

# 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], and [REDACTED]

## **in re Accounts of Carl Fuchs**

Claim Number: 221703/NF<sup>1</sup>

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Carl Fuchs (the “Account Owner”) at 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 his maternal grandfather, Carl Fuchs, who was born on 20 August 1874 in Schlawe (Pommern), Germany, and was married to [REDACTED], née [REDACTED], on 24 March 1943. The Claimant stated that his grandfather was a prominent businessman in Germany prior to the 1930s. The Claimant stated that his grandfather owned a business known as *Wellpappen Fabrik Hamburger & Fuchs G.m.b.H.* The business operated two factories; one at Glasowstrasse 44-47, in Berlin-Neukölln, Germany, and one in Coswig-Anhalt, Germany. The Claimant stated that his grandfather was forced to sell his businesses under the Nazi’s anti-Semitic laws.

The Claimant stated that his grandfather owned a residence, where he lived with his family, at *Westfälischestrasse 59* in Berlin. The Claimant indicated that he believed that his grandfather had held a Swiss bank account in his own name and in the names of his children. Additionally, the Claimant stated that his father traveled regularly within and outside Germany. The Claimant stated that his

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<sup>1</sup> The Claimant submitted additional claims to the accounts of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] which are registered under the claim numbers 221700, 221701, 221702, 221704, 221705, 221706, 221707, 221708, 221718. The CRT will treat the claims to these accounts in separate decisions.

grandfather and grandmother were deported from Berlin to the Theresienstadt concentration camp. The Claimant further stated that the Nazis murdered his grandfather and grandmother in 1943 and 1944, respectively.

The Claimant indicated that he was born on 22 April 1942 in New York, New York, the United States. The Claimant is representing his brother, [REDACTED], who was born on 26 April 1939 in New York, New York, the United States, and his cousins, [REDACTED], who was born on 26 January 1967 in Franklin Square, New York, and [REDACTED], who was born on 28 September 1962 in Far Rockaway, New York. The Claimant previously submitted an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Carl Fuchs.

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

The bank records consist of a printout of the Bank's database and a bank registration card. According to these records, the Account Owner was Carl Fuchs, who resided in Berlin- Zehlendorf. The bank records indicate that the Account Owner held a custody account and a demand deposit account. The records show that the demand deposit account was closed on 20 April 1937, and the custody account was closed on 29 August 1938. The amounts in the accounts on the dates of their closures is unknown. There is no evidence in the bank 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. His grandfather's name and country of residence match the published name and country of residence of the Account Owner. The CRT notes that the Claimant stated his grandfather's business operated in Berlin-Neukölln and Coswig-Anhalt, Germany. Unpublished information in the bank records gives the address as Berlin-Zehlendorf. - which is close in proximity to the addresses given by the Claimant for the factories owned by the Account Owner. In further support of his claim, the Claimant submitted documents, including inheritance documents indicating that his grandfather was a businessman in Berlin.

The CRT notes that the Claimant filed an ATAG Ernst & Young claim form in 1998, asserting his entitlement to a Swiss bank account owned by Carl Fuchs, 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 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 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.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Carl Fuchs, and indicates that his place of birth was Schlawe (Pommern) and he resided in Berlin, Germany, until he was deported to the Theresienstadt concentration camp, where he was murdered. This 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.

#### 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 and lived in Berlin, Germany until he and his wife were sent to the Theresienstadt concentration camp, where they were murdered. Moreover, the CRT notes that the database mentioned above contains the name and biographical details of the Account Owner, Carl Fuchs.

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

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that he is the grandchild of the Account Owner. There is no information to indicate that the Account Owner has other surviving heirs.

#### The Issue of Who Received the Proceeds

Given the forced sale of the Account Owner's business because he was Jewish, the Account Owner's death and the death of his wife in the Theresienstadt concentration camp, the Nazi campaign to confiscate the assets of its Jewish nationals, and the applicability of Presumptions (a) 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. 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 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 Owner was his grandfather, 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 accounts.

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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, 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, while the average value of a custody account was 13,000.00 Swiss Francs. The present value of each these amounts 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 181,680.00 Swiss Francs.

### Division of the Award

The Claimant is representing his brother, [REDACTED], and his cousins, [REDACTED]. According to Article 29 of the Rules, his brother and cousins are each entitled to receive one-fourth of any payment made to the Claimant.

### 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, the CRT has used the value presumptions of Article 35 of the Rules to calculate the account values, and 65% of the total award amount is 118,092.00 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 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

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).