

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED]¹

in re Accounts of Wilhelm Graf, Bertha Graf and Edith Graf

Claim Number: 401492/WT

Original Award Amount: 487,500.00 Swiss Francs

Award Amendment Amount: 176,596.75 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED] (the “Claimant”) to the account of Bertha Graf. This Award Amendment is to the published account of Wilhelm Graf (“Account Owner Wilhelm Graf”) at the Basel branch of the [REDACTED] (“Bank I”), to the published account of Bertha Graf (“Account Owner Bertha Graf”) at the Zurich branch of the [REDACTED] (“Bank II”), and to the unpublished account of Edith Graf (“Account Owner Edith Graf”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (“Bank III”) (together the “Banks”).

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.

Procedural History

On 6 May 2006, the Court approved an Award to the Claimant for a custody account held by Account Owner Wilhelm Graf at Bank I, for a custody account held by Account Owner Bertha Graf at Bank II, and for a custody account held by Account Owner Edith Graf at Bank III (the “May 2006 Award”). At the time of that award, Bank II’s records available to the CRT did not contain information regarding the value of the awarded custody account. However, Bank II 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 May 2006 Award based upon this additional information recently forwarded to the CRT by Bank II.

¹ On 6 May 2006, the Court approved an award to Claimant [REDACTED] (the “Claimant”) for the accounts of Wilhelm Graf, Bertha Graf and Edith Graf (the “May 2006 Award”), which is the subject of this Award Amendment.

The May 2006 Award

In the May 2006 Award, the CRT determined that Account Owner Wilhelm Graf owned one custody account at Bank I, that Account Owner Bertha Graf owned one custody account at Bank II, and that Account Owner Edith Graf owned one custody account held at Bank II. The CRT further determined that the Claimant plausibly identified the Account Owners, that he plausibly demonstrated that he is related to the Account Owners, and that he made a plausible showing that the Account Owners were Victims of Nazi Persecution. Additionally, the CRT determined that it is plausible that the Account Owners did not receive the proceeds of their accounts and that the Claimant was entitled to the entire award amount.

Finally, the CRT determined that the Banks' records did not indicate the value of the custody account at Bank II, and therefore presumed that the value of this custody account was 13,000.00 Swiss Francs ("SF").

Information Available in Bank II's Records

As detailed in the May 2006 Award, Bank II's record indicates the name and city of residence of Account Owner Bertha Graf. The record indicates that Account Owner Bertha Graf held a custody account, numbered L 56608, which was closed on 19 December 1938.

As noted above, Bank II recently provided the CRT with additional documents regarding this 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 Account Owner Bertha Graf was deemed to have lost control over the account, it contained the following securities:

- 3% *Niederlandische Staatsanleihe von 1937* bonds with a face value of 1,700.00 Dutch Florins ("Hfl."), which were transferred to the *Bankverein* in Zurich on 16 September 1938;
- 4% *Dominion of Canada bonds per 1 Okt. 1960* with a face value of 1,000.00 United States Dollars ("US\$"), which were sold on 29 September 1938 (the actual repository for the shares is listed as the *Irving Trust Company* in New York);
- 5% *City of Antwerp, ext. Loan sk.f.d.gold bonds per 1 Dez 1958* with a face value of US\$ 1,000.00, which were transferred to the *Bankverein* in Zurich on 16 September 1938;
- 8% *Sterling Bonds Tschechoslowakische Staatsanleihe von 1922 Serie B per 1 Okt 1952* with a face value of 400.00 Pounds Sterling ("£"), which were transferred to the *Bankverein* in Zurich on 16 September 1938; and
- 250 *Oblig. mit var. Zinsfuss Donau-Save-Adria-Eisenbahngesellschaft Wien von 1923* bonds denominated in Swiss Gold Francs ("GF") which were transferred on 16 December 1938 to another account at the Bank, numbered 27130, 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. The CRT previously determined in the May 2006 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 Owners, and that it is plausible that neither the Account Owners nor their heirs received the proceeds of their accounts.

Value of the accounts in the May 2006 Award

In the May 2006 Award, the Claimant was awarded three custody accounts. Account Owner Wilhelm Graf owned one custody account at Bank I, Account Owner Bertha Graf owned one custody account at Bank II, and Account Owner Edith Graf owned one custody account at Bank III. The values of the two accounts other than the custody account held by Account Owner Bertha Graf at Bank II remain unaffected.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for the custody account held by Account Owner Bertha Graf at Bank II in May 2006, 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 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 Bank II, Account Owner Bertha Graf held a custody account with the following securities:²

- *3% Niederlandische Staatsanleihe von 1937* bonds with a face value of Hfl. 1,700.00. These bonds were of good quality and were trading at 102.01% when transferred on 16 September 1938, for a total market value of Hfl. 1,734.17, which was equivalent to SF 4,170.68;³

² The CRT uses official exchange rates when making currency conversions.

³ The market value for this security was obtained from *Vos' Wekelijksche Uitlotings-Courant*, 28 July 1938.

- *4% Dominion of Canada bonds per 1 Okt. 1960* bonds with a face value of US\$ 1,000.00. These bonds were of good quality and were trading at 106.75% when sold on 29 September 1938, for a total market value of US\$ 1,067.50, which was equivalent to SF 4,664.98;⁴
- *5% City of Antwerp, ext. Loan sk.f.d.gold bonds per 1 Dez. 1958* bonds with a face value of US \$1,000.00. These bonds were of good quality and were trading at 92.69% when transferred on 16 September 1938. As the bonds were of good quality and had market values below the face value, the face value will be used to determine the value of this asset. The total face value of these bonds was US\$ 1,000.00, which was equivalent to SF 4,370.00;⁵
- *8% Sterling Bonds Tschechoslowakische Staatsanleihe von 1922 Serie B per 1 Okt 1952* bonds with a face value of £ 400.00. These bonds were of good quality and were trading at 75.13% when transferred on 16 September 1938. As the bonds were of good quality and had market values below the face value, the face value will be used to determine the value of this asset. The total face value of these bonds was £ 400.00, which was equivalent to SF 8,548.00;⁶
- *250 Oblig. mit var. Zinsfuß Donau-Save-Adria-Eisenbahngesellschaft Wien von 1923* bonds. These securities were listed by the Account Owner in her correspondence with the Nazi authorities, dated 12 November 1938, as being sold at the behest of the authorities at a price of RM 12.25 each for a total of RM 3,062.50. Therefore, they shall be valued at this reported value of RM 3,062.50, which was equivalent to SF 5,374.08.⁷

The CRT notes that Bank II's records do not indicate who owned the account numbered 27130, into which one of these securities was transferred, and that this account number also appears as the transfer destination for other, unrelated accounts. Even if this account were owned by Account Owner Bertha Graf, the records do not indicate when the account was closed, or the disposition of the securities contained within. Accordingly, the CRT concludes that Account Owner Bertha Graf did not receive these securities or their proceeds.

The CRT further notes that one of these securities was physically held in New York, New York, the United States. The CRT further notes that it was general practice for US-issued securities to remain physically in the United States, deposited in a US bank, and that trade in Europe in these issues was by way of so-called depository receipts. Although the security certificates thus remained in the United States, Bank II in Switzerland was ultimately in control of these assets, as ownership rested with the depository receipts.

⁴ The market value for this security was obtained from *The New York Times*, 30 September 1938.

⁵ The market value for this security was obtained from *Moody's Governments*, 1940, p. 1709.

⁶ The market value for this security was obtained from *The Financial Times*, 17 September 1938.

⁷ The correspondence in which this security was valued came from documents held in the Austrian State Archive (Archive of the Republic, Finance). Shortly after the March 1938 incorporation of Austria into the Reich (the "Anschluss"), Jewish residents and non-resident nationals of the Reich, including Austria, who had assets worth at least 5,000.00 Reichsmarks, were ordered to declare the value of all they owned as of 27 April 1938 (the "1938 Census"). The bulk of the 1938 Census records for Austria still exist (more than 48,000 of an estimated 52,000 for Austria). These records serve as the only source of contemporaneous market values for a number of Austrian securities.

Therefore, Bank II's records indicate that the total value of the custody account in June 1938 was SF 27,127.74. The Article 29 value of SF 13,000.00, which was used in the May 2006 Award, is then subtracted from the actual historic value, resulting in a difference of SF 14,127.74. 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 176,596.75.

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

Claims Resolution Tribunal
11 August 2008