

# 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]

## **in re Account of Dr. E. Hüttner**

Claim Number: 217031/MBC<sup>1</sup>

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claim the claims of [REDACTED] (the “Claimant”) to the account of Dr. E. Hüttner (the “Account Owner”) 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 identifying the Account Owner as his father, Dr. Erwin Hüttner, who was born on 7 June 1876 in Prague, Czechoslovakia, and was married to Rosa Hüttner, née [REDACTED]. The Claimant stated that his parents had two children: the Claimant, who was born on 13 August 1922 in Prague, and [REDACTED], who was born on 2 January 1924 in Prague and died on 2 February 1997 in Santiago, Chile. The Claimant indicated that his father was a doctor of chemistry, and a trademark and patent lawyer, who lived in Prague at Palacké Ho. 74 until 1930 and at U. Kralovské Obory until 1935. The Claimant further indicated that his parents were Jewish, and that his father lost many German clients after the Nazis came to power. The Claimant stated that his father died as a consequence of a stomach ulcer on 13 October 1935. During a telephone conversation with the CRT on 10 February 2002, the Claimant explained that he went to school in Prague until 1936, and from 1937 to 1939, the Claimant and his brother were sent to a Swiss boarding school in Coppet, near Nyon and Geneva. The Claimant’s mother stayed in Prague. The Claimant further explained that he, his brother and their mother never lived together in Switzerland, and that the money for the school had to be paid from an account that his parents most likely had in Switzerland. The Claimant added that after the Nazis occupied Czechoslovakia, his mother, being from a Jewish family and

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<sup>1</sup> The Claimant submitted two Claim Forms, which were registered under the Claim Numbers 217031 and 224318. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 217031.

fearing the worst for herself and her family, fled to Paris, France, where the Claimant and his brother joined her. According to the Claimant, in May or June 1939, the Claimant and his family left France for Chile, where they settled. The Claimant stated in a telephone conversation with the CRT on 24 March 2003 that his family suffered many financial difficulties in Chile and that they did not know about the account in Switzerland. In support of his claim, the Claimant submitted copies of his father's birth and death certificates, his parents' marriage certificate and his own birth certificate. The Claimant is representing his nephew [REDACTED], the son of [REDACTED], in these proceedings.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his parents, Erwin and Rosa Hüttner of Prague, Czechoslovakia. In his Initial Questionnaire, the Claimant also stated that his father had two cousins, [REDACTED] and [REDACTED], in Zurich, Switzerland.

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

The bank records consist of a power of attorney form, dated 19 May 1920 in Prague, Czechoslovakia, and printouts from the Bank's database. According to these records, the Account Owner was Dr. E. Hüttner, and the Power of Attorney Holder was Rosa Hüttner, both of whom resided at Palackýstr. 74 in Prague. The bank records indicate that the Account Owner held a custody account.<sup>2</sup>

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. There is no evidence in the bank records that the Account Owner, the Power of Attorney Holder, or their heirs closed the accounts and received the proceeds themselves.

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

#### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His father's first initial, last name and city of residence match the published first initial, last name and city of residence of the Account Owner, and the Claimant's mother's name matches the Power of Attorney Holder's published name. The Claimant indicated that his parents resided at Palackýstr. 74 in Prague, which matches unpublished information about the Account Owner's and the Power of Attorney Holder's address contained in the bank records. In addition, the Claimant indicated that his father was a doctor of chemistry, which is consistent with the unpublished title of the Account

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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.

Owner. The Claimant also established a link to Zurich, where the account is located, and which is consistent with unpublished information contained in the bank records. The CRT notes that there are no other claimants to the account.

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

The Claimant has made a plausible showing that the Account Owner and Power of Attorney Holder were Victims of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, that he lost many German clients because he was Jewish and that the Power of Attorney Holder, the Account Owner's spouse and heir to the account, fled in May or June 1939 to Paris, France, as a result of the Nazi occupation of Czechoslovakia. The Power of Attorney holder later fled from Paris to Chile with her two children.

#### 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 he is Dr. Erwin Hüttner's son.

#### The Issue of Who Received the Proceeds

Given the application of Presumptions (h), (i) and (j) as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), 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 Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his father, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder, nor their heirs received the proceeds of the claimed account.

#### Amount of the Award

In this case, the Account Owner held one custody account. Pursuant to Article 29 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 investigation carried out pursuant to the instructions of the ICEP, 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 31(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

### Division of the Award

According to Article 23(1) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares of representation. In this case, the Claimant is representing his nephew, [REDACTED], the grandson of the Account Owner, in these proceedings. Accordingly, the Claimant and his nephew are each entitled to one-half of total award amount.

### **Scope of the Award**

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claims 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  
April 21, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS  
(AS AMENDED)**

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, 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).