

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award Amendment**

to Claimant [REDACTED]<sup>1</sup>

**in re Account of Max Behr**

Claim Numbers: 213908/DE

Original Award Amount: 162,500.00 Swiss Francs

Award Amendment Amount: 144,211.88. Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED] (the “Claimant”) to the published accounts of Max Behr (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 Claimant for a custody account owned by the Account Owner (the “December 2004 Award”). At the time of that award, the bank records 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 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. The CRT further determined that the Claimant plausibly identified the Account Owner, that he plausibly demonstrated that he is related to the Account Owner, and that he made a

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<sup>1</sup> On 30 December 2004, the Court approved an award to Claimant [REDACTED] (the “Claimant”) for the accounts of Max Behr (the “December 2004 Award”), which is the subject of this Award Amendment.

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 account and that the Claimant was entitled to the entire 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 Record**

As detailed in the December 2004 Award, the Bank's record indicate that the account owner was Max Behr, who resided in Regensburg, Germany. The records indicate that the Account Owner held one custody account, numbered L40543, which was closed on 21 October 1935, subsequently re-opened, and then closed again on 27 September 1938. There is no evidence in the Bank's record that the Account Owner or his heirs closed the accounts and received the proceeds themselves.

As noted above, the Bank recently provided the CRT with additional documents regarding custody account L49543. These documents contained 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 the Account Owner was deemed to have lost control over the account, it contained the following securities:

- 4.25% *City of New York Corp. Stock per 1. Sept. 1960* bonds with a face value of 2,000.00 United States Dollars ("US\$"), which were sold on 23 April 1937; and
- 4.25% *City of New York Corp. Stock per 1. Sept. 1960* bonds with a face value of US \$3,000.00, which were transferred, on 23 September 1938, to another account within the Bank, numbered 15200, the owner of which is not known.

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

#### Basis for the Award Amendment

The CRT has determined that an Award Amendment may be made in favor of the Claimant. The CRT previously determined in the December 2004 Award that the claim is admissible in accordance with Article 18 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), that the Claimant has plausibly demonstrated that he is related to the Account Owner, and that it is plausible that neither the Account Owner nor his heirs received the proceeds of his account.

#### Value of the accounts in the December 2004 Award

In the December 2004 Award, the Account Owner held one custody account.

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 face value of bonds not in default shall be awarded if the market value was below the face 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. The market value of bonds shall be awarded if that value was above the face value on the date the account owner is deemed to have lost control over the account.

According to the additional information from the Bank, the Account Owner held the following securities in custody account 40543:

- 4.25% *City of New York Corp. Stock per 1. Sept. 1960* bonds with a face value of US\$ 2,000.00. These bonds were of good quality and were trading at 112.50% when sold on 23 April 1937.<sup>2</sup> Since these bonds were of good quality and had market values above their face value, the market value will be used to determine the value of this asset. The total market value of these bonds was US\$ 2,245.00, which was equivalent to SF 9,788.20;<sup>3</sup> and
- 4.25% *City of New York Corp. Stock per 1. Sept. 1960* bonds with a face value of US\$ 3,000.00. These bonds were of good quality and were trading at 112.50% when transferred on 23 September 1938 to an account, numbered 15200, the owner of which is not known. Since these bonds were of good quality and had market values above their nominal value, the market value will be used to determine the value of this asset. The total market value of these bonds was US\$ 23,375.00, which was equivalent to SF 14,748.75.<sup>4</sup>

The CRT notes that the Bank’s records do not indicate who owned the account numbered 15200, into which one of the securities was transferred, and that this account number appears as the transfer destination for other, unrelated accounts. Even if this account was held by the respective owners of the accounts from which these securities originated, the records do not indicate when the account was closed, or the disposition of the securities contained within it. 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, numbered 40543, before its closure in September 1938 was SF 24,536.95. 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 11,536.95. The current value of this amount is

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<sup>2</sup> The market value for this security was obtained from *The New York Times*, 24 April 1937.

<sup>3</sup> The CRT uses official exchange rates when making currency conversions.

<sup>4</sup> The market value for this security was obtained from *The New York Times*, 24 September 1938.

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 144,211.88.

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

The Claimant should be aware that, pursuant to Article 20 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 Amendment**

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

Claims Resolution Tribunal  
29 September 2008