

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Margaret Mary Wadleigh  
represented by Jonathan Palmer, *Mondex Corporation*

## **in re Account of Josef Mahler**

Claim Number: 402170/GO

Award Amount: 15,500.00 Swiss Francs

This Certified Award is based upon the claim of Margaret Mary Wadleigh, née Mahler, (the “Claimant”) to the published account of Josef Mahler (the “Account Owner”) at the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

## **Information Provided by the Claimant**

The Claimant submitted a Claim Form identifying the Account Owner as her paternal grandfather, Josef Mahler, who was born on 12 May 1886 in Austria, and was married to Fritzi Forster. The Claimant indicated that her grandparents had one son, Victor Georg Mahler (the Claimant’s father). The Claimant stated that her grandfather, who was Jewish, was a businessman and that he resided at Rosensteingasse 16, at Taubstummengasse 15 and at Marktgasse 6 in Vienna, Austria, and at Niebuhrstrasse 77 in Berlin, Germany. According to the Claimant, on 13 June 1938 her grandfather was arrested, and by 19 December 1939 he was imprisoned in the Buchenwald concentration camp. Finally, the Claimant indicated that her grandfather died on 27 August 1963 in Reichenhall, Germany, that her grandmother, Fritzi Mahler, died on 11 July 1990 in New Rochelle, New York, the United States, and that her father died on 23 June 1996 in Sierra Madre, California.

The Claimant submitted copies of documents, including: (1) her grandfather’s last will and testament, signed on 3 July 1962 and indicating that Josef Mahler left his residual estate to his wife, Fritzi Mahler, his son, Victor Georg Mahler, and his granddaughter, Margaret Mary Mahler, and that he died on 27 August 1963 in Reichenhall; (2) her grandmother’s last will and testament, signed on 22 June 1983 and indicating that Fritzi Mahler left her residual estate to her son, Victor George Mahler, her daughter-in-law, Wynnaretta Mahler, and her granddaughter,

Margaret Mary Burnham;<sup>1</sup> (3) her grandmother's death certificate, indicating that Fritzi Mahler was born on 24 September 1897 in Austria, that Victor Mahler was her son, and that she died on 11 July 1990 in New Rochelle; (4) her father's last will and testament, signed on 19 July 1991 and indicating that Victor G. Mahler left his residual estate to his wife, Wynnaretta Mahler, and his daughter, Margaret Mary Mahler Wadleigh; (5) her parents' declaration of trust (the "Mahler 1991 Trust"), signed on 19 July 1991, and indicating that Victor G. Mahler and Wynnaretta Mahler left their residual estate to their daughter, Margaret Mary Mahler Wadleigh; (6) her mother's death certificate, indicating that Wynnaretta Mahler was married to Victor Mahler, and that she died on 1 September 1995 in Arcadia, California; (7) her father's first and second amendment to the Mahler 1991 Trust, signed 27 September 1995 and 20 October 1995, respectively, and indicating that Victor G. Mahler's wife, Wynnaretta W. Mahler died on 1 September 1995, and that he left his residual estate to his daughter, Margaret Mary Mahler Wadleigh, and his grandsons, Matthew Burnham and Mason Burnham; (8) her father's death certificate, indicating that he was born on 17 July 1920 in Austria, that Joseph and Fritzi Mahler were his parents, that Margaret Wadleigh was his daughter, and that he died on 23 June 1996 in Sierra Madre.

The Claimant indicated that she was born on 26 April 1946 in New York, New York, the United States.

### **Information Available in the Bank's Record**

The Bank's record consists of a customer card. According to this record, the Account Owner was Josef Mahler who resided in Vienna, Austria. The Bank's record indicates that the Account Owner held a safe deposit box account, number 3654, which was opened on 6 November 1931 and closed on 16 March 1940. The amount in the account on the date of its closure is unknown. There is no evidence in the Bank's records that the Account Owner or his heirs closed the account and received the proceeds themselves

### **Information Available from the Austrian State Archive**

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Josef Mahler, numbered 43814. These records indicate that Josef Mahler was born on 12 May 1886, that he lived at Taubstummengasse 15 in Vienna, Austria, and that he was a business owner, and that he was married to Fritzi Mahler, née Forster.

In his Census declaration, signed 26 July 1938 by Josef Mahler's power of attorney holder, Josef Mahler listed his assets including a residence at Marktgasse 6 in Vienna, a fifth-eighth share,

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<sup>1</sup> The CRT notes that Margaret Mary Wadleigh was previously known as Margaret Mary Burnham.

worth 36,000.00 Reichsmark (“RM”); a 21.66 percent share of two businesses, his shares being worth RM 198,360.00; and several securities and bank accounts held at banks in Austria.

According to these records, Josef Mahler was assessed flight tax (*Reichsfluchtsteuer*) of RM 214,781.00 on total assets of RM 859,122.00 on 13 December 1939.

The records also contain a letter to the Gestapo in Vienna from the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or “VVSt.”), dated 19 December 1938 indicating that Josef Mahler was deported to Buchenwald and a letter to the Finance Ministry (*Finanzamt*) from the VVSt, dated 21 February 1939, indicating that most of Josef and Fritzi Mahler’s assets were aryanized. In addition, these records indicate that as of 7 June 1941 Josef and Fritzi Mahler were both arrested by the Gestapo. The records finally contain official correspondence dealing with the confiscation of Josef Mahler’s assets.

These records make no mention of assets held in a Swiss bank account.

## **The CRT’s Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant’s grandfather’s name matches the published name of the Account Owner. The Claimant identified the Account Owner’s city and country of residence, which matches unpublished information about the Account Owner contained in the Bank’s record. Moreover, the Claimant identified the Account Owner’s street address, profession, spouse’s name, and date of birth, all of which matches information found in the 1938 Census report submitted by Josef Mahler.

In support of her claim, the Claimant submitted documents, including: her grandfather’s last will and testament, and her father’s death certificate, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same country recorded in the Bank’s record as the name and country of residence of the Account Owner.

The CRT notes that the name Josef Mahler appears only once on the List of Account Owners Published in 2005 (the “2005 List”).

The CRT further notes that there are no other claims to this account.

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

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, that he resided in Nazi - controlled Austria, that on 13 June 1938 he was arrested and that by 19 December 1939 he was imprisoned in Buchenwald. The CRT notes that the 1938 Census records submitted by the

Account Owner indicates that as of that as of 21 February 1939 the Reich aryanized the assets owned by Josef and Fritzi Mahler, that as of 19 December 1939 Josef Mahler was deported to Buchenwald, that he was forced to pay a flight tax and that as of as of 7 June 1941 Josef and Fritzi Mahler were both arrested by the Gestapo. The CRT notes that the Account Owner was required to register his assets pursuant to the 1938 Census.

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

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's grandfather. These documents include: her grandfather's last will and testament, indicating that Victor Georg Mahler was the son of Josef Mahler and Fritzi Mahler, and that Margaret Mary Mahler was his daughter; her grandmother's last will and testament, indicating that Victor George Mahler was Fritzi Mahler's son and that Margaret Mary Burnham was his daughter; her grandmother's death certificate, indicating that Victor Mahler was Fritzi Mahler's son; her father's last will and testament, indicating that Margaret Mary Mahler Wadleigh was Victor G. Mahler's daughter; her father's first and second amendment to the Mahler 1991 Trust, indicating that Margaret Mary Mahler Wadleigh was Victor G. Mahler's daughter; and her father's death certificate, indicating that Joseph and Fritzi Mahler were his parents, and that Margaret Wadleigh was his daughter.

The CRT notes that the Claimant indicated that she has other surviving relatives, but that because they are not represented in the Claimant's claim, the CRT will not treat their potential entitlement to the Account Owner's account in this decision.

#### The Issue of Who Received the Proceeds

Given that the account was closed on 16 March 1940, two years after the incorporation of Austria into the Reich in March 1938 (the "*Anschluss*"); that the Account Owner was arrested on 13 June 1938; that he was forced to pay a flight tax; that there is no record of the payment of the Account Owner's account to him; that the Account Owner and his heirs would not have been able to obtain information about his account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (a), (h), 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 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 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 her grandfather, and that

relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

### Amount of the Award

In this case, the Account Owner held one safe deposit box 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 current value of the account being awarded. Based on the investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a Safe Deposit Box was 1,240.00 Swiss Francs (“SF”). The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 15,500.00.

### **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 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  
19 December 2007