

# 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 Georg Müller and Ernst Müller**

Claim Numbers: 201545/AH; 205063/AH<sup>1</sup>

Award Amount: 922,884.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Georg Müller and Ernst Müller (the “Account Owners”) at the Zurich branch 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 two Claim Forms, an ATAG Ernst & Young claim, and an Initial Questionnaire identifying the Account Owners as her paternal grandfather, Georg Müller, and her paternal uncle, Ernst Friedrich Müller. According to the Claimant, her grandfather was born in Muensterberg, Germany on 18 June 1861, and was married to [REDACTED], née [REDACTED], in 1888. The Claimant’s uncle was born on 23 December 1891 in Berlin, Germany and was married to [REDACTED], née [REDACTED], in 1920 in Berlin. The Claimant indicated that between 1904 and 1933, her grandfather resided at 11/14 Lindenallee in Zeuthern, Germany, and at 40 Kurfürstendamm in Berlin. The Claimant also stated that her grandfather was an orthopedic surgeon and a director of a clinic at Friedrichstrasse 120 in Berlin. The Claimant further stated that her uncle, who was a cardiologist, resided in Berlin for an unknown period and also taught at a medical school in Hamburg, Germany. The Claimant indicated that she knows that her grandfather opened several accounts in Zurich at the Bank in which he deposited money and securities and probably owned other accounts opened on behalf

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<sup>1</sup> The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 201534. The CRT will treat the claim to this account in a separate decision.

of his wife, the Claimant, and her sister. The Claimant further stated that the Nazis prohibited her grandfather and her uncle from practicing medicine, and that in May 1933, her grandparents fled Germany to The Hague, the Netherlands, where her grandfather died on 25 May 1939. In November 1941, one of the Claimant's grandfather's sons was murdered in the Grossrosen concentration camp in Germany. In December 1942, the Claimant's grandmother committed suicide in fear of the Nazis. The Claimant indicated that her uncle fled Germany and emigrated to the United States, where he lived until his death, without issue, in New York, New York on 11 September 1971. According to the family tree submitted by the Claimant, Ernst Müller had two brothers: [REDACTED], who had two children, [REDACTED] and [REDACTED], and [REDACTED], who also had two children, the Claimant and [REDACTED].

In support of her claim, the Claimant submitted various documents including her uncle's and father's birth certificates indicating that they were brothers, and her grandfather's death certificate. The Claimant stated that she and her uncle Ernst Friedrich Müller tried to trace the family's Swiss bank accounts through the Bank. The Claimant submitted the respective reply letters from the bank. In one letter, which is dated 2 October 1995 and addressed to the Claimant, the bank stated that, as they are obliged by law to keep records only for ten years, they could not ascertain if an account was indeed opened by her grandfather and referred her to the Swiss Banking Ombudsman. In the other letter, which is dated 30 June 1960 and addressed to Ernst F. Müller, M.D., the bank confirmed that their records were destroyed long ago and that their investigations regarding accounts in the names of Dr. Georg Müller and [REDACTED] proved negative. The Claimant indicated that she was born on 7 November 1927 in Berlin. The Claimant is representing her sister, [REDACTED], née [REDACTED], born on 26 September 1920, in Berlin, and her two paternal cousins, [REDACTED], née [REDACTED], born on 15 April 1925 in Neumark, Germany, and [REDACTED], née [REDACTED], born on 1928 in Halle, Germany.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999 and an ATAG Ernst & Young claim form in 1998, asserting her entitlement to a Swiss bank account owned by Georg Müller.

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

The bank records consist of various bank lists, closing records, printouts from the Bank's database, a copy of the Foreign Assets Law of Austria as of 23 March 1938, as well as a letter from the Bank dated 17 March 1938, describing how it would soon complete a list of over 1000 custody accounts belonging to Austrian citizens, pursuant to the Foreign Assets Law of Austria. According to these records, the accounts were jointly held by Dr. Georg Müller, and by Ernst Müller, the latter registered with an address at 10 Bergasse in Vienna, Austria. The bank records indicate that the Account Owners held a demand deposit account, numbered 3340, which was closed on 14 April 1938 with a value of 3,407.00 Swiss Francs. The bank records further indicate that the Account Owners also held a custody account, numbered 41913, which was closed on 30 April 1938 with a value of 73,500.00 Swiss Francs. The accounts were included on a bank list dated 26 April 1938, which referred to accounts paid to Austrian or German banks, as part of the Nazi confiscation of funds and indicates that these accounts were transferred to the

*Mercurbank* in Vienna. 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”) determined that the amount in these accounts had been paid to the Nazi authorities. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

## **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 CRT’s discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimant in one proceeding.

### Identification of the Account Owners

The Claimant has plausibly identified both of the Account Owners. Her paternal grandfather’s and her uncle’s names, as submitted by the Claimant, both match the published names of the Account Owners. The CRT notes that the Claimant identified the connection between the Account Owners although their names were not published together. The Claimant also identified her grandfather’s doctor title, which matches unpublished information about the Account Owner’s title contained in the bank records. In support of her claim, the Claimant submitted various documents including her uncle’s birth certificate, her grandfather’s death certificate, and denial letters sent to her and her uncle by the Bank, regarding their inquiries into any accounts in the names of Dr. Georg Müller.

### 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 Account Owner Georg Müller, his wife, and her uncle fled Germany, and that following the murder of one of Account Owner Georg Müller's sons in a concentration camp, the Account Owner's wife committed suicide in 1942 in fear of the Nazis.

### 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 the Account Owners were her paternal uncle and grandfather. There is no information to indicate that the Account Owner has other surviving heirs.

### The Issue of Who Received the Proceeds

The ICEP auditors determined that the accounts were paid to Nazi authorities.

### 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 paternal uncle and grandfather, and those 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

With respect to the Account Owners' demand deposit account, the bank records indicate the value of the demand deposit account as of 14 April 1938 was 3,407.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules. Consequently, the total award amount for this account is 40,884.00 Swiss Francs.

The bank records indicate that the value of the Account Owners' custody account as of 30 April 1938, was 73,500.00 Swiss Francs. The present value of the amount of the award of this account (882,000.00 Swiss Francs) is determined by multiplying the historic value by a factor of 12, in accordance with Article 37(1) of the Rules.

Consequently, the total amount of the award for both accounts in this case is 922,884.00 Swiss Francs.

### Division of the Award

The Claimant is representing her sister, [REDACTED], and her two paternal cousins, [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED], in her Claim to the accounts jointly held by their uncle and grandfather. According to the principles of distribution set forth in Article 29 of the Rules Governing the Claims Resolution Process (the "Rules"), the Award will be in favor of any entitled relatives who have submitted claims to the account, in equal shares by representation. Therefore the Claimant, her sister, and her cousins are each entitled to one-fourth of the award.

### **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

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

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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).