

# CLAIMS RESOLUTION TRIBUNAL

---

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

## **Certified Award**

to Claimants [REDACTED] and [REDACTED],  
the latter acting on behalf of himself and of [REDACTED]

## **in re Accounts of Richard Lustig**

Claim Numbers: 205651/MBC; 208864/MBC

Award Amount: 138,918.60 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (“Claimant I [REDACTED]”) and [REDACTED] (“Claimant II [REDACTED]”) (together the “Claimants”) to the accounts of Richard Lustig (the “Account Owner”) at the Zurich branch of the [REDACTED] (“Bank I”) and at the Zurich branch of the [REDACTED] (“Bank II”).

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, who are cousins, each submitted a Claim Form to the CRT identifying the Account Owner as their maternal grandfather, Richard Lustig, who was born on 24 April 1877 and was married to [REDACTED]. The Claimants stated that their grandfather, who was Jewish, resided in St. Pölten, Austria, where he owned a sporting goods store at Linzerstrasse 17. According to the Claimants, [REDACTED] and Richard Lustig had four daughters, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The Claimants stated that their grandfather fled from Austria to the United Kingdom in December 1939, and from there to the United States, where he died in 1947 or 1948. The Claimants stated that [REDACTED] died in 1945 or 1946. According to the Claimants, [REDACTED] is the only one of Richard Lustig’s four daughters still living. [REDACTED], represented by Claimant II [REDACTED], was born on 15 December 1905 in St. Pölten. Claimant I [REDACTED] is the daughter of [REDACTED] and was born on 14 April 1943 in New York, New York, the United States. Claimant II [REDACTED] is the son of [REDACTED] and was born on 13 May 1938 in Vienna, Austria.

In support of his claim, Claimant II [REDACTED] submitted a copy of the census form that his grandfather was forced to submit to Nazi authorities in 1938, as well as documents relating to the “flight tax” (*Reichsfluchtsteuer*) that he was forced to pay before emigrating from Austria in 1939. According to these documents, Richard Lustig was born on 24 April 1877 and was

married to [REDACTED], née [REDACTED]. The documents indicate that Richard Lustig was the owner of a leather and sporting goods store located at Linzerstrasse 17 in St. Pölten, Austria, that was worth 95,564.79 Reichsmarks (1938 value). The documents indicate that Richard Lustig had assets totaling 234,200.00 Reichsmarks as of 1 January 1938, and that he was forced to pay 49,000.00 Reichsmarks as flight tax. According to these documents, Richard Lustig reported assets worth 1,000.00 Swiss Francs in a savings booklet numbered 15912 at Bank I and assets worth 10,500.00 Swiss Francs in another account at Bank II. The documents indicate that the savings booklet at Bank I was transferred to the German *Reichsbank* in 1938 and that the assets at Bank II were reported to the Austrian National Bank and were to be liquidated on 26 January 1939.

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

### Account with Bank I

The bank records relating to this account consist of internal notes and correspondence with the Account Owner's heirs and their representative from 1959 to 1964. According to these records, the Account Owner was Richard Lustig, who resided at Linzerstrasse 17, St. Pölten, Austria. The bank records indicate that the Account Owner held a savings booklet numbered 15912, and that the balance of this savings booklet, 1,071.00 Swiss Francs, was paid to the German *Reichsbank* on 7 September 1938, pursuant to instructions of the Account Owner dated 25 August 1938.

The bank records include a letter from the lawyer for the Account Owner's estate, [REDACTED], dated 14 February 1959, in which [REDACTED] requests confirmation that the Account Owner's assets were transferred to the *Reichsbank* in order to substantiate the Account Owner's heirs' claim for restitution. Even though the Bank's files contained relevant information about the Account Owner's account, Bank I responded in a letter dated 16 February 1959, that, since it was only legally obliged to keep records for ten years, it could not provide any information regarding this matter.

The bank records also include a letter from a [REDACTED] of the Austrian Fund to Compensate Property Losses of Victims of Political Persecution (*Fonds zur Abgeltung von Vermögensverlusten politisch Verfolgter*) (the "Fund") to Bank I, dated 16 April 1962, in which the Fund, in an appeal to all "Austrian banks and monetary institutions," seeks confirmation from Bank I that the Account Owner's assets at Bank I were transferred to the Nazis in order to substantiate claims for restitution by the Account Owner's heirs. A handwritten note on the letter, apparently written by an employee of Bank I, asks, "Since when are we an Austrian bank?" In an internal note to the files dated 24 April 1962, handwritten notes apparently made by one or more employees of Bank I indicate that Account Owner Richard Lustig, who formerly resided at Linzerstrasse 17 in St. Pölten, owned a savings booklet numbered 15912. Those notes indicate that the assets in the account were transferred to the *Reichsbank* Direktorium Berlin pursuant to instructions of the Account Owner dated 25 August 1938. The notes indicate that the Account Owner had 1,074.80 Swiss Francs in principal in the savings book and that 1.75 Swiss Francs were added as interest for 1938. Bank I deducted 5.55 Swiss Francs for fees and postage

from the account before transferring the remaining 1,071.00 Swiss Francs to the *Reichsbank*. The notes record that [REDACTED] contacted Bank I regarding the Account Owner in 1959. In a letter dated 26 April 1962 (two days after the internal notes), Bank I responded to the Fund's letter by referring the matter to the correspondence conducted with [REDACTED] in February 1959.

The bank records also include a letter, dated 2 January 1964, from the Account Owner's daughter [REDACTED], in which she identifies herself and her sister, [REDACTED], as the heirs of Richard Lustig. In her letter, [REDACTED] states that her father had a savings book at Bank I worth approximately 1,000.00 Swiss Francs in 1938. [REDACTED] asks, since the proceeds of the account were not paid out to the Account Owner or his heirs, "for reasons that are surely known to you," whether and how she might access the account, and she inquires how much, including interest, the account is now worth. There is no indication in the bank records that Bank I ever responded to [REDACTED]'s letter.

### Account with Bank II

The CRT has no information about any account under the name of Richard Lustig with Bank II other than that contained in the Account Owner's Austrian census records. Such an account was apparently not identified during the investigation carried out in the Swiss banks by the Independent Committee of Eminent Persons (the "ICEP Investigation") and therefore does not appear in the CRT's Account History Database.

### **Information Available in 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 is a record concerning Richard Lustig, who was born on 24 April 1877 and who resided in St. Pölten. However, the actual census form is not in the archives in Vienna.

### **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 discretion of the CRT. In this case, the CRT determines it appropriate to join the claims of Claimant I [REDACTED] and of Claimant II [REDACTED] in one proceeding.

#### Identification of the Account Owners

The Claimants have plausibly identified the Account Owner. Their grandfather's name matches the published name of the Account Owner. The Claimants have provided their grandfather's precise street address in St. Pölten, which matches the unpublished address contained in the bank

documents. Moreover, the Claimants submitted documents containing details about their grandfather's savings booklet with the Bank I, including its number, its approximate balance, and that it was transferred to the *Reichsbank* in 1938, which matches unpublished information about the claimed account contained in the bank documents.

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

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and lived in Nazi-controlled Austria until December 1939, when he was forced to flee. The Claimants have shown that the Account Owner was compelled to report all of his assets to the Nazi authorities, and that he was forced to pay a "flight tax" in order to emigrate.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Richard Lustig, and indicates that his date of birth was 24 April 1877, which 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.

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

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that [REDACTED] is the daughter of the Account Owner and that Claimant I [REDACTED] and Claimant II [REDACTED] are the grandchildren of the Account Owner. In support of their claims, Claimant I [REDACTED] has provided her parents' marriage certificate, which indicates that her mother's maiden name was [REDACTED], as well as her mother's death certificate, which indicates that her mother's parents were Richard Lustig and [REDACTED]. Claimant II [REDACTED] has provided his "Report of Birth," which indicates that his mother's maiden name was [REDACTED]. There is no information to indicate that the Account Owner has other surviving heirs.

#### The Issue of Who Received the Proceeds

Regarding the account at Bank I, given the application of Presumptions (a), (d), (f), and (j) contained in Appendix A, the CRT concludes that it is plausible the account proceeds were not paid to the Account Owner or his heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not the Account Owners or their heirs received the proceeds of their accounts.

Regarding the account held at Bank II, according to Article 27(4) of the Rules, the CRT may make an Award in a case in which the Claimant plausibly establishes a right to an account that falls within the CRT's jurisdiction but which, for whatever reasons, was not identified during the ICEP Investigation. In this case, Claimant II [REDACTED] has submitted copies of his grandfather's Austrian census forms which indicate that, in addition to the savings booklet with Bank I, the Account Owner also had an account with Bank II. Based on this evidence, the CRT

considers it appropriate to consider this additional account, which does not appear in the Account History Database, for an award to the Claimants.

The documents submitted by Claimant II [REDACTED] indicate that, like the savings booklet with Bank I, the Account Owner's account with Bank II was reported to the Nazi authorities in 1938. The documents further indicate that this account was to be liquidated in January 1939, almost one year before the Account Owner emigrated from Nazi-controlled Austria.

Given the application of Presumptions (a), (d), (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, 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 claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was the grandfather of Claimant I [REDACTED] and II [REDACTED] and the mother of [REDACTED], and those relationships justify an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

#### Amount of the Award

The bank records indicate that the balance of the Account Owner's savings account as of 7 September 1938 was 1,071.00 Swiss Francs, and that Bank I deducted 5.55 Swiss Francs from this account for fees and postage before transferring it to the Nazi-controlled *Reichsbank*. According to the additional documents submitted by Claimant I [REDACTED], the value of the Account Owner's account with Bank II as of 12 July 1938 was 10,500.00 Swiss Francs. Thus, the total value of the Account Owner's assets at the time they were transferred to the Nazi authorities was 11,576.55 Swiss Francs. The present value of this amount is calculated by multiplying this total value by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 138,918.60 Swiss Francs.

#### Division of the Award

According to Article 29 of the Rules, Claimant I [REDACTED] is entitled to receive one-third (1/3) of the award and Claimant II [REDACTED], who is representing his aunt [REDACTED], is entitled to receive two-thirds (2/3) of the award. [REDACTED] is entitled to receive one-half of any payment made to Claimant II [REDACTED] on the basis of this award.

#### **Scope of the Award**

---

<sup>1</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

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

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>

---

<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 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).