

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1]
represented by [REDACTED]

and to Claimant [REDACTED 2]
also acting on behalf of [REDACTED 3]
represented by [REDACTED]¹

in re Accounts of Max Bandler

Claim Numbers: 200065/HS; 500374/HS

Original Award Amount: 242,750.00 Swiss Francs

Award Amendment Amount: 1,017,953.75 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) and [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published and unpublished accounts of Max Bandler (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All award amendments are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relative of the claimants other than the account owner, and the bank have been redacted.

Procedural History

On 30 December 2004, the Court approved an Award to the Claimants for a custody account and three demand deposit accounts owned by the Account Owner (the “December 2004 Award”). At the time of that award, the bank records then available to the CRT did not contain information regarding the value of the awarded custody account. However, the Bank recently made available to the CRT additional information about this account, including detailed documentation on the portfolios held in the account. In this Award Amendment, the CRT adopts and amends its

¹ On 30 December 2004, the Court approved an award to [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) for the accounts of Max Bandler (the “December 2004 Award”), which is the subject of this Award Amendment.

findings set out in the December 2004 Award based upon this additional information recently forwarded to the CRT by the Bank.

The December 2004 Award

In the December 2004 Award, the CRT determined that the Account Owner owned a custody account and three demand deposit accounts. The CRT further determined that the Claimants plausibly identified the Account Owner, that they plausibly demonstrated that they are related to the Account Owner, and that they made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Additionally, the CRT determined that it is plausible that the Account Owner did not receive the proceeds of his accounts and that Claimant [REDACTED 2] and represented party [REDACTED 3], as the wife and child, respectively, of the Account Owner, were each entitled to one-half of the award amount.

Finally, the CRT determined that the Bank's record did not indicate the value of the custody account, and therefore presumed that the value of the custody account was 13,000.00 Swiss Francs ("SF").

Information Available in the Bank's Records

As detailed in the December 2004 Award, the only record previously available from the Bank was a customer card, which indicates the name and city of residence of the Account Owner. This record also indicates that the Account Owner held three demand deposit accounts and one custody account numbered L46363. According to this record, the demand deposit accounts were closed on 20 April 1938 and the custody account was closed on 27 April 1938.

As noted above, the Bank recently provided the CRT with additional documents regarding the custody account. These documents include a custody account identification card ("*Leitkarte*") and custody account portfolio holding cards ("*Depotvalorenkarten*") for each security held within the custody account.

These documents indicate that at the time when the Account Owner was deemed to have lost control over the account, it contained held the following securities:

- *6% City of Vienna extended sinking fund gold bonds per 1 Nov. 1952* with a nominal value of 4,500.00 United States Dollars ("US \$"), which were transferred to the Bank's Geneva branch on 13 April 1938;
- *6% Republic of Chile extended sinking fund bonds per 1 April 1960* with a nominal value of US \$5,000.00, which were transferred to the Bank's Geneva branch on 22 April 1938 (the actual repository for the shares was listed first as *A. Iselin & Co.* and, at an unspecified later date, *Bank of the Manhattan Co.*, both located in New York, the United States);
- *6½% Lower Austrian Hydro-Electric Power Comp. (Newag) 2 year closed 1 st mortgage sinking fund gold bonds per 1 August 1944* with a nominal value of US \$6,000.00, which were transferred to the Bank's Geneva branch on 13 April 1938;

- *6½% Niederösterreichische Landesanleihe von 1934* bonds with a nominal value of 22,000.00 Austrian Schillings (“AS”), which were transferred to the Bank’s Geneva branch on 13 April 1938;
- *7% Austrian Government International Loan of 1930 sinking fund gold bonds per 1 July 1957 amerikanische Tranche* with a nominal value of US \$10,600.00, which were transferred to the Bank’s Geneva branch on 13 April 1938;
- *7% Internationale Anleihe Republik Oesterreich von 1930 englische Tranche* bonds with a nominal value of 600.00 Pounds Sterling (“£”), which were transferred to the Bank’s Geneva branch on 13 April 1938;
- *100 Canadian Pacific Railway Co.* common shares with a nominal value of US \$25.00 per share, which were transferred to the Bank’s Geneva branch and designated exempt (“*freigestellt*”) on 22 April 1938 (the actual repository for the shares is listed as the *Guaranty Trust Co. of New York* in New York);
- *50 Oesterreichische Credit-Anstalt – Wiener Bankverein, Wien* preferred shares with a nominal value of AS 375.00 per share, which were transferred to the Bank’s Geneva branch on 13 April 1938;
- *50 Oesterreichische Credit-Anstalt – Wiener Bankverein, Wien* redemption certificates without nominal value, which were transferred to the Bank’s Geneva branch on 13 April 1938;
- *20 Société Nationale des Chemins de Fer Belges Bruxelles 6 schweizerische Tranche 6%* preferred shares series “A” with a face value of 500.00 Belgian Francs (“BF”) per share, which were transferred to the Bank’s Geneva branch on 13 April 1938; and
- *100 Standard Brands Inc.* common shares without face value, which were transferred to the Bank’s Geneva branch on 22 April 1938 (the actual repository for the shares is listed as the *Guaranty Trust Co. of New York* in New York).

There is no information in the Bank’s records as to the disposition of these securities following their transfer to the Bank’s Geneva branch. Nor is there any evidence of an account held in Geneva by the Account Owner. There is no evidence that the Account Owner or his heirs received the proceeds of these securities.

The CRT’s Analysis

Basis for the Award Amendment

The CRT has determined that an Award Amendment may be made in favor of Claimant [REDACTED 2] and represented party [REDACTED 3]. The CRT previously determined in the December 2004 Award that the claims are admissible in accordance with Article 18 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), that the Claimants have plausibly demonstrated that they are related to the Account Owner, and that it is plausible that neither the Account Owner nor his heirs received the proceeds of his accounts.

Value of the accounts in the December 2004 Award

In the December 2004 Award, the Account Owner held three demand deposit accounts and one custody account. The value of the demand deposit accounts remains unaffected.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for the custody account in December 2004, 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 upon the investigation conducted by the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), in 1945 the average value of a custody account was SF 13,000.00.

Amount of the Award Amendment

According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal value on the date the account owner is deemed to have lost control over the account. The CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond to maturity to avoid a capital loss. Additionally, the market value of bonds shall be awarded if that value was above the nominal value on the date the account owner is deemed to have lost control over the account. Stocks are valued at market value. In this case, since there is no further indication of the disposition of the Account Owner’s securities following their transfer to Geneva, the CRT shall use the transfer dates to determine the relevant values for the securities.

According to the additional information from the Bank, the Account Owner held a custody account numbered L46363 with the following securities:

- *6% City of Vienna extended sinking fund gold bonds per 1 Nov. 1952* with a nominal value of US \$4,500.00. These bonds were transferred on 13 April 1938. The nearest market price available is 27 April 1938, at which time these bonds were in default and trading at 23.5%.² Therefore, these bonds shall be valued at their market value of US \$1,057.50, which was equivalent to SF 4,621.28.³
- *6% Republic of Chile extended sinking fund bonds per 1 April 1960* with a nominal value of US \$5,000.00. These bonds were in default and trading at 16.75% when transferred on 22 April 1938.⁴ Therefore, these bonds shall be valued at their market value of US \$837.50, or SF 3,659.88.

² The market value for this security was obtained from the Austrian State Archive (Archive of the Republic, Finance). Shortly after the March 1938 incorporation of Austria into the Reich (the “*Anschluss*”), Jewish residents and non-resident nationals of the Reich, including Austria, who had assets worth at least 5,000.00 Reichsmarks, were ordered to declare the value of all they owned as of 27 April 1938 (the “1938 Census”). The bulk of the 1938 Census records for Austria still exist (more than 48,000 of an estimated 52,000 for Austria). These records serve as the only source of contemporaneous market values for a number of Austrian securities. In a case such as this, a security’s market value may come from a 1938 Census declaration submitted by a person other than the account owner.

³ The CRT uses official exchange rates when making currency conversions.

⁴ The market value for this security was obtained from the New York Times, 23 April 1938.

- *6½% Lower Austrian Hydro-Electric Power Comp. (Newag) 2 year closed 1 st mortgage sinking fund gold bonds per 1 August 1944* with a nominal value of US \$6,000.00. These bonds were in default and trading at 23.25% when transferred on 13 April 1938.⁵ Therefore, these bonds shall be valued at their market value of US \$1,395.00, or SF 6,096.15.
- *6½% Niederösterreichische Landesleihe von 1934* bonds with a nominal value of AS 22,000.00. Following the incorporation of Austria into the Reich (the “Anschluss”) in March 1938, Austrian Schillings (“AS”) were converted into Reichsmark (“RM”) at a rate of AS 1.50 to RM 1.00. Thus, the post-*Anschluss* nominal value of the bonds is RM 14,666.00. Since these bonds were of good quality and had a market value of 102% when transferred on 13 April 1938, the market value will be used to determine their value.⁶ Thus the total market value of these bonds was RM 14,959.32, or SF 26,250.61.
- *7% Austrian Government International Loan of 1930 sinking fund gold bonds per 1 July 1957 amerikanische Tranche* with a nominal value of US \$10,600.00. These bonds were in default and trading at 32% when transferred on 13 April 1938.⁷ Therefore, these bonds shall be valued at their market value of US \$3,392.00, or SF 14,823.04.
- *7% Internationale Anleihe Republik Oesterreich von 1930 englische Tranche* bonds with a nominal value of £ 600.00. These bonds were in default and trading at 40.5% when transferred on 13 April 1938.⁸ Therefore, these bonds shall be valued at their market value of £ 243.00, or SF 5,192.91.
- *100 Canadian Pacific Railway Co.* common shares with a face value of US \$25.00 per share. These shares were trading at US \$6.8125 per share when transferred on 22 April 1938. Thus the total market value of these shares was US \$681.25, or SF 2,977.06.
- *50 Oesterreichische Credit-Anstalt – Wiener Bankverein, Wien* preferred shares with a nominal value of AS 375.00 per share. These shares were transferred on 13 April 1938. The nearest market price available is 27 April 1938, at which time the shares were trading at AS 330.00 per share.⁹ The total market value of the shares was AS 16,500. For purposes of calculation this amount is converted to RM 11,000.00, equivalent to SF 19,302.80.
- *50 Oesterreichische Credit-Anstalt – Wiener Bankverein, Wien* redemption certificates without nominal value. These certificates were transferred on 13 April 1938. The nearest market price available for these certificates is 27 April 1938, at which time they were trading at AS 110.50 each.¹⁰ Thus the total market value was AS 5,525.00. For purposes of calculation this amount is converted to RM 3,683.33, or SF 6,463.51.
- *20 Société Nationale des Chemins de Fer Belges Bruxelles Schweizerische Tranche* series “A” preferred shares with a face value of BF 500.00. Their market value was SF 81.75 per share when they were transferred on 13 April 1938.¹¹ Thus the total market value for the shares was SF 1,635.00.

⁵ The market value for this security was obtained from Moody’s Utilities 1940, 630.

⁶ The market value for this security was obtained from Compass Oesterreich 1940, 152.

⁷ The market value for this security was obtained from the New York Times, 14 April 1938.

⁸ The market value for this security was obtained from the Financial Times, 14 April 1938.

⁹ The market value for this security was obtained from the Austrian State Archive. See note 2 *supra*.

¹⁰ *Id.*

¹¹ The market value for this security was obtained from the Zürcher Kursblatt, 31 December 1938.

- 100 *Standard Brands Inc.* common shares without nominal value. The market rate for these shares was US \$7.8125 each when they were transferred on 22 April 1938.¹² Thus the total market value of these shares was US \$ 781.25, or SF 3,414.06.¹³

The CRT notes that certain securities in the account were transferred to another branch of the Bank. The CRT notes that the Bank's records do not indicate the owner of the account to which these securities were transferred. However, even if these accounts were owned by the Account Owner, there is no record of either the closure date of these accounts or the ultimate disposition of the securities contained within them. Accordingly, the CRT concludes that the Account Owner did not receive these securities or their proceeds.

Therefore, the Bank's records indicate that the total value of the custody account before its closure on 27 April 1938 was SF 94,436.30. The Article 29 value of SF 13,000.00, which was used in the December 2004 Award, is then subtracted from the actual historic value, resulting in a difference of SF 81,436.30. The current value of this amount is determined by multiplying this difference by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total Award Amendment amount of SF 1,017,953.75.

Division of the Award Amendment

According to Article 23(1)(b) of the Rules, if the Account Owner's spouse and descendants have submitted a claim, the spouse shall receive one-half of the account and any descendants who have submitted a claim shall receive the other half in equal shares by representation. Accordingly, Claimant [REDACTED 2] and [REDACTED 3], as the Account Owner's spouse and child, respectively, are each entitled to one-half of the total Award Amendment amount. Claimant [REDACTED 1], who is related to the Account Owner by marriage only, is not entitled to a share in the Award Amendment.

Scope of the Award Amendment

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).

¹² The market value for this security was obtained from the *New York Times*, 23 April 1938.

¹³ As noted above, the Bank's records indicate that the actual repository for the shares was the *Guaranty Trust Co. of New York* in New York. The CRT notes that Swiss assets located in the United States were frozen in June 1941 (the "1941 Freeze"), over three years following the incorporation of Austria into the Reich in March 1938 (the "Anschluss"). The CRT further notes that the Bank's records do not indicate the ultimate disposition of these shares. Given these facts, the CRT presumes that the shares may have been transferred back to Switzerland prior to the 1941 Freeze, and that the Account Owner did not receive them or their proceeds.

Certification of the Award Amendment

The CRT certifies this Award Amendment for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
30 June 2008