

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED 1]  
also acting on behalf of [REDACTED 2]

and to Claimant [REDACTED 3]  
represented by Stephen M. Harnik and [REDACTED]

## **in re Accounts of Robert Schwarz and *Verlag für Fachliteratur GmbH***

Claim Numbers: 213071/AC;<sup>1,2</sup> 215139/AC; 222838/AC; 222839/AC<sup>3</sup>

Award Amount: 140,634.88 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the accounts of Robert Schwarz and the company *Verlag für Fachliteratur*. This Award is to the published account of Robert Schwarz (“Account Owner Schwarz”), over which Hedda Schwarz (“Power of Attorney Holder Schwarz”) and Franz Neumann (“Power of Attorney Holder Neumann”) (together the “Power of Attorney Holders”) held power of attorney, at the Zurich branch of the [REDACTED] (“Bank 1”), and to the unpublished account of the *Verlag für Fachliteratur GmbH* (“Account Owner *Verlag für Fachliteratur*”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (“Bank 2”) (together the “Banks”).

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.

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<sup>1</sup> Claimant [REDACTED 1] submitted two Claim Forms, which were registered under the Claim Numbers 213070 and 213076. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 213070.

<sup>2</sup> Claimant [REDACTED 1] submitted additional claims to the accounts of [REDACTED] and Hans Enoch, which are registered under the Claim Numbers 211908 and 213070. The CRT has issued an award to Claimant Enoch for the accounts of Hans Enoch. See *In re Accounts of Hans Enoch*, which was approved by the Court on 31 December 2003. The CRT will treat the claim to the account of [REDACTED] in a separate decision.

<sup>3</sup> Claimant [REDACTED 3] submitted an additional claim to the published accounts of Robert Schwarz from Germany, which is registered under the Claim Number 222839. The CRT will treat the claim to these accounts in a separate decision.

## Information Provided by the Claimants

### Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying Account Owner Schwarz as his distant cousin by marriage, Robert Schwarz, who was born in 1884, and was married on an unknown date in Vienna, Austria to Hedda Schwarz, née Schweissburg, who was born on 20 October 1895. According to Claimant [REDACTED 1], his cousin's parents were [REDACTED] and [REDACTED], née [REDACTED]. Claimant [REDACTED 1] indicated that his cousin, who was Jewish, had a first cousin named Franz Neumann, whose father was Robert Schwarz's maternal uncle. Claimant [REDACTED 1] stated that Robert Schwarz's maternal aunt, [REDACTED], was his paternal grandmother, making them distant cousins. Claimant [REDACTED 1] indicated that his cousin was a publisher, and that he owned a company called *Verlag für Fachliteratur*, located in Vienna. According to Claimant [REDACTED 1], his cousin lived in Vienna, managing his company, and deposited assets in Switzerland until 1938, when he fled Austria for the Swiss border, where he was stopped and detained at a hospital in Feldkirch, Austria, until his escape in 1938, first to Switzerland and then to Paris, France, where he lived until 1940. Claimant [REDACTED 1] stated that his cousin emigrated in 1940 to Hollywood, California, the United States. Claimant [REDACTED 1] stated that his cousin had two children, [REDACTED], born in 1916, and [REDACTED], née [REDACTED], born in 1918. Claimant [REDACTED 1] indicated that to his knowledge, both of the children of Robert and Hedda Schwarz are deceased. Claimant [REDACTED 1] stated that Robert Schwarz died in 1961 in Los Angeles, California, the United States, and that Hedda Schwarz passed away in 1976, also in Los Angeles. Claimant [REDACTED 1] indicated that he was born on 29 May 1954 in London, England. Claimant [REDACTED 1] represents his brother, [REDACTED 2], who was born on 6 November 1951, also in London.

### Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owner as his father, Robert Schwarz, who was born on 9 August 1884 in Moravska Ostrava, Czechoslovakia (now Ostrava, Czech Republic), and was married on 8 July 1915 in Vienna to Hedda Mary Schwarz, née Schweinburg, who was born on 20 October 1893. Claimant [REDACTED 3] indicated that his father's parents were [REDACTED] and [REDACTED], née [REDACTED], and that Robert and Hedda Schwarz had two children: the Claimant and his sister, [REDACTED], née [REDACTED], who passed away in January 1972 in Haifa, Israel. According to Claimant [REDACTED 3], his father was a publisher who owned a company called *Verlag für Fachliteratur*, whose offices were located at Vegagasse 4, in Vienna XIX. Claimant [REDACTED 3] stated that his father lived in Vienna until 16 March 1938, when he attempted to flee, but was then interned in Feldkirch for about ten days, after which he fled to France, and eventually emigrated to the United States in 1939. Claimant [REDACTED 3] indicated that his father died on 25 June 1961 in Los Angeles, and that his mother died on 9 June 1976, also in Los Angeles. Claimant [REDACTED 3] submitted a copy of his birth certificate, which indicates that [REDACTED 3] was born on 8 May 1916 in Vienna, and that his parents were Robert Schwarz, who was an engineer, and Hedwig Schwarz, née Schweinburg; and a copy of his mother's Last Will and Testament, dated 3 May 1965, which indicates that she had a son named

[REDACTED 3], and which names her son as one of her beneficiaries. Claimant [REDACTED 3] indicated that he was born on 8 May 1916 in Vienna.

## **Information Available in the Banks' Records**

### Bank 1

Bank 1's records consist of two power of attorney forms and printouts from the Bank's database. According to these records, Account Owner Schwarz was Robert Schwarz, an engineer who resided at Vegagasse Nr. 4, Vienna XIX, Austria, and the two Power of Attorney Holders were *Frau* (Mrs.) Hedda Schwarz, the Account Owner's wife, who also resided at Vegagasse Nr. 4, Vienna XIX, Austria, and *Herr* (Mr.) Dr. Franz Neumann. Bank 1's records indicate that the Account Owner held an account, the type of which is not indicated.

Bank 1's records do not show when the account at issue was closed, 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. There is no evidence in Bank 1's records that Account Owner Schwarz, the Power of Attorney Holders or their heirs closed the account and received the proceeds themselves.

### Bank 2

The auditors who carried out the ICEP Investigation did not investigate Bank 2.

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

By decree on 26 April 1938, the Nazi Regime required all Jews 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 *Ing.* (Engineer) Robert Schwarz, numbered 43985. These documents, dated 30 July 1938, indicate that Robert Schwarz resided at Vegagasse 4, Vienna XIX, that he was born on 6 September 1884, and that he was married to Hedda Schwarz, née Schweinburg. These records further indicate that Robert Schwarz was the owner of a publishing company called *Verlag für Fachliteratur GmbH*, the value of which was estimated to be 370,000.00 Reichsmark ("RM"). The 1938 Census records were filed by the Nazi-appointed provisional administrator of the *Verlag für Fachliteratur*.

According to the 1938 Census records, Robert Schwarz owned real estate in Vienna and in Berlin, Germany, and together with *Verlag für Fachliteratur*, held non-Swiss bank accounts with

a total value of RM 183,201.16. These records also indicate that *Verlag für Fachliteratur* held an account of unknown type at Bank 2, which was valued at 7,300.79 Swiss Francs ("SF"), as of April 1938. The 1938 Census records indicate further that Robert Schwarz was arrested in Feldkirch and subsequently fled Austria with his family no later than 25 March 1938. According to the 1938 Census records Robert Schwarz was assessed *Reichsfluchsteuer* ("flight tax") of RM 196,933.00, *in absentia*, on 22 November 1938. Additionally, the records show that criminal proceedings were opened against Robert Schwarz based on a suspicion that he deposited his assets abroad. The 1938 Census records make no mention of assets deposited at Bank 1.

## **The CRT's Analysis**

### Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (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 four claims of the Claimants in one proceeding.

### Identification of the Account Owners

Claimant [REDACTED 1] has plausibly identified the Account Owners. Claimant [REDACTED 1]'s cousin's name and city and country of residence match the published name and city and country of residence of Account Owner Schwarz. The names of Claimant [REDACTED 1]'s cousin's wife and his other cousin match the published names of the Power of Attorney Holders. Claimant [REDACTED 1] identified Account Owner Schwarz's spouse's name, which matches unpublished information about Account Owner Schwarz contained in Bank 1's records. Claimant [REDACTED 1] also identified the fact that Account Owner Schwarz was the owner of a company called *Verlag für Fachliteratur*, which matches the name of Account Owner *Verlag für Fachliteratur* in the records from the Austrian State Archive.

Claimant [REDACTED 3] has also plausibly identified the Account Owners. Claimant [REDACTED]'s father's name and city and country of residence match the published name and city and country of residence of Account Owner Schwarz. Claimant [REDACTED 3]'s mother's name matches the published name of Power of Attorney Holder Schwarz. Claimant [REDACTED 3] identified his father's profession, spouse's name, and street address, which match unpublished information about Account Owner Schwarz contained in Bank 1's records. Claimant [REDACTED 3] also identified the fact that Account Owner Schwarz was the owner of the company *Verlag für Fachliteratur*, which matches the unpublished name of Account Owner *Verlag für Fachliteratur* in the records from the Austrian State Archive.

In support of his claim, Claimant [REDACTED 3] submitted documents, including his own birth certificate, which indicates that he was born in Vienna, and that his father was Robert Schwarz, who was an engineer, providing independent verification that the person who is claimed to be the Account Owner had the same name, resided in the same city, and had the same profession

recorded in the Bank's records as the name, city of residence, and profession of the Account Owner.

Additionally, the CRT notes that the Claimants submitted their Claim Forms independently, without knowledge of each other's claims, and that the information provided by each of the Claimants regarding the Account Owner and the Power of Attorney Holders is consistent, which strengthens the credibility of their claims. The CRT notes that the other claims to this account were disconfirmed because those claimants provided a different profession, spouse's name, or country of residence than the Account Owner's profession, wife's name, and country of residence, or because they provided a family tree and street address that were inconsistent with the information provided by the Claimants and with the information available in Bank 1's records and in the 1938 Census records.

#### Status of Account Owner Schwarz as Victim of Nazi Persecution

The Claimants have made a plausible showing that Account Owner Schwarz was a Victim of Nazi Persecution. The Claimants stated that Account Owner Schwarz was Jewish, and that after fleeing Vienna after the Nazi invasion in 1938, he was detained in Feldkirch before fleeing to France, where he lived until immigrating to the United States.

#### The Claimants' Relationship to the Account Owners

Claimant [REDACTED 1] has plausibly demonstrated that he is related to Account Owner Schwarz by submitting specific information, demonstrating that Account Owner Schwarz was Claimant [REDACTED 1]'s cousin, and that Account Owner *Verlag für Fachliteratur* was a company owned by Account Owner Schwarz. The CRT notes that Claimant [REDACTED 1] identified unpublished information about Account Owner Schwarz as contained in Bank 1's records, and that the information he submitted is consistent with the information provided by Claimant [REDACTED 1], which supports the plausibility that Claimant [REDACTED 1] is related to Account Owner Schwarz, as he has asserted in his Claim Form.

Claimant [REDACTED 3] has plausibly demonstrated that he is related to Account Owner Schwarz, who was also the owner of Account Owner *Verlag für Fachliteratur*, by submitting specific information and documents, demonstrating that Account Owner Schwarz was Claimant [REDACTED 3]'s father. These documents include a copy of his own birth certificate, which indicates that his father's name was Robert Schwarz.

#### The Issue of Who Received the Proceeds

With respect to the account of unknown type held by Account Owner Schwarz at Bank 1, given that there is no record of the payment of the Account Owner Schwarz's account to him nor any record of a date of closure of the account; that Account Owner Schwarz and his heirs would not have been able to obtain information about his account after the Second World War from Bank 1 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 (h) and (j), as provided in Article 28 of the

Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Schwarz, the Power of Attorney Holders, 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.

With respect to the account of unknown type held by Account Owner *Verlag für Fachliteratur* at Bank 2, the facts of this case are similar to other cases that have come before the CRT, in which Jewish nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts were closed unknown to whom or were transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account were ultimately confiscated by the Nazi regime; that the account was reported in the 1938 Census; that Account Owner Schwarz lived in Austria until he fled to France, and therefore could not have repatriated the accounts without losing ultimate control over their proceeds; and given the application of Presumptions (d), (h), and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners 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 [REDACTED 3]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 3] has plausibly demonstrated that Account Owner Schwarz was his father, and that Account Owner *Verlag für Fachliteratur* was a company owned by his father, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, nor the Power of Attorney Holders nor their heirs received the proceeds of the claimed accounts.

Further, the CRT notes that Claimant [REDACTED 3], as Account Owner Schwarz's son, has a better entitlement to the account than Claimant [REDACTED 1], the cousin of Account Owner Schwarz.

#### Amount of the Award

In this case, the Account Owners each held one account of unknown type.

With respect to the account of unknown type held by Account Owner Schwarz, 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 ICEP Investigation, in 1945 the average value of an account of unknown type was SF 3,950.00. 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 an amount of SF 49,375.00.

With respect to the account of unknown type held by Account Owner *Verlag für Fachliteratur*, the 1938 Census records indicate that the value of the account as of April 1938 was SF 7,300.79. The current value of the amount of the award is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount of SF 91,259.88.

Consequently, the total award amount in this case is SF 140,634.88.

#### Division of the Award

As indicated above, Claimant [REDACTED 3] has a better entitlement to the accounts than Claimant [REDACTED 1] and his brother, [REDACTED 2], and is therefore solely entitled to the entire award amount.

#### **Scope of the Award**

The Claimants should be aware that, pursuant to Article 20 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  
18 November 2004