

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED 1]  
and  
Claimant [REDACTED 2]

## **in re Account of Dr. A.S. Frischauer**

Claim Numbers: 216163/ES; 216164/ES;<sup>1</sup> 219582/ES

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) and [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the account of Dr. A.S. Frischauer (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case the Claimants have, 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**

Claimant [REDACTED 1] submitted two Claim Forms identifying the Account Owner as Anna Frischauer, née [REDACTED], as her paternal grandmother, who was born on 13 April 1870 in Vienna, Austria, and was married to [REDACTED], a Catholic lawyer, on 4 August 1891 in Vienna. Claimant [REDACTED 1] identified Anna Frischauer’s children as [REDACTED], who was born on 8 September 1906; Paul Max Frischauer, Claimant [REDACTED 1]’s father, who was born on 25 May 1898; [REDACTED], who was born around 1893; [REDACTED], who was born around 1895; and [REDACTED], who was born around 1897, all in Vienna. Claimant [REDACTED 1] stated that her father was married to [REDACTED] and that he was a well-known author and historian. Claimant [REDACTED 1] stated that her grandmother, who was Jewish, was the daughter of [REDACTED] and [REDACTED], née [REDACTED]. Claimant [REDACTED 1] stated that her father was a member of the P.E.N. international

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<sup>1</sup> Claimant [REDACTED 2] submitted a total of four Claim Forms. Two were registered under the Claim Numbers 216163 and 221575. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 216163. Two of her other Claim Forms were registered under the Claim Numbers 216164 and 221576. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 216164. Claimant [REDACTED 1] submitted one Claim Form, Number 219582

organization and an activist against the Nazi Regime, which is the reason he fled from Austria to England in 1934. He then traveled to Brazil and returned to Austria in 1958. He died on 7 May 1977 in Vienna. Claimant [REDACTED 1] stated that her grandmother was forcibly removed from her home in Vienna in 1941 and deported to Theresienstadt, where she perished on 22 November 1942 with her husband, the Claimant's grandfather. Claimant [REDACTED 1] submitted her birth certificate, identifying Paul Max Frischauer as her father, [REDACTED]'s birth certificate, and a letter to her signed by her father. Claimant [REDACTED 1] indicated that she was born on 23 April 1935 in London, England.

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owner as her paternal grandmother, Anna Frischauer, née [REDACTED], the mother of Claimant [REDACTED 2]'s father, [REDACTED]. Claimant [REDACTED 2] indicated that Anna Frischauer was married to [REDACTED], a Catholic lawyer, who was born on 5 December 1863 in Brünn, Austria. Claimant [REDACTED 2] submitted her birth certificate, indicating that [REDACTED] was her father, her father's birth and death certificates, and a letter from Yad Vashem detailing the fate of her grandparents. The Claimant indicated that she was born on 27 June 1937 in London.

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

The bank records consist of printouts from the Bank's database and a power of attorney form, signed in Vienna on 31 October 1930. According to these records, the Account Owner was Dr. A.S Frischauer and the Power of Attorney Holder was Paul Frischauer, who both resided at Hohenbergstrasse 40, Vienna XII, Austria. The bank records indicate that the Account Owner held a custody account.<sup>2</sup>

The account was closed on 28 August 1950 unknown by whom. 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, the Power of Attorney Holder or their heirs closed the account 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 Claimant [REDACTED 2] and the one claim of Claimant [REDACTED 1] in one proceeding.

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<sup>2</sup> The bank records contain a power of attorney form that references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. The CRT concludes that it is plausible that the Account Owner held such an account.

### Identification of the Account Owner

The Claimants have plausibly identified the Account Owner and the Power of Attorney Holder. Their relatives' names match the published names of the Account Owner and the Power of Attorney Holder. Claimant [REDACTED 1] submitted a sample of her father's signature, which matches the signature sample of the Power of Attorney Holder contained in the bank records. The CRT notes that women may have used their husband's professional title during that period of time. Therefore, the fact that the Claimant stated her grandfather was a lawyer is consistent with her grandmother's use of the title "Dr." in the bank records.

The CRT notes that there were no other claims matching to this account. In support of her claim, Claimant [REDACTED 1] submitted her birth certificate, identifying Paul Max Frischauer as her father, and the birth certificate of her uncle, [REDACTED]. Claimant [REDACTED 2] submitted her birth certificate, identifying [REDACTED] as her father, her father's birth and death certificates, and a letter from Yad Vashem acknowledging the fate of her grandparents.

### 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. Claimant [REDACTED 1] stated that the Account Owner was Jewish and perished in Theresienstadt. Claimant [REDACTED 2] submitted a letter from Yad Vashem demonstrating that her grandparents perished in Theresienstadt in 1942.

### The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents including birth certificates of [REDACTED] and of Claimant [REDACTED 1], demonstrating that the Account Owner was their paternal grandmother.

### The Issue of Who Received the Proceeds

Given the death of both the Account Owner and the Power of Attorney Holder in a concentration camp in November 1942 and the application of Presumptions (h) and (j) contained in Appendix A,<sup>3</sup> the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the Power of Attorney Holder or their 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 their grandmother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither

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<sup>3</sup> An expanded version of Appendix A appears on the CRT II website -- [www.crt-ii.org](http://www.crt-ii.org).

the Account Owner, the Power of Attorney Holder 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 Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a custody account was 13,000.00 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 156,000.00 Swiss Francs.

### Division of the Award

According to the principles of distribution set forth in Article 29(1)(c) of the Rules, an award will provide for division among the descendants of the account owner who have submitted a claim, in equal shares by representation. The Claimants are the grandchildren of the Account Owner and are each entitled to one-half of the total Award amount.

### 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 value, and 65% of the total award amount is 101,400.00 Swiss Francs.

### **Scope of the Award**

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

January 28, 2003

## 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)

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(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).