

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1] and Claimant [REDACTED 2]

in re Accounts of Walter Gerstel

Claim Number: 204179/AY, 208909/AY¹

Award Amount: 139,875.00 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) and upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) (together the “Claimants”) to the account of Walter Gerstel (the “Account Owner”) at the Basel branch of 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 29 March 2002, the Court approved an Award to Claimant [REDACTED 2] for one account of unknown type held by the Account Owner.² Based on additional review of the Bank’s records, the CRT has concluded that the type of account held by the Account Owner was a custody account, numbered 36137, rather than an account of unknown type, and that Claimant [REDACTED 2] should therefore be awarded the difference in value between the two types of accounts. The CRT’s additional review of the Bank’s records also traced an additional account belonging to the Account Owner, a demand deposit account, also numbered 36137, opened on 3 October 1930. The Bank’s records do not show when the demand deposit account was closed, or to whom it was paid, nor do these records indicate the value of this account. This award is for the difference between the value of an account of unknown type and a custody account, and for the value of an additional account, the demand deposit account, held by the Account Owner.

In this award, the CRT adopts and amends its findings in the March 2002 Award. The CRT notes that, in the March 2002 Award, it was determined that the Claimants had plausibly identified the Account Owner; that the Claimants had demonstrated that they are related to the Account Owner; that the Claimants had made a plausible showing that the Account Owner was a Victim of Nazi Persecution; and that it was plausible that the Account Owner did not receive the proceeds of the account of unknown type. In this award, the CRT has determined that the account of unknown type was actually a custody account and that the Account Owner also held a

¹ According to Article 37(1) of the Rules Governing the Claims Resolution Process (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.

² In re Account of Walter Gerstel (approved by the Court on 29 March 2002)[hereinafter the “March 2002 Award”].

demand deposit account. The CRT has also determined that the Account Owner did not receive the proceeds of the demand deposit account, which was closed on an unknown date, given that in 1933 the Nazis embarked on a campaign to seize the domestic and foreign assets of Jewish nationals in Germany through the enforcement of flight taxes and other confiscatory measures including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until 1937, and would not have been able to repatriate his account to Germany without its confiscation; that there is no record of payment of the Account Owner's account to him or to his heirs; that the Account Owner and his heirs would not have been able to obtain information about his account after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Amount of the Award

The Account Owner held a custody account and a 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. The CRT notes that in the March 2002 Award Claimant [REDACTED 2] received an award for the amount an account of unknown type. Therefore, the award amount in this case is the total average value of a custody account and a demand deposit account minus the average value of an account of unknown type. Based on the investigation carried out pursuant to the instructions of Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a custody account was 13,000.00 Swiss Francs, the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of an account of unknown type was 3,950.00 Swiss Francs. Therefore, the values of the custody account and demand deposit account (15,140.00 Swiss Francs) minus the value of the account of unknown type (3,950.00 Swiss Francs) amounts to 11,190.00 Swiss Francs. 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 amount of 139,875.00 Swiss Francs.

Division of the Award

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 2] is the son of the Account Owner and Claimant [REDACTED 1] is the niece of the Account Owner. Therefore, Claimant [REDACTED 2], as a direct descendant of the Account Owner, has a better entitlement to the award and is entitled to 100% of the total award amount.

Scope of the Award

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

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
20 May 2004