

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]
represented by Stephen M. Harnik

in re Account of Victor Mandler

Claim Numbers: 773483/MBC;¹ 775011/MBC²

Award Amount: 1,764,149.75 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) and [REDACTED 1] (“Claimant [REDACTED 1]”) (together the “Claimants”) to the unpublished account of Victor Mandler (the “Account Owner”) at the St. Gallen branch of the [REDACTED] (the “Bank”).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 claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

Information Provided by the Claimants

The Claimants, who are siblings, submitted Initial Questionnaires (“IQs”) identifying the Account Owner as their father, Victor Mandler, who was born on 16 December 1887 in Vienna, Austria, and was married to [REDACTED], née [REDACTED]. The Claimants indicated that their father, who was Jewish, was a physician, and resided at Schönbrunnerstrasse 219 in Vienna from 1934 to 1939, when he fled from Austria to the United States via Italy. The Claimants indicated that their father died on 3 July 1976 in Bellmore, New York, the United States.

¹ [REDACTED 1] (“Claimant [REDACTED 1]”) did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered ENG-0124-165, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 773483.

² In 1999, [REDACTED 2] (“Claimant [REDACTED 2]”) submitted an Initial Questionnaire (“IQ”), numbered ENG-0181-115, to the Court in the United States. Additionally, Claimant [REDACTED 2]’s representative filed a Claim Form on Claimant [REDACTED 2]’s behalf. The IQ was forwarded to the CRT and the IQ and Claim Form are being treated under the consolidated claim number 775011.

In support of her claim, Claimant [REDACTED 2] submitted a letter, dated 18 July 1963, from the *Creditanstalt Bankverein* in Vienna in connection with its Restitution Fund (*Fonde zur Abgeltung*). This letter concerns accounts held by Dr. Victor Mandler and [REDACTED] at the *Creditanstalt Bankverein* and documents how these assets were forfeited during the Second World War. In particular, the letter indicates that several foreign securities were forcibly exchanged for German government bonds, that other securities were transferred to the Finance Ministry of the German Reich in Berlin (*Reichsfinanzministerium Berlin*) for payment of atonement tax (*Judenvermögensabgabe*) and other taxes, and that a demand deposit account was confiscated by the Gestapo and transferred to the Chief Finance Minister for Vienna (*Oberfinanzpräsident Wien-Niederdonau*).

In addition, Claimant [REDACTED 2] submitted documents evidencing account ownership at the Bank, which are described in detail below.

Finally, Claimant [REDACTED 2] submitted documents relating to Victor Mandler's asset declaration in the Census of Jewish-owned Assets decreed by the Reich on 26 April 1938, which are further described below.³

Claimant [REDACTED 2] indicated that she was born on 12 May 1925 in Vienna. Claimant [REDACTED 1] indicated that he was born on 11 April 1930.

Information Available in the Bank's Records

The CRT notes that the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report an account belonging to Victor Mandler during their investigation of the Bank. The Bank's documents were obtained from the Bank by Claimant [REDACTED 2] and were forwarded to the CRT.

Claimant [REDACTED 2] submitted an account statement and three transaction summaries from the Bank, indicating that the Account Owner was Dr. Victor Mandler, who resided at Schönbrunnerstrasse 219 in Vienna XII, and who owned a custody account, numbered K 18, at the St. Gallen branch of the Bank. According to these documents, the custody account contained the following securities, as of 1 January 1938:

1. *4½% Schweiz. Bundesbahnen 1928* bonds, with a nominal value of 10,000.00 Swiss Francs ("SF") and a market value of SF 10,950.00;
2. *4% Schweiz. Bundesbahnen 1933* bonds, with a nominal value of SF 10,000.00 and a market value of SF 10,580.00;
3. *4½% Eidgenössische Anleihe v. 1930* bonds, with a nominal value of SF 5,000.00 and a market value of SF 5,395.00;

³ The CRT notes that by decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census").

4. 4% *Kanton Basel-Stadt v.1931* bonds, with a nominal value of SF 5,000.00 and a market value of SF 5,237.50;
5. 4% *Kanton Bern v. 1930* bonds, with a nominal value of SF 5,000.00 and a market value of SF 5,312.50;
6. 4% *Kanton Graubiinden 1933/38* bonds, with a nominal value of SF 20,000.00 and a market value of SF 20,000.00;
7. 4% *Kanton Neuenburg v. 1934* bonds, with a nominal value of SF 7,000.00 and a market value of SF 7,175.00;
8. 4% *Kanton St. Gallen v. 1931* bonds, with a nominal value of SF 5,000.00 and a market value of SF 5,237.50;
9. 4% *Stadt Zürich von 1930* bonds, with a nominal value of SF 10,000.00 and a market value of SF 10,550.00;
10. 4% *Stadt Zürich 1933* bonds, with a nominal value of SF 8,000.00 and a market value of SF 8,488.00;
11. 3½% *English War Loan of 1932* bonds, with a nominal value of 1,900.0.0 Pounds Sterling (“£”) and a market value of SF 41,655.60;
12. 4½% *Kingdom of Norway [sic] 1941/56* bonds, with a nominal value of 1,000.00 United States Dollars (“US \$”) and a market value of SF 4,536.00;
13. 5% *North American Co. due 1961* bonds, with a nominal value of US \$1,000.00 and a market value of SF 4,406.40.

Furthermore, the documents indicate that, pursuant to the Account Owner’s orders, several of these securities were liquidated by the Bank and the proceeds were transferred to the *Deutsche Golddiskontbank* in Berlin, Germany, to the credit of Victor Mandler. In particular, the documents include transaction summaries, indicating that 4% *Oblig. Stadt Zürich v. 1933* bonds (also referred to as 4% *Stadt Zürich 1933* bonds) with a nominal value of SF 3,000.00 worth were sold on 26 August 1938 and that the proceeds from the sale amounted to SF 3,163.10; that 4% *Oblig. Schweiz. Bundesbahnen v. 1933* bonds (also referred to as 4% *Schweiz. Bundesbahnen 1933* bonds) with a nominal value of SF 5,000.00 were sold on 26 August 1938, and that the proceeds from the sale amounted to SF 5,244.35, and that all of the 3½% *Oblig. War Loan* bonds (also referred to as 3½% *English War Loan of 1932* bonds), with a face value of £1,900.0.0, were sold on 26 August 1938, and that the proceeds from the sale amounted to SF 41,358.45.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Dr. Victor Mandler, numbered 19470. These records indicate that Dr. Victor Mandler was born on 16 December 1887, that he resided at Schönbrunnerstrasse 219 in Vienna XII, that he was a medical doctor, and that he was married to [REDACTED], née [REDACTED]. According to these records, Victor Mandler owned a one-half share of a home in Baden, near Vienna (“*b/Wien*”) valued at 8,500.00 Reichsmark (“RM”) and securities valued at RM 114,290.00.

Furthermore, the records indicate that, as of 27 April 1938, Victor Mandler owned the following foreign currency-denominated securities:

1. *4½% Schweiz Bundesbahnen 1928* bonds with a nominal value of SF 10,000.00;
2. *4% Schweiz. Bundesbahnen 1933* bonds with a nominal value of SF 10,000.00;
3. *4½% Eidgen. Anleihe 1930* bonds with a nominal value of SF 5,000.00;
4. *4% Kanton Stadt Basel 1931* bonds with a nominal value of SF 5,000.00;
5. *4% Kanton Bern 1930* bonds with a nominal value of SF 5,000.00;
6. *4% Kanton Graubünden 1933/38* bonds with a nominal value of SF 20,000.00;
7. *4% Kanton Neuenburg 1934* bonds with a nominal value of SF 9,000.00;
8. *4% Kanton St. Gallen 1931* bonds with a nominal value of SF 5,000.00;
9. *4% Stadt Zürich 1930* bonds with a nominal value of SF 10,000.00;
10. *4% Stadt Zürich 1933* bonds with a nominal value of SF 8,000.00;
11. *3½% English Warloan [sic] 1932* bonds with a nominal value of £ 1,900.0.0;
12. *4½% Kingsdom [sic] of Norway 1941/56* bonds with a nominal value of US \$1,000.00;
13. *5% North Amer. Co. due 1961* bonds with a nominal value of US \$1,000.00.

The records contain no further information regarding the subsequent disposition of these securities.

The file further contains official correspondence showing that Victor Mandler was assessed flight tax (*Reichsfluchtsteuer*) of RM 43,024.00 on estimated assets of RM 200,495.00 and after reduction of RM 28,400.00 in atonement tax (*Judenvermögensabgabe*). Correspondence regarding court proceedings against Victor Mandler for having underreported his assets on his declaration by RM 2,200.00 and a Gestapo notification, dated 11 November 1941, indicate that all remaining assets were confiscated.

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.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants' father's name and city and country of residence match the unpublished name and city and country of residence of the Account Owner. The Claimants identified the Account Owner's street address, title, profession, and spouse's name, which matches information about the Account Owner contained in the Bank's records and in the 1938 Census records. The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that he fled from Austria to the United States in 1939. Claimant [REDACTED 2] also submitted a letter from the *Creditanstalt Bankverein* in Vienna, indicating that assets held by the Account Owner at that bank were forfeited to the Nazi government.

The Claimants' Relationships to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was the Claimants' father. The CRT notes that the Claimants identified unpublished information about the Account Owner. The CRT further notes that Claimant [REDACTED 2] submitted records pertaining to the Account Owner's accounts at the Bank and at the *Creditanstalt Bankverein* in Vienna. The CRT notes that it is plausible that these documents are documents which most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimants as a family member, and all of this information supports the plausibility that the Claimants are related to the Account Owner, as they have asserted in their IQs. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The records submitted by Claimant [REDACTED 2] indicate that, pursuant to the Account Owner's instructions, the Bank liquidated several of the securities held in the Account Owner's account and transferred the proceeds to the *Deutsche Golddiskontbank* in Berlin. With respect to the remaining securities, which were reported by the Account Owner in his 1938 Census declaration, the facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that the records submitted by Claimant [REDACTED 2] indicate that several of the securities were in fact liquidated and the proceeds transferred to a German bank; that the Account Owner reported the accounts in the 1938 Census; that the Account Owner lived in Austria until he fled to the United States in 1939, and therefore could not have repatriated the account without losing ultimate control over its proceeds; and given the application of Presumptions (d), (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.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their father, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account. According to the Guidelines for the Valuation of Securities, circulated 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. Market value shall be awarded if the market value was above the nominal value on the date the Account Owner is deemed to have lost control over the account.

The CRT notes that all of the bonds owned by the Account Owner were in good standing, and therefore are valued at the higher of their nominal or market values. Furthermore, the CRT notes that all of the bonds owned by the Account Owner had market values that were greater than or equal to their nominal values, and all of the bonds held by the Account Owner shall therefore be awarded at market value.⁴

The account statement submitted by Claimant [REDACTED 2] indicates that, as of 1 January 1938, the market values of some of the Account Owner's securities were as follows:

- *4½% Schweiz. Bundesbahnen 1928* bonds, with a market value of SF 10,950.00;
- *4½% Eidgenössische Anleihe v. 1930* bonds, with a market value of SF 5,395.00;
- *4% Kanton Basel-Stadt v. 1931* bonds, with a market value of SF 5,237.50;
- *4% Kanton Bern v. 1930* bonds, with a market value of SF 5,312.50;
- *4% Kanton Graubünden 1933/38* bonds, with a market value of SF 20,000.00;
- *4% Kanton St. Gallen v. 1931* bonds, with a market value of SF 5,237.50;
- *4% Stadt Zürich von 1930* bonds, with a market value of SF 10,550.00;
- *4½% Kingdom of Norway [sic] 1941/56* bonds, with a nominal value of US \$1,000.00 and a market value of SF 4,536.00;
- *5% North American Co. due 1961* bonds, with a nominal value of US \$1,000.00 and a market value of SF 4,406.40.

The combined market value for the securities listed above was therefore SF 71,624.90.

⁴ The CRT notes that the *3½% English War Loan of 1932* bonds had a nominal value of £1,900.0.0, which at the time was equivalent to SF 40,603.00, and that the *4½% Kingdom of Norway [sic] 1941/56* bonds and the *5% North American Co. due 1961* bonds each had a nominal value of US \$1,000.00, which at the time was equivalent to SF 4,370.00. The CRT uses official exchange rates when making currency conversions.

The Bank's records further indicate that the some or all of the following securities were sold on 26 August 1938, and the proceeds transferred to the *Deutsche Golddiskontbank* in Berlin:

- *4% Stadt Zürich 1933* bonds, with a nominal value of SF 8,000.00, of which bonds with a nominal value of SF 3,000.00 were sold for SF 3,163.10;
- *4% Schweiz. Bundesbahnen 1933* bonds, with a nominal value of SF 10,000.00, of which bonds with a nominal value of SF 5,000.00 were sold for SF 5,244.35;
- *3½% English War Loan of 1932* bonds, with a nominal value of £1,900.0.0, all of which were sold for SF 41,358.45.

Because the values on the sale date of 26 August 1938 more accurately represents the value of these bonds when the Account Owner lost control over these securities than 1 January 1938, the date indicated in the Bank's records for the earlier valuation of the Account Owner's securities, the CRT will apply the same market valuation to the remaining *4% Stadt Zürich 1933* bonds and *4% Schweiz. Bundesbahnen 1933* bonds. The CRT therefore determines that the Account Owner held:

- *4% Stadt Zürich 1933* bonds, with a total market value of SF 8,434.93;
- *4% Schweiz. Bundesbahnen 1933* bonds, with a total market value of SF 10,488.70;
- *3½% English War Loan of 1932* bonds, with a total market value of SF 41,358.45.

The CRT determines that the combined market value for the securities listed above was therefore SF 60,282.08.

The CRT notes that the account statement provided by the Claimant indicates that as of 1 January 1938, the Account Owner owned *4% Kanton Neuenburg 1934* bonds with a total nominal value of SF 7,000.00, whereas in the 1938 Census, the Account Owner reported that, as of 27 April 1938, he owned the same bonds with a total nominal value of SF 9,000.00. The CRT determines that in this case, the Account Owner held *4% Kanton Neuenburg 1934* bonds with a total nominal value of SF 9,000.00. The CRT further notes that according to the Bank's records, the market value of these bonds was 102.5% of their nominal value. Therefore, the market value of the additional *4% Kanton Neuenburg 1934* bonds worth SF 2,000.00 was SF 2,050.00, for a combined market value of SF 9,225.00 for the Account Owner's *4% Kanton Neuenburg 1934* bonds.

Thus, the total value of the securities held by the Account Owner was SF 141,131.98. The current value of the amount of the award is determined by multiplying the historic value by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is SF 1,764,149.75.

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, the Claimants are the children of the

Account Owner. Accordingly, the Claimants are each entitled to one-half 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
17 November 2006