

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]

and to Claimant [REDACTED 3]
also acting on behalf of [REDACTED 4], and [REDACTED 5]

in re Accounts of Helene Flesch

Claim Numbers: 216019/CU; 217675/CU²

Original Award Amount: 181,680.00 Swiss Francs

Award Amendment Amount: 115,434.87 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the accounts of Helene Flesch and upon the claim of Charles [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the account of Erwin Basch.³ This Award Amendment is to the published accounts of Helene Flesch (the “Account Owner”) at 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.

¹ On 31 December 2002, the Court approved an award to Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) and to [REDACTED 3] (“Claimant [REDACTED 3]”) for the accounts of Helene Flesch (the “December 2002 Award”), which is the subject of this Award Amendment. The CRT notes that the December 2002 Award did not reach a decision for two accounts. The CRT will treat these accounts in a separate determination.

² Claimant [REDACTED 3] submitted five additional claims, which are registered under the Claim Numbers 501538, 220026, 220024, 220023 and 220025. The CRT awarded the accounts of Siegfried Berl and Juliane Steiner to Claimant [REDACTED 3] in separate decisions; see *In re Accounts of Siegfried Berl* (approved on 10 August 2005); and *In re Accounts of Juliane Steiner* (approved on 8 June 2004). Additionally, the CRT treated Claimant [REDACTED 3]’s claim to the account of Johanna Bielitz in a separate decision; see *In re Accounts of Johanna Bielitz* (approved on 29 December 2005). Finally, the CRT treated Claimant [REDACTED 3]’s remaining additional claims in a separate determination dated 23 January 2008.

³ See footnote 2.

Procedural History

On 31 December 2002, the Court approved an Award to the Claimants for a custody account, numbered 51726, and one demand deposit account, which was closed on 10 September 1938, owned by the Account Owner (the “December 2002 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 2002 Award based upon this additional information recently forwarded to the CRT by the Bank.

The December 2002 Award

In the December 2002 Award, the CRT determined that the Account Owner owned two custody accounts and two demand deposit accounts, however only one custody account and one demand deposit account were awarded. 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 1] was entitled to the entire award amount.

Finally, the CRT determined that the Bank’s records did not indicate the value of the awarded 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 2002 Award, the Bank’s records indicate the name and the city of domicile of the Account Owner. According to these records, the Account Owner resided in Vienna, Austria and held four accounts: a demand deposit account, which was closed on 10 February 1933; a demand deposit account, which was closed on 10 September 1938; a custody account numbered L40919, which was closed on 7 February 1933; and a custody account numbered 51726, which was closed on 29 August 1938.

As noted above, the Bank recently provided the CRT with additional documents regarding the custody account numbered 51726.⁴ These documents contain a custody account identification card (“*Leitkarte*”) and custody account portfolio holding cards (“*Depotvalorenkarten*”) for each security held within custody account numbered 51726.

⁴ The CRT notes that the Bank only provided the CRT with additional documents regarding the custody account numbered 51726.

These documents indicate that at the time the Account Owner was deemed to have lost control over custody account 51726, it contained the following securities:

- 2.5% *British Consols* bonds with a face value of Pound Sterling (“£”) 500.00, which were transferred to an unknown account numbered 27130 on 25 August 1938;
- 4% *Argentinische äussere Anleihe von 1933* bonds with a face value of SF 6,000.00, which were transferred to an account, the owner of which is unknown, numbered 27130 on 25 August 1938;
- 4% *Canadian Pacific Railway Co. consolidated perpetual debenture stock* bonds with a nominal value of £ 500.00, which were transferred to an account, the owner of which is unknown, numbered 27130 on 25 August 1938.

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.

Basis for the Award Amendment

The CRT has determined that an Award Amendment may be made in favor of the Claimants. The CRT previously determined in the December 2002 Award that the claims are admissible in accordance with Article 18 of 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 her heirs received the proceeds of the custody account numbered 51726 and the demand deposit account which was closed on 10 September 1938.

Value of the accounts in the December 2002 Award

In the December 2002 Award, the Account Owner was awarded the value of two accounts: a custody account numbered 51726, and a demand deposit account that was closed on 10 September 1938. The value of the demand deposit account closed on 10 September 1938 remains unaffected.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for custody account numbered 51726 in December 2002, 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. 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.

According to the additional information received from the Bank, the Account Owner held a custody account numbered 51726 with the following securities:

- 2.5% *British Consols* bonds with a nominal value of £ 500.00. These bonds were trading at 75.44% when transferred on 25 August 1938.⁵ As these bonds were issued in perpetuity, they shall be valued at their market value of £ 377.20, which was equivalent to SF 8,060.76;⁶
- 4% *Argentinische äussere Anleihe von 1933* bonds with a nominal value of SF 6,000.00. These bonds were of good quality and were trading at 100.00% when sold on 25 August 1938. The total market value of these bonds was SF 6,000.00;⁷ and
- 4% *Canadian Pacific Railway Co. consolidated perpetual debenture stock* bonds with a nominal value of £ 500.00. These bonds were trading at 76.50% when transferred on 25 August 1938. As these bonds were issued in perpetuity, they shall be valued at their market value of £ 382.50, which was equivalent to SF 8,174.03.⁸

The CRT notes that the Bank's records do not indicate who owned the account into which certain of the securities were transferred, and that the custody account numbered 27130 appears as the transfer destination for other, unrelated accounts. Even if this account was held by the Account Owner, the records do not indicate when the account was closed, or the 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 numbered 51726 in August 1938 was SF 22,234.79. The Article 29 value of SF 13,000.00, which was used in the December 2002 Award, is then subtracted from the actual historic value, resulting in a difference of SF 9,234.79. The current value of this amount is determined by multiplying this

⁵ The market value for this security was obtained from *The Financial Times*, 25 August 1938. The CRT notes that bonds held in perpetuity have no fixed maturity date and cannot be redeemed at the option of the holder. These bonds are therefore valued at the market price on the date of disposition.

⁶ The CRT uses official exchange rates when making currency conversions.

⁷ The market value for this security was obtained from a bank statement from the [REDACTED] on 27 August 1938.

⁸ The market value for this security was obtained from *The Financial Times*, 25 August 1938. The CRT notes that bonds issued in perpetuity have no fixed maturity date and therefore can only command the market value at any moment in time, the option of waiting for redemption at face value not being available. These bonds are therefore valued at the market price on the date of disposition.

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 115,434.87.

Division of the Award Amendment

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, Claimant [REDACTED 1] is representing her sister, [REDACTED 2]. Accordingly, Claimant [REDACTED 1] and her sister are each entitled to one-half of the total award amount. As noted in the December 2002 Award, Claimant [REDACTED 3] and the parties he represents are not entitled to share in the award.

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 for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
11 August 2008