

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Adela Yanchelevich <sup>1</sup>

**in re Accounts of A. Wechsler and Ita Wechsler**

Claim Number: 000818/EZ

Award Amount: 203,400.00 Swiss Francs

This Certified Award is based upon the claim of Adela Yanchelevich, née Wechsler (the “Claimant”) to the account of A. Wechsler. This Award is to the accounts of A. Wechsler and Ita Wechsler (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 a Claim Form and an Initial Questionnaire identifying herself as the Account Owner, Adela Wechsler, who was born on 10 June 1916 in Konstanta, Romania, and was married to her first husband in 1939. She indicated that her parents, [REDACTED] and [REDACTED], who were Jewish, owned several lingerie factories and stores in Konstanta and in Bucharest. The Claimant provided her exact street address in Bucharest. The Claimant stated that her father frequently traveled to Istanbul, Turkey, in order to purchase products, and that he held Swiss bank accounts for his business. The Claimant stated that in 1939 she moved to Kishinev, Romania, where her parents joined her several months later. In 1941, the Nazi-controlled authorities murdered her entire family including her husband and his family. The Claimant and her daughter, [REDACTED], were the only survivors. They were deported to a ghetto and later to Transnistria, where they remained until their release in 1944. The Claimant and her daughter live in Israel today.

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<sup>1</sup> The Claimant provided her name and some of her relatives’ names only in Hebrew characters in the claim form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the claim form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provides different variations in Latin characters for each of the names.

The Claimant stated that her father's sister was Ita Wechsler. The Claimant could not recall specific information about her aunt, except that she, too, was murdered in Kishinev.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her and by her parents [REDACTED] and [REDACTED].

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

The bank records consist of a ledger card and printouts from the Bank's database. According to these records, the joint Account Owners were A. Wechsler and Mrs. Ita Wechsler from Romania. The bank records indicate that the Account Owners held a custody account numbered 25111 and a numbered account of unknown type, numbered 10225. The custody account was closed on 19 August 1946. The bank records do not show who closed the account or its balance at the closure date. There is no evidence in the bank records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

The bank records do not show if or when the account of unknown type was closed, or to whom it was paid, nor do these records indicate the value of this account. 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") did not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945.

### **The CRT's Analysis**

#### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. The first initial and last name of the Claimant match the published initial and last name of Account Owner A. Wechsler, and the Claimant's aunt's name matches the published name of Account Owner Ita Wechsler. The Claimant stated that her entire family resided in Romania, which matches published information about the Account Owner contained in the bank records. Furthermore, despite the fact that the Account Owners' names were listed separately on the list of bank accounts published by the ICEP Investigation on 5 February 2001, the Claimant stated that the Account Owners were related, which is consistent with unpublished information about the accounts contained in the bank documents.

Additionally, the CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her, prior to the publication of the ICEP List. This indicates that the Claimant has based her 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 her name, but rather on information that was known to her before the publication

of the ICEP List. It also indicates that the Claimant had reason to believe that she owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

#### 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 she is Jewish and survived the Second World War in a ghetto. The Claimant stated that her family, including Account Owner Ita Wechsler, was murdered by the Nazi-controlled authorities in Kishinev.

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

The Claimant has plausibly demonstrated that she is one of the Account Owners by submitting documents including a copy of her identity card. The Claimant also stated that Account Owner Ita Wechsler was her aunt.

#### The Issue of Who Received the Proceeds

Based on its precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.<sup>2</sup> The CRT concludes in this case that Presumptions (h), (i), and (j) apply, and it is therefore plausible that the account proceeds were not paid to the Account Owners or their heirs.

#### 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 she and her aunt, and these 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 account.

#### 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 custody account was 13,000.00 Swiss Francs, and the average value of an account of unknown type was 3,950.00 Swiss Francs. The present value of these amounts is calculated by multiplying them by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 203,400.00 Swiss Francs for both of the 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).

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 values presumptions of Article 35 of the Rules to calculate the account values and 65% of the total award amount is 132,210.00 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 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  
October 3, 2002

## APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;<sup>2</sup>
- i) the Account 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 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 Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia

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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).