

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Robert William Fischer

## **in re Account of Rosa Fischer**

Claim Number: 208936/ES

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Robert William Fischer (the “Claimant”) to the account of Wilhelm Fischer.<sup>1</sup> This Award is to the account of Rosa Fischer, née Terk (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 his mother as Rosa Fischer, née Terk, who was born on 15 February 1910 in Vilno, Lithuania, and was married to Wilhelm Fischer. In a telephone conversation with the CRT, the Claimant stated that his mother was a piano professor at a university in Germany before she married his father. The Claimant stated that his parents, who were Jewish, lived in Nordstrasse in Leipzig, Germany until 1933, and that his father owned a wholesale business for furs in Leipzig called *Karl Fischer Ambrühl*.

The Claimant stated, that in 1933, his parents fled to France and lived at 38 rue de Courcelles in Paris until 1941. According to the Claimant, after his family fled to Paris, his father founded a wholesale business at 22 rue Bergere called *W. Fischer Pelletries en Gros*. The Claimant asserted that his family was very rich and that he recalls hearing family conversations regarding money and jewelry that were sent to Switzerland.

The Claimant indicated that he was born on 23 March 1934 in Paris. The Claimant stated that, in 1941, his family fled to Nice, France and lived there at 6 bis rue Meyerbeer until they were deported to the Drancy concentration camp on 15 September 1943. The Claimant further stated that his mother, father, and sister were deported from Drancy to Auschwitz on 28 October 1943, and that on 23 November 1944, they were deported to the Ravensbrück concentration camp,

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<sup>1</sup> The CRT will treat the claim to this account in a separate decision.

where they were all killed. The Claimant stated that he is the sole survivor of his family. In a telephone call with the CRT, the Claimant explained that he was at school the day his family was deported to Drancy concentration camp, and that is how he survived.

In support of his claim, the Claimant submitted his birth certificate, which identifies him as the son of Rosa Fischer. The Claimant also submitted letters from the Auschwitz museum, the American Red Cross, the International Tracing Service, and official decisions from the French Ministry of War Victims, all describing the fate of his parents and sister. The Claimant also submitted a bill of exchange from his father's business in Paris. The Claimant previously submitted an ATAG Ernst & Young claim form in 1997, asserting his entitlement to a Swiss bank account owned by his father, Wilhelm Fischer.

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

The bank record consists of printouts based on a bank registry card. According to this record, the Account Owner was Rosa Fischer, who resided in France. The bank record indicates that the Account Owner held an account of unknown type, which at an unknown date held a balance of 2,615.00 Swiss Francs. The bank record does not show when the account at issue was closed or to whom it was paid.

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 or her heirs closed the account and received the proceeds themselves.

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

#### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His mother's name matches the published name of the Account Owner. In support of his claim, the Claimant submitted documents, including a letter from the International Tracing Service asserting his mother's date and place of birth and death and his own birth certificate.

The CRT notes that the bank records do not contain any specific information about the Account Owner other than her name. Thus, the additional information provided by the Claimant cannot be compared with the bank information.

The CRT notes that the Claimant filed an ATAG Ernst & Young claim form in 1997 asserting his entitlement to a Swiss bank account owned by his father Wilhelm Fischer, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based his 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 his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimant.

The CRT further notes that other claims to this account were disconfirmed because those claimants provided an incorrect first name or county of residence of the Account Owner.

#### 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 and was deported to Auschwitz and then to Ravensbrück, where she was killed. The Claimant submitted letters from the Auschwitz museum, the American Red Cross, the International Tracing Service and official decisions from the French Ministry of War Victims, all describing the fate of his mother Rosa Fischer.

#### 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 the Account Owner was his mother. The Claimant submitted his own birth certificate, showing that Rosa Fischer, née Terk, was his biological mother.

#### The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) contained in Appendix A,<sup>2</sup> the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or her heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his mother, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her 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 because there is no date of the value of the account, the average value of the same or a similar

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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).

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 an account of unknown type was 3,950.00 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 47,400.00 Swiss Francs.

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 30,810.00 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 his claim 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

November 26, 2002

## 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*

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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).