

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

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

in re Accounts of Adolf Egger

Claim Number: 216480/MC

Original Award Amount: 258,375.10 Swiss Francs

Award Amendment Amount: 0.00 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED 1] (the “Claimant”) to the published accounts of Adolf Egger (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 claimant, any relative of the claimants other than the account owner, and the bank have been redacted.

Procedural History

On 28 January 2002, the Court approved an Award to the Claimant for the Account Owner’s accounts (the “January 2002 Award”). The January 2002 Award was approved prior to an Order of the Court dated 28 May 2002, which amended the Rules Governing the Claims Resolution Process (the “Rules”) to extend value presumptions, previously used only when the value of an account was unknown, to accounts whose 1945 values were less than the average 1945 value of an account of similar type, in the absence of plausible evidence to the contrary. Further, the January 2002 Award was approved prior to the issuance of the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Junz in 2005 and incorporated into decisions subsequently approved by the Court. Moreover, subsequent to the January 2002 Award, the Bank provided the CRT with additional documents regarding the contents of the custody account. In this Award Amendment, the CRT adopts and amends its findings to address the value of the two accounts at issue.

The January 2002 Award

In the January 2002 Award, the CRT determined that the Account Owner owned one custody account and one demand deposit account; that the Claimant plausibly identified the Account Owner as his relative; that the Account Owner was a Victim of Nazi Persecution; and that it was plausible that neither the Account Owner nor his heirs received the proceeds of accounts. The CRT noted that the auditors who carried out the investigation of the bank at issue to identify accounts of Victims of Nazi persecution relied on information contained in the Account Owner's 1938 Census record to conclude that the value of the custody account was 5,000.00 United States Dollars ("US \$"); which was equivalent to 21,739.13 Swiss Francs ("SF"), and that the value of the demand deposit account was 416.47 *Reichsmark* ("RM"), which was equivalent to SF 728.27, for a total 1945 value for the two accounts of SF 22,467.40. The present value of this amount was calculated by multiplying it by a factor of 11.5 in use at the time for a total award amount of SF 258,375.10. The CRT determined that the Claimant and represented party [REDACTED 2] were each entitled to one-half of the award amount.

Information Available in the Bank's Records

As noted above, subsequent to the January 2002 Award, the Bank provided the CRT with additional documents regarding the custody account. 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:

- *6 % Rhine Westphalia Electric Power Corp. Direct Mtgs. Gold Bonds per 1 May 1952* with a face value of US \$2,000.00, which were transferred to account 2269 on 24 December 1938; and
- *6 % Rhine Westphalia Electric Power Corp. Consolidated Mortgage Gold Bonds per 1 August 1953* with a face value of US \$3,000.00, which were transferred to account 2269 on 24 December 1938.

The CRT's Analysis

Amount of the Award Amendment

With regard to the Account Owner's demand deposit account, according to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be presumed to be SF 2,140.00. Accordingly, the 1945 value of the Account Owner's demand deposit account is SF 2,140.00.

With regard to the Account Owner's custody account, according to the Guidelines for the Valuation of Securities, which was circulated to the CRT by Special Master Helen B. Junz after the January 2002 Award in June 2005, 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. Bonds that were in default are awarded at market value.

Accordingly, the securities contained in the Account Owner's custody account are valued as follows:

- *6% Rhine Westphalia Electric Power Corp. Direct Mtgs. Gold Bonds per 1 May 1952* with a face value of US \$2,000.00, which were transferred to account 2269 on 24 December 1938. These bonds were in default, and were trading at 26.5% as of 24 December 1938. Accordingly, these bonds are valued at their market value of US \$530.00, which was equivalent to SF 2,316.10;¹ and
- *6% Rhine Westphalia Electric Power Corp. Consolidated Mortgage Gold Bonds per 1 August 1953* with a face value of US \$3,000.00, which were transferred to account 2269 on 24 December 1938. These bonds were in default, and were trading at 26.5% as of 24 December 1938. Accordingly, these bonds are valued at their market value of US \$795.00, which was equivalent to SF 3,474.15.²

Accordingly, the total value of the custody account was SF 5,790.25. According to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be presumed to be SF 13,000.00. Accordingly, the value of the Account Owner's custody amount is SF 13,000.00.

In summary, in the January 2002 Award, the Account Owner's demand deposit account was undervalued by SF 1,411.73 (SF 2,140.00 minus SF 728.27), and his custody account was overvalued by an amount of SF 8,739.13 (SF 21,739.13 minus SF 13,000.00). Taken together, the two accounts were therefore overvalued in the January 2002 Award by an amount of SF 7,327.40 (1945 value).

The CRT notes that the January 2002 Award was based upon information available to the CRT at the time. Accordingly, the CRT does not seek outright repayment of the overpayment from the Claimant. However, because the original January 2002 Award was overpaid, no further amount is awarded in this Award Amendment. Moreover, the overpayment amount shall be deducted from any award amendment that may be forthcoming.

¹ The market value for these securities was obtained from *The New York Times*, 25 December 1938. The CRT uses official exchange rates when converting currencies.

² *Id.*

Certification of the Award Amendment

The CRT certifies this Award Amendment for approval by the Court.

Claims Resolution Tribunal
19 January 2010