

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Erich Fischer

## **in re Accounts of Adolf Kahane**

Claim Number: 206809/ME<sup>1</sup>

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of Erich Fischer (the “Claimant”) to the accounts of Adolf Kahane (the “Account Owner”) at the [REDACTED] (the “Bank”).

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

## **Information Provided by the Claimant**

The Claimant submitted a Claim Form, an Initial Questionnaire, and an ATAG Claim Form identifying the Account Owner as his maternal grandfather, Adolf Kahane, who was born in Vienna, Austria and was married. The Claimant stated that he could not remember his grandmother and believed that she died before he was born. According to the information provided by the Claimant, his grandfather had two children: Pauline, who was born in Vienna in 1887, and Rudolf, who was born in Vienna in 1900, both of whom are now deceased. Pauline Kahane married Heinrich Fischer, and had a child, the Claimant, born 4 November 1925 in Vienna. The Claimant stated that his grandfather was a businessman who operated a business called *Adolf Kahane* which manufactured decorations for ladies’ millinery (*Kunstblumen und Schmuckfedern*). The Claimant stated that his grandfather resided at Seidengasse 29 Vienna VII, and his grandfather’s business was located at Zollergasse 13 Vienna VII. The Claimant stated that his grandfather, who was Jewish, died in Vienna in 1941.

In support of his claim, the Claimant provided copies of a registry from the Vienna Archives, as well as his birth certificate. Furthermore, the Claimant submitted a letter to Nazi authorities dated 1 June 1939 written by Adelheid Wawriczek on letterhead of his grandfather’s company *Adolf Kahane*, which was located at Zollergasse 13 Vienna VII. This document lists several domestic and international banks at which the company maintained banking relationships. The letter reveals that the Company had Jewish owners and that the owners were forced to sell the company and the building in which it was located to the Nazis. Furthermore, the purpose of the

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<sup>1</sup> The Claimant submitted an additional claim to the account of Heinrich Fischer, which is registered under the claim number 209079. The CRT will treat the claim to this account in a separate decision.

letter was to object to the amount of the *Entjudungsauflage* (fee charged by the Nazis for the confiscation of Jewish assets) that the Nazis required the author of the letter to pay.

The Claimant indicated that he left Vienna on a children's transport at the age of thirteen.

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

The bank record consists of an account registry card. According to this record, the sole Account Owner was Adolf Kahane, who resided in Vienna VII. The bank record indicates that the Account Owner held a demand deposit account. The account was closed on 31 July 1938. The amount in the account on the date of its closure is unknown. There is no evidence in the bank records that the Account Owner or his heirs closed the account and received the proceeds themselves.

### **Information Available from the Austrian State Archives**

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Adolf Kahane. These records include an Austrian census form for Adolf Kahane, numbered 34814, which is dated 15 July 1938. These records indicate that Adolf Kahane was Jewish, was born on 30 November 1861, and was a widower. The records show that Adolf Kahane resided at Seidengasse 29 Vienna VII, and that he owned a *Kunstblumen und Schmuckfedernhandel* (business of decorations for ladies millinery) by the name of *Adolf Kahane* located at Zollerngasse 13 Vienna VII. The records indicate that Adelheid Wawriczek became the new owner of the *Kunstblumen und Schmuckfedernhandel Adelheid Wawriczek* formerly known as *Adolf Kahane* as of 3 May 1939. The records also contain a letter from the Nazis in response to the letter submitted by the Claimant and written by Adelheid Wawriczek. In their response letter, the Nazis reference the letter Wawriczek wrote regarding the *Entjudungsauflage* required to be paid to the Nazis in connection with the company of Adolf Kahane. According to the records, the business was valued at 27,000.00 Reichsmarks and was sold for 1,380.00 Reichsmarks. There is no mention in these records of assets held in a Swiss bank account.

Additionally, the records of the Austrian State Archives (Archive of the Republic, Finance) contain documents concerning the assets of Heinrich Fischer, the son-in-law of Adolf Kahane. These records include an Austrian census form for Heinrich Fischer, numbered 6109, which is dated 2 August 1938. These records indicate that Heinrich Fischer was Jewish, was born on 2 January 1885, and was married to Paula Fischer, née Kahane, born 16 September 1885. The records show that Heinrich Fischer resided at Seidengasse 29 Vienna VII, that he was an employee, and that his employment and monthly salary were terminated without notice on 30 June 1938. According to the records, Heinrich Fischer held one security in an Austrian bank. There is no mention in these records of assets held in a Swiss bank account.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His grandfather's name matches the published name of the Account Owner. Moreover, the city and district of residence the Claimant indicated for his grandfather matches unpublished information contained in the bank documents. Furthermore, the Claimant was able to provide the Account Owner's home and business street addresses, which match information contained in the Austrian State Archives records. In support of his claim, the Claimant submitted documents, including his birth certificate, showing that his mother's maiden name was Kahane.

### 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 that the Account Owner's business and other assets were confiscated by the Nazis.

### 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 his mother's maiden name was the same as the last name 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

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, the Austrian citizens who are Jewish report their assets in the 1938 census, and their account are closed unknown to whom or are transferred to Nazi-controlled banks. The CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis. Given the application 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 account.

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<sup>2</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).

### 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. 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 25,680.00 Swiss Francs.

### Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive 100% payment of his portion of the total award amount.

### **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 31, 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,

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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).