

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], [REDACTED 3],
[REDACTED 4], and [REDACTED 5]

in re Account of Max Hitschman

Claim Number: 221024/BW²

Original Award Amount: 369,644.50 Swiss Francs

Award Amendment Amount: 94,992.50 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED 1] (the “Claimant”) to the published account of Max Hitschman (the “Account Owner”), at the Zurich branch of the [REDACTED] (the “Bank”).

All award amendments are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Procedural History

On 14 May 2002, the Court approved an Award to the Claimant for a custody account and a demand deposit account owned by the Account Owner (the “May 2002 Award”). 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 May 2002 Award based upon this additional information recently forwarded to the CRT by the Bank.

The May 2002 Award

In the May 2002 Award, the CRT determined that the Account Owner owned a custody account and a demand deposit account. The CRT further determined that the Claimant plausibly

¹ On 14 May 2002, the Court approved an award to Claimant [REDACTED 1] (the “Claimant”) for the account of Max Hitschman (the “May 2002 Award”), which is the subject of this Award Amendment.

² The Claimant submitted one additional claim, which is registered under the Claim Number 221023. The CRT awarded this account to the Claimant in a separate decision. See *in re Account of Heinrich Hitschman* (approved on 13 July 2004).

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 his accounts and that the Claimant and each of the parties he represents was entitled to a one-fifth share of the award amount.

Finally, according to the records available at the time of the May 2002 Award, the CRT determined that the value of the custody account was 30,003.00 Swiss Francs (“SF”).

Information Available in the Bank’s Records

As detailed in the May 2002 Award, the Bank’s records indicate the name, occupation and cities of residence of the Account Owner. The records indicate that the Account Owner held a demand deposit account and a custody account, which were closed on 10 April 1938 and 27 October 1938, respectively.

As noted above, the Bank recently provided the CRT with additional documents regarding the custody account numbered 44085. 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 account numbered 44085, it contained the following securities:

- 3.5% *Belgische äussere Anleihe von 1937*, bonds with a face value of SF 1,200.00, which were sold on 18 October 1938;
- 5% *Funding Gold Oblig. Königreich Jugoslavien von 1933*, bonds with a face value of 2,000.00 French Francs (“FF”), which were sold on 18 October 1938;
- 7% *Internat. Stabilisierungs-Gold Anleihe des Königreichs Jugoslavien von 1931, Schweizerische Tranche*, bonds with a face value of SF 2,030.50, which were sold on 18 October 1938;
- 100 shares of *Société Nationale des Chemins de Fer Belges 4% (prev. 6%) Vorzugs-Aktien à Bfr. 500.--, Serie A, Schweizer Tranche*, which were sold on 18 October 1938 (the actual repository for the shares is listed as *Banque de la Société Générale de Belgique, Bruxelles*);
- 10 shares of *Rand Mines Ltd. Shares à Sh. 5.-*, which were recorded in the names of two other persons and booked out of the account on 24 October 1938;
- 4% *Belgische unif. Anleihe von 1935 I. Serie*, bonds with a face value of 7,500.00 Belgian Francs (“Bfr.”), which were designated as exempt (*freigestellt*) and booked out of the account to the *Länderbank, Wien* on 25 October 1938 (the actual repository for the bonds is listed as *Banque de la Société Générale de Belgique, Bruxelles*);
- 23 shares of *Consolidated Edison Gas company of New York common shares, ohne Nennwert*, which were designated exempt (*freigestellt*) and booked out of the account to the *Länderbank, Wien* on 25 October 1938 (the actual repository for the shares is listed as *Bankers Trust Company, New York*); and

- 200 shares of *Société Nationale des Chemins de Fer Belges 4% (prev. 6%) Vorzugs-Aktien à Bfr. 500.-- Belgische Tranche Series C/J*, which were delivered (*ausgeliefert*) to the *Länderbank, Wien* on 25 October 1938 (the actual repository for the shares is listed as *Banque de la Société Générale de Belgique, Bruxelles*).

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 2002 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 his heirs received the proceeds of his account.

Value of the accounts in the May 2002 Award

In the May 2002 Award, the Account Owner held one demand deposit account and one custody account. The value of the demand deposit account remains unaffected.

According to the records available at the time of the May 2002 Award, the CRT determined that the value of the custody account was SF 30,003.00.

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. Stocks are valued at market value.

According to the additional information received from the Bank, the Account Owner held the following securities in the custody account numbered 44085:

- *3.5% Belgische äussere Anleihe von 1937*, bonds with a face value of SF 1,200.00. These bonds were of good quality and were trading at 92.50% when sold on 18 October 1938. Since these 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 1,200.00.³

³ The market value for this security was obtained from *Zürcher Kursblatt*, 28 December 1938.

- *5% Funding Gold Oblig. Königreich Jugoslavien von 1933*, bonds with a face value of FF 2,000.00. The nearest market price available is 31 December 1936, at which time these bonds were of good quality and were trading at 43.50%. Since these 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 2,000.00, which was equivalent to SF 405.00.^{4,5}
- *7% Internat. Stabilisierungs-Gold Anleihe des Königreichs Jugoslavien von 1931, Schweizerische Tranche*, bonds with a face value of SF 2,030.50. The nearest market price available is 31 December 1936, at which time these bonds were in default and were trading at 18.38%. Therefore, these bonds shall be valued at their market value of SF 373.10.⁶
- 100 shares of *Société Nationale des Chemins de Fer Belges 4% (prev. 6%) Vorzugs-Aktien à Bfr. 500.--, Serie A, Schweizer Tranche*, each with a market value on 31 December 1938 of SF 81.75, and a total market value of SF 8,175.00.⁷
- 10 shares of *Rand Mines Ltd. Shares à Sh. 5.-*, each with a market value on 24 October 1938 of 9.5625 Pound Sterling (“£”), and a total market value of £95.63, which was equivalent to SF 2,043.51.^{8,9}
- *4% Belgische unif. Anleihe von 1935 I. Serie*, bonds with a face value of Bfr. 7,500.00. The nearest market price available is 27 April 1938, at which time these bonds were of good quality and were trading at 92.25%. Since these 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 Bfr. 7,500.00, which was equivalent to SF 1,107.75.¹⁰
- 23 shares of *Consolidated Edison Gas company of New York common shares, ohne Nennwert*, each with a market value of 33.8125 United States Dollars (“US\$”), and a total market value of US\$ 777.69, which was equivalent to SF 3,398.49.¹¹
- 200 shares of *Société Nationale des Chemins de Fer Belges 4% (prev. 6%) Vorzugs-Aktien à Bfr. 500.-- Belgische Tranche*. The nearest market price available is 3 August

⁴ The market value for this security was obtained from *Manuel des Valeurs Cotées à la Bourse de Genève 36-37 (1937)*, 31 December 1936.

⁵ The CRT uses official exchange rates when making currency conversions.

⁶ The market value for this security was obtained from *Manuel des Valeurs Cotées à la Bourse de Genève 36-37 (1937)*, 31 December 1936.

⁷ The market value for this security was obtained from *Zürcher Kursblatt*, 31 December 1938.

⁸ These shares appear to be in the names of nominees for administrative purposes as was not unusual at that time. Accordingly, the CRT determined that, despite the registration to other names, the ownership of these shares rested with the Account Owner.

⁹ The market value for this security was obtained from the *Financial Times*, 25 October 1938.

¹⁰ The market value for this security was obtained from 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 Reichsmark, 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). In some cases, as in this instance, these records provide the source of contemporaneous market values for a specific asset. Thus, the market value for this security was obtained from the 1938 Census declaration of the Account Owner.

¹¹ The market value for this security was obtained from the *New York Times*, 26 October 1938.

1938, at which time these shares were trading at 141.50% of their face value, for a total market price of Bfr. 141,500.00, which was equivalent to SF 20,899.55.¹²

Therefore, the Bank's records indicate that the total value of the custody account in October 1938 was SF 37,602.40. The value of SF 30,003.00, which was used in the May 2002 Award, is then subtracted from the actual historic value, resulting in a difference of SF 7,599.40. 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 94,992.50.

Division of the Award Amendment

The Claimant is representing his sister and his cousins in these proceedings. According to Article 23(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. Therefore, the Claimant, and the parties represented by the Claimant, is each entitled to a one-fifth share of the 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
28 October 2008

¹² The market value for this security was obtained from *Vos' Wekelijksche Uitlotings-Courant*, 11 August 1938.