

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award Amendment**

to [REDACTED 1]  
represented by *Hoerner Bank AG*

and to Claimant [REDACTED 2]<sup>1</sup>

## **in re Accounts of Richard Bial and Gertrud Bial**

Claim Numbers: 202287/MBC<sup>2</sup>; 221201/MBC

Original Award Amount: 237,447.50 Swiss Francs

Award Amendment Amount: 163,375.00 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) to the published accounts of Richard Bial and Gertrud Bial-Quetscher, and upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) (together the “Claimants”) to the published accounts of Franz Bial.<sup>3</sup> This Award Amendment is to the accounts of Richard Bial (“Account Owner Richard Bial”) and Gertrud Bial (“Account Owner Gertrud Bial”) (together the “Account Owners”) 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 claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

## **Procedural History**

On 20 May 2004 the Court approved an Award to Claimant [REDACTED 2] for three accounts owned by the Account Owners (the “May 2004 Award”). In this Award Amendment, the CRT

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<sup>1</sup> On 20 May 2004, the Court approved an award to Claimant [REDACTED 2] (“Claimant [REDACTED 2]”) for the accounts of Richard Bial and Gertrud Bial (the “May 2004 Award”), which is the subject of this Award Amendment.

<sup>2</sup> Claimant [REDACTED 2] submitted two Claim Forms claiming the published accounts of Richard Bial and Gertrud Bial, which were registered under the Claim Numbers 202287 and 202288. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Number 202287. Claimant Hedges submitted two additional claims, which are registered under the Claim Numbers 202289 and 202286. The CRT will treat these claims in separate determinations.

<sup>3</sup> The CRT approved an award to Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) and Claimant [REDACTED 2] for the accounts of Dr. Franz Bial on 25 October 2002 (the “October 2002 Award”).

adopts and amends its findings to address the entitlement of Claimant [REDACTED 1] and the valuation of Account Owner Gertrud Bial's custody account. The CRT notes that although Claimant [REDACTED 1] had filed a timely claim to the awarded accounts, his claim was not considered in the May 2004 Award. Subsequent review of Claimant [REDACTED 1]'s claim indicates that he is entitled to share in the original award amount, and that the value of Account Owner Gertrud Bial's custody account should be increased, as detailed below.

On 25 October 2002, the Court approved an Award to Claimant [REDACTED 2] and Claimant [REDACTED 1] for five accounts owned by Dr. Franz Bial, who was Claimant [REDACTED 1]'s maternal grandfather and Claimant [REDACTED 2]' paternal uncle (the "October 2002 Award"). In that decision, the CRT determined that Claimant [REDACTED 1], who was Dr. Franz Bial's direct descendant, was more entitled to the October 2002 Award amount than Claimant [REDACTED 2], who was the descendant of Dr. Franz Bial's parents. This Award Amendment does not alter any aspect of the October 2002 Award.

### **The May 2004 Award**

In the May 2004 Award, the CRT determined that Account Owner Gertrud Bial owned one demand deposit account and one custody account, and that Account Owner Richard Bial owned one demand deposit account and one custody account. Additionally, the CRT determined that Claimant [REDACTED 2] plausibly identified the Account Owners, that she plausibly demonstrated that she is related to the Account Owners, and that she made a plausible showing that the Account Owners were Victims of Nazi Persecution. The CRT further determined that Account Owner Richard Bial received the proceeds of his custody account, since it was closed on 18 October 1937, nearly six months before the incorporation of Austria into the German Reich in March 1938 (the "*Anschluss*"), but that it was plausible that the Account Owners did not receive the proceeds of the remaining three accounts. With respect to Account Owner Richard Bial's demand deposit account, the CRT noted that the Bank's record did not indicate the value of the account, and therefore presumed that its value was 2,140.00 Swiss Francs ("SF"). With respect to Account Owner Gertrud Bial's accounts, the CRT determined that the value of the demand deposit account was SF 11,000.00, and that the value of the custody account was SF 5,855.80. The CRT determined that the amount of the May 2004 Award was SF 237,447.50, and that Claimant [REDACTED 2] was entitled to the entire award amount.

### **Information Provided by Claimant [REDACTED 1]**

Claimant [REDACTED 1] submitted a Claim Form identifying [REDACTED] as his maternal grandfather. According to Claimant [REDACTED 1], his grandfather resided in Berlin, Germany until approximately 1928, and then he resided in Vienna, Austria until his death on 27 December 1937. Claimant [REDACTED 1] did not identify the Account Owners as his relatives in his claim form.

Claimant [REDACTED 1] indicated that he was born on 3 November 1942.

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

As detailed in the May 2004 Award, the Bank's records indicate the names and addresses of the Account Owners and the name and address of a contact person for their accounts. According to these records, Account Owner Richard Bial held one demand deposit account and one custody account, and Account Owner Gertrud Bial also held one demand deposit account and one custody account. These records indicate the closing date of the Account Owners' custody accounts, but not of their demand deposit accounts, which were presumed to have been closed on an unknown date. These records also indicate that the Account Owners were married.

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

As detailed in the May 2004 Award, 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"). Records from the Austrian State Archives indicate the names and addresses of Richard and Gertrud Bial, who were married. These records also indicate the name of Richard Bial's brother, and list the value of two accounts held by Account Owner Gertrud Bial at the Bank.

## **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 two claims of the Claimants in one proceeding.

### Claimant [REDACTED 1]'s Identification of the Account Owners

The CRT notes that Claimant [REDACTED 1] did not identify the Account Owners. However, in the May 2004 Award, the CRT determined that Claimant [REDACTED 2], who is related to Claimant [REDACTED 1], plausibly identified the Account Owners as her uncle and his wife. Thus, it is clear that Account Owner Richard Bial was Claimant [REDACTED 1]'s great-uncle (the brother of his maternal grandfather, [REDACTED]) and that Account Owner Gertrude Bial was Claimant [REDACTED 1]'s great-aunt.

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

In the May 2004 Award, the CRT determined that the Account Owners were Victims of Nazi Persecution.

### Claimant [REDACTED 1]'s Relationship to the Account Owners

In the May 2004 Award the CRT determined that Claimant [REDACTED 2] had plausibly demonstrated that Account Owner Richard Bial was her father's brother and that Account Owner Gertrud Bial was the Account Owner Richard Bial's wife. In the October 2002 Award, the CRT determined that Claimant [REDACTED 2] had plausibly demonstrated that [REDACTED] was her father's brother, and that Claimant [REDACTED 1] had plausibly demonstrated that [REDACTED] was his maternal grandfather.

Therefore, based on a comparison between the May 2004 Award and the October 2002 Award, the CRT determines that it is plausible that the Account Owners were also Claimant [REDACTED 1]'s great-uncle and great-aunt; namely, that Claimant [REDACTED 2]' father, Claimant [REDACTED 1]'s grandfather, and Account Owner Richard Bial were brothers.

### The Issue of Who Received the Proceeds

As detailed in the May 2004 Award, the CRT has concluded that it is plausible that three of the accounts' proceeds were not paid to the Account Owners' or their heirs, and that Account Owner Richard Bial received the proceeds of his custody account.

### Basis for the Award Amendment

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, a comparison between the May 2004 Award, the October 2002 Award, and the information provided by Claimant [REDACTED 1] plausibly demonstrates that the Account Owners were his great-uncle and great-aunt, and that relationship justifies an Award. Third, the CRT determined in the May 2004 Award that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

### Amount of the May 2004 Award

As detailed in the May 2004 Award, for the purposes of the May 2004 Award, and for the purposes of this Award Amendment, the Account Owners held two demand deposit accounts and one custody account. Based on review of the Bank's records, the CRT determined that the value of Account Owner Gertrud Bial's demand deposit account was SF 11,000.00, and that the value of her custody account was SF 5,855.80. With respect to Account Owner Richard Bial's demand deposit 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 upon the investigation conducted by the Independent Committee of Eminent Persons ("ICEP" or "ICEP Investigation"), in 1945 the average value of a demand deposit account was SF 2,140.00. Thus, the combined 1945 value of the accounts in the May 2004 Award was SF 18,995.80

According to Article 31 of the Rules, account values are multiplied by an adjustment factor to bring award amounts up to current value. At the time of the May 2004 Award, the adjustment

factor was 12.5, and the resulting award amount was SF 237,447.50.

### New Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. Additionally, according to Article 23(1)(g) of the Rules, if none of the persons entitled to an award under Article 23(1)(a-f) has submitted a claim, the CRT may make an award to any relative of the Account Owner, whether by blood or marriage, who has submitted a claim, consistent with principles of fairness and equity. Accordingly, Claimant [REDACTED 2] and Claimant [REDACTED 1], as descendants of Account Owner Richard Bial's parents, and as the niece by marriage and the grand-nephew by marriage, respectively, of Account Owner Gertrud Bial, are each entitled to one-half of the total amount of the May 2004 Award.

### Amount and Division of the Award Amendment

In the May 2004 Award, the CRT determined that the value of Account Owner Gertrud Bial's custody account was SF 5,855.80, based on information contained in the Austrian State Archives. However, the CRT has no evidence regarding the circumstances of Account Owner Gertrud Bial's declaration. The CRT notes that, as evidenced in a number of cases, Account Owner Gertrud Bial may not have declared all of her assets, or understated their value, in the belief that this might help her to safeguard some of them.<sup>4</sup> Pursuant to Article 29 of the Rules, if the amount in a custody account is less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. Accordingly, the CRT does not find that the information contained in Account Owner Gertrud Bial's 1938 Census declaration constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the value of Account Owner Gertrud Bial's custody account shall be determined to be SF 13,000.00. Consequently, the CRT concludes that the combined 1945 value of the Account Owners' accounts was SF 26,140.00. 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 a total amended award amount of SF 326,750.00. As noted above, Claimant [REDACTED 2] and Claimant [REDACTED 1] are each entitled to one-half of the 1945 combined account value, or SF 13,070.00, for a current value of SF 163,375.00 each.

With respect to Claimant [REDACTED 2], the CRT notes that in the May 2004 Award, she was awarded the combined 1945 value of SF 18,995.80, which was equal to the current value of SF 237,447.50. According to the Award Amendment, Claimant [REDACTED 2] is entitled to a combined 1945 value of SF 13,070.00, which is equal to the current value of SF 163,375.00. Because Claimant [REDACTED 2] has received SF 237,447.50, but was only entitled to receive SF 163,375.00, she is not entitled to any additional payment.

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<sup>4</sup> In a previous Order, the Court amended the values of other accounts reported in 1938 Census records. See Order Approving Award Amendments, 21 October 2004.

With respect to Claimant [REDACTED 1], as noted above, the total 1945 value of the Account Owners' accounts was SF 26,140.00. Claimant [REDACTED 1] is entitled to one-half of this amount, or SF 13,070.00. 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 Award Amendment amount of SF 163,375.00. Claimant [REDACTED 1] has not previously received any portion of the Award amount. Therefore, Claimant [REDACTED 1] is entitled to the full amount of 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).

### **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  
6 May 2006