

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

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

in re Accounts of Emmy Feisenberger

Claim Number: 300335/WT

Original Award Amount: 402,147.50 Swiss Francs

Award Amendment Amount: 387,953.00 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED 1] (the “Claimant”) to the account of Albert Feisenberger.² This award is to the unpublished accounts of Emmy Feisenberger (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).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 claimant other than the account owner, and the bank have been redacted.

Procedural History

On 21 September 2005, the Court approved an Award to the Claimant for a custody account and two demand deposit accounts owned by the Account Owner (the “September 2005 Award”). At the time of that award, the bank records available to the CRT did not contain complete 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 September 2005 Award based upon this additional information recently forwarded to the CRT by the Bank.

¹ On 21 September 2005, the Court approved an award to Claimant [REDACTED 1] (the “Claimant”) for the accounts of Emmy Feisenberger (the “September 2005 Award”), which is the subject of this Award Amendment.

² The CRT notes that, on the February 2001 published list of account determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Albert Feisenberger is indicated as owning one account. Upon careful review, the CRT concluded that the Bank’s records evidence the existence of three accounts. Furthermore, the CRT concluded that the Bank’s records indicate that Albert Feisenberger was the original owner of these accounts, but that ownership of the accounts was transferred, after his death, to Emmy Feisenberger, née Opdenhoff, on 20 August 1935.

The September 2005 Award

In the September 2005 Award, the CRT determined that the Account Owner owned one custody account and two demand deposit accounts. 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 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 her accounts and that the Claimant was entitled to one-half of the total award amount and the represented party was entitled to one-half of the total award amount.

Further, the CRT determined that the Bank's records indicated that the custody account contained the following securities:

- *4.5% Bons du Trésor Français von 1933/43* bonds with a face value of 52,000.00 French Francs ("FF");
- *4.5% Kassa-Obligationen Schweizerische Bodenkredit-Anstalt. Zürich* bonds with a face value of SF 10,000.00;
- *4.5% Pfdbr. Schwedische Reichshypotheken-Bank, Stockholm von 1929 Amort. von 1949 bis 2009* bonds with a face value of 4,000.00 Swedish Kronen ("SK"); and
- *4.5% Schwedische Staatsanleihe von 1929* bonds with a face value of SK 4,000.00.

Finally, the CRT determined the value of the custody account was 27,891.80 Swiss Francs ("SF") based on general post-War valuations contained in the Bank's records.

Information Available in the Bank's Records

As detailed in the September 2005 Award, the Bank's records indicate the name, city and country of residence of the Account Owner, and the name, professional title, and city and country of residence of an original owner of the accounts. The records indicate that the Account Owner held one custody account, numbered L39527, which was closed on 5 December 1936, and two demand deposit accounts, which were closed on unknown dates.

As noted above, the Bank recently 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 custody account numbered L39527, it contained the following securities:

- *3.5% Oblig. Eidgenössische Staatsanleihe von 1932/33, Serie 1-2* bonds with a face value of SF 10,000.00, which were sold on 12 August 1933;
- *4% Schweiz. Bundesbahnen 3. Elektr. Anleihe von 1923* bonds with a face value of SF10,000.00, which were sold on 4 October 1933;

- 4.5% *Bons du Trésor Français von 1933/43* bonds with a face value of FF 52,000.00, which were transferred to the *Societe Generale* in Paris, France on 23 March 1936;
- 4.5% *Kassa-Obligationen Schweizerische Bodenkredit-Anstalt. Zürich* bonds with a face value of SF 10,000.00, which were sold on 26 March 1936;
- 4.5% *Pfdr. Schwedische Reichshypotheken-Bank, Stockholm von 1929 Amort. von 1949 bis 2009* bonds with a face value of SK 4,000.00, which were sent (*zugesandt*) to the *Skand.Kred.Akt.* in Stockholm, Sweden on 23 March 1936;
- 4.5% *Schwedische Staatsanleihe von 1929* bonds with a face value of SK 4,000.00, which were sent to the *Skand.Kred.Akt.* in Stockholm on 23 March 1936; and
- 5.25% *Acieries Reunies de Burbach-Eich-Dudelange (Arbed) S.A. von 1927/1942* bonds with a face value of 1,200.00 United States Dollars (“US \$”), which were transferred on 3 December 1936 to another account within the Bank, numbered 57292, 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 and the party he represents. The CRT previously determined in the September 2005 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 her heirs received the proceeds of her accounts.

Value of the Accounts in the September 2005 Award

In the September 2005 Award, the Account Owner held one custody account and two demand deposit accounts. The value of the two demand deposit accounts remains unaffected.

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 a custody account, numbered L39527, with the following securities:

- 3.5% *Oblig. Eidgenössische Staatsanleihe von 1932/33, Serie I-3* bonds with a face value of SF 10,000.00. These bonds were of good quality and were trading at 92.75% when they

were sold on 12 August 1933.³ As the bonds were of good quality and had market values below their face value, the face value will be used to determine the value of this asset. The total face value of these bonds was SF 10,000.00.

- *4% Schweiz. Bundesbahnen 3. Elektr. Anleihe von 1923* bonds with a face value of SF10,000.00. These bonds were of good quality and were trading at 101.40% when they were sold on 4 October 1933. As the 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 face value of these bonds was SF 10,140.00.
- *4.5% Bons du Trésor Français von 1933/43* bonds with a face value of FF 52,000.00. These bonds were of good quality and were trading at 84.65% when transferred on 23 March 1936.⁴ As the bonds were of good quality and had market values below their face value, the face value will be used to determine the value of this asset. The total face value of these bonds was FF 52,000.00, which was equivalent to SF 10,530.00;⁵
- *4.5% Kassa-Obligationen Schweizerische Bodenkredit-Anstalt. Zürich* bonds with a face value of SF 10,000.00. These bonds were of good quality and were trading at 101.50% when sold on 26 March 1936. As the 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 SF 10,150.00;⁶
- *4.5% Pfdbr. Schwedische Reichshypotheken-Bank, Stockholm von 1929 Amort. von 1949 bis 2009* bonds with a face value of SK 4,000.00. These bonds were of good quality and were trading at 110.75% when sent on 23 March 1936. As the 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 SK 4,430.00, which was equivalent to SF 4,876.99;⁷
- *4.5% Schwedische Staatsanleihe von 1929* bonds with a face value of SK 4,000.00. These bonds were of good quality and were trading at 105.25% when sent on 23 March 1936. As the 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 SK 4,210.00, which was equivalent to SF 4,634.79;⁸ and
- *5.25% Acieries Reunies de Burbach-Eich-Dudelange (Arbed) S.A. von 1927/1942* bonds with a face value of US \$1,200.00. No transaction price could be found for these bonds, but they had a cash-in price of 28,750.00 Belgian Francs (“BF”) per US \$600.00 worth of bonds when transferred on 3 December 1936.⁹ As no trade transactions in these bonds could be found at the time, they will be valued at their cash-in price. The total cash-in price of these bonds was BF 57,500.00, which was equivalent to SF 8,596.26.

³ The market value for this security was obtained from *Zürcher Kursblatt*, 29 December 1933.

⁴ The market value for this security was obtained from *Le Temps*, 24 March 1936.

⁵ The market value for this security was obtained from *Zürcher Kursblatt*, 31 December 1936.

⁶ The market value for this security was obtained from *Aftonbladet*, 29 April 1938.

⁷ The market value for this security was obtained from *Aftonbladet*, 29 April 1938.

⁸ The market value for this security was obtained from *Moody's Industrials 1936*, p. 1301.

⁹ No traded price was available for this security; however, in April 1939 the company offered to purchase bonds at 28,750.00 Belgian Francs (“BF”) per bonds of US \$600.00 and the same proportionately for \$150.00 bonds. The price is thus Belgian Francs per US \$100.00. *Moody's Industrials 1940*, p. 1,579.

The CRT notes that the Bank's records do not indicate who owned the account numbered 57292, into which one of these securities was transferred. Even if the Account Owner owned this account, the records do not indicate when the account was closed, or the disposition of the securities contained within. Accordingly, the CRT concludes that the Account Owner did not receive these securities or their proceeds.

The CRT also notes that the additional documents obtained from the Bank indicate that the 4.5% *Bons du Trésor Français von 1933/43* bonds with a face value of FF 52,000.00 were transferred to the *Societe Generale* in Paris, France on 23 March 1936; that the 4.5% *Pfdbr. Schwedische Reichshypotheken-Bank, Stockholm von 1929 Amort. von 1949 bis 2009* bonds with a face value of SK 4,000.00 were sent (*zugesandt*) to the *Skand. Kred. Akt.* in Stockholm, Sweden on 23 March 1936; and that the 4.5% *Schwedische Staatsanleihe von 1929* bonds with a face value of SK 4,000.00 were sent to the *Skand. Kred. Akt.* in Stockholm on 23 March 1936. This information suggests that the Account Owner may have retained control over these assets. However, as detailed in the September 2005 Award, the Bank's records also include a letter from the Account Owner's attorney, Dr. Georg Benkard, dated 14 March 1950, informing the Bank that the Account Owner, whose husband was Jewish, was compelled by the German authorities to sell her foreign securities and that the Bank consequently transferred the following securities to the *Deutsche Bank und Disconto-Gesellschaft*: 4½% *Oblig. Schwedische Staatsanleihe 1929* bonds, with a total nominal value of SK 4,000.00; 4½% *Pfdbr. Schwedische Reichshypothekenbank 1929 amort. 1949/2009* bonds, with a total nominal value of SK 4,000.00; 4½% *Kassa-Oblig Schweizerische Bodenkreditanstalt kündbar ab 12 August 1937* bonds, with a total nominal value of SF 10,000.00; and 4½% *Bons du Tresor Français 1933/43* bonds, with a total nominal value of FF 52,000.00.

In the same letter, the Account Owner's attorney stated that the Account Owner filed a claim for compensation from the German authorities after the Second World War and, as the claim also concerned the securities transferred by the Bank to the *Deutsche Bank und Disconto-Gesellschaft*, the Account Owner's attorney requested a statement of the value of these securities from the Bank. [REDACTED] also attached a transcript of the Bank's letter to the Account Owner, dated 16 March 1936, in which the Bank informed the Account Owner that, following the Account Owner's order of 10 March 1936, the Bank transferred the aforementioned securities to the Leipzig branch of the *Deutsche Bank und Disconto-Gesellschaft*.

In this case, the CRT concludes that the transcript of the Bank's letter of 10 March 1936, in which it confirmed the transfer of the securities to the *Deutsche Bank und Disconto-Gesellschaft*, shows that the Account Owner did not receive the proceeds of these securities. The CRT notes that it is plausible that the *Deutsche Bank und Disconto-Gesellschaft* directed the Bank to sell the securities and credit it with the proceeds, and that the references to these securities having been transferred to the *Societe Generale* in Paris, France, and to the *Skand. Kred. Akt.* in Stockholm, Sweden refer to such sales, and not to continued ownership of the securities by the Account Owner.

Therefore, the Bank's records indicate that the total value of custody account L39527 before its closure in December 1936 was SF 58,928.04. The value of SF 27,891.80, which was used in the September 2005 Award, is then subtracted from the actual historic value, resulting in a difference

of SF 31,036.24. 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 387,953.00.

Division of the Award Amendment Amount

According to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. In this case, the Claimant is representing his brother, James Feisenberger. Accordingly, the Claimant is entitled to one-half of the total award amendment amount, and his brother is entitled to one-half of the total award amendment amount.

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