled to receive payment of 100% of their portions of the total award amount. Accordingly, the initial payment amount is 181,356.00 Swiss Francs, which is comprised of 100% of that portion of the award allocated to those parties who are over 75 (121,920.00 Swiss Francs) and 65% of that portion of the award allocated to those parties who are under 75 (59,436.00 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 her claim 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

November 26, 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)

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(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).