

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant the Estate of [REDACTED 1]¹
also acting on behalf of [REDACTED 2]²
and on behalf of [REDACTED 3]
represented by Stephen M. Harnik

**in re Accounts of Albert Gerngross, Paul Gerngross, Martha Gerngross,
and A. Gerngross A.G.**

Claim Numbers: 222432/AC; 222434/AC; 222435/AC³

Award Amendment Amount: 164,442.38 Swiss Francs

This Certified Award Amendment is based upon the claims of the Estate of [REDACTED 1], née [REDACTED], (the “Claimant”) to the accounts of Albert Gerngross, Paul Gerngross, and Martha Gerngross. This Award Amendment is to the accounts of Albert Gerngross (“Account Owner Albert Gerngross”), Paul Gerngross (“Account Owner Paul Gerngross”), Martha Gerngross (“Account Owner Martha Gerngross”), and A. Gerngross A.G. (Account Owner “A. Gerngross A.G.”) (together the “Account Owners”) at the [REDACTED] (the “Bank”).

All awards 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.

On 4 April 2003, the Court approved an Award to the Claimant for three custody accounts, two demand deposit accounts, and one account of unknown type owned by the Account Owners (the “April 2003 Award”). In this Award Amendment, the CRT adopts and amends its findings set out in the April 2003 Award. Based upon Article 29 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), and based upon further evidence regarding the reliability of the declarations made in the Nazi decreed 1938 Census of Jewish-owned assets (the “1938 Census”), the CRT determines that the value of the custody account owned by Account Owner Martha Gerngross was 13,000.00 Swiss Francs (“SF”), and that the value of the demand

¹ [REDACTED 1] passed away on 23 February 1996. This claim is made in the name of her Estate, the executor of which is Stephen M. Harnik, of *Harnik & Finkelstein*, who represents the Estate of [REDACTED 1], the Claimant, in these proceedings, and who submitted three Claim Forms.

² [REDACTED 2] passed away on 26 June 2001. This claim is made in the name of his Estate, the executor of which is his widow, [REDACTED]. Stephen Harnik also represents the Estate of [REDACTED 2] in these proceedings.

³ The Claimant submitted an additional claim to her own account, which is registered under Claim Number 222433. The CRT will treat the claim to this account separately.

deposit account owned by Account Owner Paul Gerngross was SF 2,140.00, and that given the foregoing, the April 2003 Award amount shall accordingly be increased by SF 164,442.38.

The CRT notes that in the April 2003 Award, the CRT determined that the Claimant 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. Based on the information contained in the Bank's records and in the Austrian State Archives regarding the Account Owners' 1938 Census declarations, the CRT determined that the Account Owners held three custody accounts, two demand deposit accounts, and one account of unknown type, and that the value of the custody account owned by Account Owner Martha Gerngross was SF 1900.00 as of 16 August 1938, and that the value of the demand deposit account owned by Account Owner Paul Gerngross was SF 84.61 as of 29 June 1938. Additionally, in the April 2003 Award, the CRT determined that it is plausible that the Account Owners did not receive the proceeds of their six accounts. Finally, the CRT determined that the April 2003 Award amount was SF 858,895.32.

The CRT's Analysis

Amount of the Award Amendment

In the April 2003 Award, the CRT determined that the value of Account Owner Martha Gerngross's custody account was SF 1,900.00, which is the amount recorded in the Bank's records as the value of the custody account as of 16 August 1938, and that the value of Account Owner Paul Gerngross's demand deposit account held at the Bank was SF 84.61, which is the amount recorded in the Account Owner's 1938 Census declaration as the value of the demand deposit account as of 29 June 1938.

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 custody account shall be determined to be SF 13,000.00; also, if the amount in a demand deposit account is less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the demand deposit account shall be determined to be SF 2,140.00.

In this case, the CRT does not find that the value of the custody account owned by Account Owner Martha Gerngross indicated in the Bank's records constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the value of the custody account owned by Account Owner Martha Gerngross shall be determined to be SF 13,000.00.

Furthermore, the CRT determines that it is unable to rely on the balance amounts declared in the 1938 Census as it has no evidence regarding the circumstances of Account Owner Paul Gerngross's declaration. The CRT notes that, as evidenced in a number of cases, Account Owner Paul Gerngross may not have declared all his assets, or he may have understated their value, in the belief that this might help him safeguard some of them. Accordingly, the CRT does not find that the value of the demand deposit account indicated in Account Owner Paul

Gerngross'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 Paul Gerngross's demand deposit account shall be determined to be SF 2,140.00.

The amount of SF 1,984.61, which is the combined value for these two accounts used in the April 2003 Award, is then subtracted from the Article 29 value, resulting in a difference of SF 13,155.39. 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.

Consequently, the amount of the April 2003 Award is increased by SF 164,442.38, which reflects the adjusted difference between the value of Account owner Martha Gerngross's custody account and Account Owner Paul Gerngross's demand deposit account recorded in the Bank's records and the 1938 Census records and the value determined by Article 29 of the Rules.

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, [REDACTED 3], whom the Claimant is representing in this claim, is the only direct descendant of Account Owner Paul Gerngross and Account Owner Martha Gerngross to have submitted a claim. Accordingly, [REDACTED 3] is entitled to the entire Award Amendment amount.

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
30 December 2004