

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Gary Fust

## **in re Accounts of Siegfried Freund and Else Elisabeth Freund**

Claim Number: 202965/MI

Award Amount: 42,550.00 Swiss Francs

This Certified Award is based upon the claim of Gary Fust (the “Claimant”) to the accounts of Siegfried Freund (“Account Owner Siegfried Freund”) and Else Elisabeth Freund (“Account Owner Else Freund”) (together the “Account Owners”) at the [REDACTED] (the “Bank”).<sup>1</sup> On 5 September 2002, the Court approved an award (the “September 2002 Award”) to the Claimant for two of the accounts of Account Owner Siegfried Freund and Account Owner Else Freund, while reserving decision regarding a third account.<sup>2</sup> Upon careful review, and as further described below, the CRT has determined that the Account Owners held four accounts. The third and fourth accounts of the Account Owners, which were not previously awarded in the September 2002 Award, are the subject of this award.

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

### **Information Provided by the Claimant**

The Claimant submitted a Claim Form identifying Account Owner Siegfried Freund as his maternal grandfather and Account Owner Else Freund as his maternal grandmother. According to the Claimant, his maternal grandfather, Siegfried Freund, was born on 27 July 1867 in Pschow, Upper Silesia, Germany, and his maternal grandmother, Else Elisabeth Freund, née Mosler, was born on 24 June 1874 in Germany.<sup>3</sup> The Claimant stated that his grandparents, who were Jewish, were married in 1894 in Berlin, Germany, and resided in Berlin at Fregestrasse 58.

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<sup>1</sup> The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Siegfried Freund is indicated as having two accounts. As noted above, the CRT has concluded that the Bank’s records evidence the existence of four accounts. Moreover, the CRT has determined that these were jointly held by Siegfried Freund and Else Freund.

<sup>2</sup> See *In re Account of Siegfried Freund and Else Elisabeth Freund* (approved on 5 September 2002), hereinafter the “September 2002 Award.”

<sup>3</sup> The CRT notes that the September 2002 Award erroneously indicates that Else Elisabeth Freund was born on 26 May 1884.

According to the Claimant, his grandfather was a medical doctor. The Claimant stated that, after the First World War, his grandparents lost much of their capital as a result of the hyper-inflation that beset post-War Germany. According to the Claimant, his grandparents established a Swiss bank account as early as 1924 in order to protect their assets against devaluation caused by inflation. The Claimant explained that, in 1934, after the Nazi seizure of power in Germany, his grandparents transferred the equivalent of 31,000.00 US Dollars (“US \$”) to the Chase Manhattan Bank in New York, United States, and transferred additional funds to their Swiss bank account. The Claimant stated that in 1937 he accompanied his grandparents as they fled Germany via Lugano, Switzerland to Abbazia, Italy. According to the Claimant, his grandparents paid their modest living expenses in Italy from an account that they held with branches of the Banco D’Italia in Trieste and Fiume, which was regularly replenished by money they had deposited at the Bank. The Claimant stated that beginning in approximately 1940, when Italy entered the Second World War, the remittances from the Swiss bank account stopped, and his grandparents were forced to rely upon the charitable contributions of the local Jewish community. The Claimant further stated that in approximately November 1943, his grandparents were arrested by Nazis, at which time they took their own lives.

According to the Claimant, his grandparents had two children: Werner Freund, who was killed in the First World War, and Stephanie Fust, née Freund, the Claimant’s mother, who was born on 20 May 1897 and died on 12 August 1988 in St. Petersburg, Florida, the United States.

The Claimant stated that, in 1946, his mother inherited the US \$31,000.00 that his grandparents had deposited in the Chase Manhattan Bank in New York. He further stated that he attempted to locate his grandparents’ Swiss assets in 1995. At that time, he wrote to the Swiss Banking Ombudsman at the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks (“the Swiss Bank Contact Office”) and, in 1996, paid a fee of 300.00 Swiss Francs (“SF”) to that office to cover the costs of the search. The Claimant stated that the Ombudsman responded that no information about his grandparents’ account had been located.

The Claimant submitted copies of documents in support of his claim, including: his mother’s death certificate, identifying her parents as Siegfried Freund and Elizabeth Mosler; and letters documenting the Claimant’s earlier attempts to recover his grandparents’ Swiss bank account, one of which, addressed to the Swiss Banking Ombudsman, dated 22 April 1996, references an attached questionnaire, completed by the Claimant, which identifies his maternal grandparents as Siegfried Freund and Elizabeth Freund, née Mosler, indicates that they resided in Berlin and later in Abbazia, and states that they owned an account in Switzerland, from which they regularly transferred funds to Italy. The Claimant indicated that he was born on 3 April 1921 in Berlin.

The Claimant previously submitted an Initial Questionnaire (“IQ”) to the Court in 1999, asserting his entitlement to Swiss bank accounts owned by Siegfried Freund and Else Freund.

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

The Bank’s records consist of a bank customer card, printouts from the Bank’s database, and correspondence from the lawyer of Stephanie Fust to the Bank dated 21 September 1946. According to these records, Account Owner Siegfried Freund was Dr. Siegfried Freund and

Account Owner Else Freund was *Frau* (Mrs.) Else Elisabeth Freund, née Mosler, both of whom resided in Berlin-Friedenau, Germany, and in Abbazia, Italy. The Bank's records indicate that the Account Owners held two demand deposit accounts, a safe deposit box numbered S 992, and a custody account numbered 36009.

The Bank's records indicate that one of the demand deposit accounts was closed on 10 February of an illegible year sometime between 1930 and 1939; that safe deposit box S 992 was closed on 11 February 1939; that custody account 36009 was closed on 4 June 1941; and that the other demand deposit account was closed on 20 June 1941.<sup>4</sup> The amounts in the accounts on the dates of their closures are unknown. There is no evidence in the Bank's records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

## **The CRT's Analysis**

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The Claimant's grandfather's name matches the published name of Account Owner Siegfried Freund, and the Claimant's grandmother's name matches the unpublished name of Account Owner Else Freund. The Claimant identified Berlin, Germany, and Abbazia, Italy, as cities in which his grandparents resided during the period between 1933 and 1945, which matches unpublished information about the Account Owners contained in the Bank's records. The Claimant identified Else Elisabeth Freund, née Mosler, as the wife of Siegfried Freund, which is consistent with unpublished information in the Bank's records. Finally, the Bank's records include a copy of a letter from the lawyer of the Claimant's mother inquiring about the Account Owners' accounts.

In support of his claim, the Claimant submitted copies of documents, including his mother's death certificate and letters documenting the Claimant's earlier attempts to recover his grandparents' Swiss bank accounts, providing independent verification that the people who are claimed to be the Account Owners had the same names and cities of residence recorded in the Bank's records as the names and cities of residence of the Account Owners.

The CRT notes that the Claimant filed an IQ with the Court in 1999, asserting his entitlement to Swiss bank accounts owned by Siegfried Freund and Else Elisabeth Freund, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant 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 the Claimant 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 the Claimant. Finally, the CRT notes that there are no other claims to these accounts.

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<sup>4</sup> The CRT notes that the custody account and demand deposit account that were closed in 1941 were previously awarded in the September 2002 Award.

### Status of the Account Owners as 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, that they fled from Nazi Germany to Italy in 1937, and that they took their own lives in 1943 after being arrested by the Nazis in Abbazia.

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

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were the Claimant's maternal grandparents. These documents include copies of his mother's death certificate and letters from the Claimant's earlier attempts to recover his grandparents' Swiss bank accounts. There is no information to indicate that the Account Owners have other surviving heirs.

### The Issue of Who Received the Proceeds

The custody account, numbered 36009, which was closed on 4 June 1941, and the demand deposit account, which was closed on 20 June 1941, were addressed in the September 2002 Award. As for the remaining accounts, which are the subject of this Award, the CRT notes that the Bank's records indicate that the second demand deposit account may have been closed as late as 10 February 1939, and that safe deposit box S 992 was closed on 11 February 1939, at which time, according to information provided by the Claimant, the Account Owners were in Nazi-allied Italy. Given this closure date, and the fact that the Account Owners' heirs would not have been able to obtain information about their accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, due to the 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 (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 Owners or their 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 Owners were his maternal grandparents, and that relationship justifies an Award. Third, 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

In this case, the Account Owner held two demand deposit accounts, a safe deposit box, and a custody account. As stated above, the demand deposit account and the custody account that were both closed in 1941 were addressed in the September 2002 Award. Pursuant to Article 29 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 current value of the account being awarded. Based on the investigation carried out pursuant to the instructions of ICEP, in 1945 the average value of a demand deposit account was SF 2,140.00, and the average value of a safe deposit box was SF 1,240.00, for a total 1945 value of SF 3,380.00. 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 amount of SF 42,250.00. The CRT notes that the Claimant paid a search fee of SF 300.00 in 1996, when he requested that the Swiss Bank Contact Office search for accounts held by Siegfried and Else Freund, and that he received no results from this search. This search fee is therefore added to the amount being awarded to the Claimant, for a total award amount of SF 42,550.00.

### **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 his claim to determine whether there are additional Swiss bank accounts to which he 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  
12 May 2006