

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1],

to Claimant [REDACTED 2],

to Claimant [REDACTED 3],
represented by Ron Ben Dor

to Claimant [REDACTED 4],

and to Claimant [REDACTED 5]

in re Account of M. Merlaub

Claim Numbers: 215971/NB;¹ 753946/NB; 754150/NB; 754170/NB; 754253/NB; 754402/NB²

Original Award Amount: 25,680.00 Swiss Francs

Award Amendment Amount: 26,750.00 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 2] (“Claimant [REDACTED 2]”); [REDACTED 3], née [REDACTED] (“Claimant [REDACTED 3]”); [REDACTED 4], née [REDACTED] (“Claimant [REDACTED 4]”); [REDACTED 5], née [REDACTED] (“Claimant [REDACTED 5]”); and [REDACTED 1] (“Claimant [REDACTED

¹ On 28 August 2002, the Court approved an award to [REDACTED 1] (“Claimant [REDACTED 1]”) for the account of M. Merlaub (the “August 2002 Award”), which is the subject of this Award Amendment.

² [REDACTED 2] (“Claimant [REDACTED 2]”), [REDACTED 3], née [REDACTED], (“Claimant [REDACTED 3]”), [REDACTED 4], née [REDACTED], (“Claimant [REDACTED 4]”), and [REDACTED 5], née [REDACTED], (“Claimant [REDACTED 5]”) did not submit Claim Forms to the CRT. However, in 1998 they submitted ATAG Ernst & Young claim forms (“ATAG Forms”), numbered C-TLV-A-80-216-211-734, C-TLV-D-80-301-205-416, C-TLV-D-80-318-204-729, and C-TLV-W-80-323-223-906, respectively, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. In 1998, Claimant [REDACTED 1] also submitted an ATAG Form, numbered C-TLV-G-71-228-141-021. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004). These ATAG Forms were forwarded to the CRT and have been assigned Claim Numbers 753946, 754150, 754170, 754402, and 754253, respectively.

1]”) (together the “Claimants”) to the published account of M. Merlaub (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All award amendments are published, but where a claimant has requested confidentiality, as the Claimants have 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 28 August 2002, the Court approved an Award to Claimant [REDACTED 1] for one demand deposit account held by the Account Owner (the “August 2002 Award”). In this Award Amendment, the CRT adopts and amends its findings to address the entitlement of Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5] to that account. The CRT notes that although those claimants had filed timely claims to the awarded account, their claims were not available for consideration in the August 2002 Award. Subsequent review of the claims submitted by Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5] indicates that they are each entitled to share in the original award amount, as detailed below.

The August 2002 Award

In the August 2002 Award, the CRT determined that the Account Owner owned one demand deposit account. The CRT further determined that Claimant [REDACTED 1] plausibly identified the Account Owner, that she plausibly demonstrated that she was related to the Account Owner, 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 his demand deposit account. The CRT determined that the value of the account was 2,140.00 Swiss Francs (“SF”). The August 2002 Award amount was SF 25,680.00. The CRT determined that Claimant [REDACTED 1] was entitled to the entire award amount.

Information Provided by Claimant [REDACTED 1]

As indicated in the August 2002 Award, Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as Moritz Merlaub, who was the cousin of her late husband, [REDACTED]. Claimant [REDACTED 1] stated that Moritz Merlaub, who was Jewish, was a lawyer who lived in Bucharest, Romania, was unmarried, and died attempting to flee to Palestine in 1942 when the ship he was on, the *Struma*, sank.

Information Provided by Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5]

Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5], who are cousins, each submitted substantially similar ATAG Ernst & Young

Claim Forms (“ATAG Forms”) identifying the Account Owner as their cousin, Moritz Merlaub. Claimant [REDACTED 2] and Claimant [REDACTED 3] stated that their mothers, [REDACTED] and [REDACTED], respectively, were the sisters of Moritz Merlaub’s mother, [REDACTED]. Claimant [REDACTED 4] and Claimant [REDACTED 5], who are siblings, stated that their father was the brother of Moritz Melaub’s mother.

According to the information provided by these claimants, Moritz Merlaub was an attorney who resided at 6 Dr. Jatropol Street in the Cotroceni neighborhood of Bucharest, Romania. These Claimants stated that Moritz Merlaub never married and did not have any children. These Claimants explained that their relative died in 1942 when the ship he was on, the *Struma*, sank in the Black Sea.

In support of their claims, Claimant [REDACTED 4] and Claimant [REDACTED 5] submitted a copy of a letter dated 14 November 1941 from M. Merlaub who resided at 6 Dr. Jatropol Street in Bucharest to *Bank John Porter & Comp.* at 291 Broadway in New York, in which M. Merlaub requested that that bank pay a sum of money to [REDACTED].

Claimant [REDACTED 2] indicated that she was born on 29 December 1922 in Romania; Claimant [REDACTED 3] indicated that she was born on 27 August 1913 in Romania; Claimant [REDACTED 4] indicated that she was born on 23 June 1924 in Romania; and Claimant [REDACTED 5] indicated that she was born on 7 June 1926 in Romania.

Information Available in the Bank’s Records

As detailed in the August 2002 Award, the Bank’s records indicated that the Account Owner was M. Merlaub, who was a lawyer, and whose country of residence was Romania. The Bank’s records further indicated that the Account Owner held a numbered demand deposit account, which held a balance of SF 232.50 as of 1948, and that the balance of the account was transferred to a suspense account on an unknown date.

The CRT’s Analysis

Joinder of Claims

According to Article 37(1) of 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 five claims of the Claimants in one proceeding.

Identification of the Account Owner

Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5] have plausibly identified the Account Owner. Their cousin’s name and country of residence match the published name and country of residence of the Account Owner.

Moreover, they identified their cousin's profession, which matches the unpublished profession of the Account Owner as contained in the Bank's records.

In support of their claims, Claimant [REDACTED 4] and Claimant [REDACTED 5] submitted a copy of a letter dated 14 November 1941 from M. Merlaub, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same country recorded in the Bank's records as the name and country of residence of the Account Owner.

Additionally, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Moritz Merlaub, and indicates that he was born in 1907 in Constanta, Romania, to [REDACTED] and [REDACTED], that he was a lawyer who resided in Bucharest, Romania during the Second World War, and that he died in 1942 when the ship *Struma* sank, which matches the information about the Account Owner provided by Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5]. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT further notes that Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5] filed ATAG Forms in 1998, asserting their entitlement to a Swiss bank account owned by the Account Owner, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5] have each based their present claims not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that they had reason to believe that their relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5].

Status of the Account Owner as a Victim of Nazi Persecution

As detailed in the August 2002 Award, the CRT determined that the Account Owner was a Victim of Nazi Persecution.

The Claimants' Relationships to the Account Owner

Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5] have each plausibly demonstrated that they are related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was their cousin.

The CRT further notes that Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5] have each identified unpublished information

about the Account Owner as contained in the Bank's records; that they filed ATAG Forms in 1998, identifying their relationship with the Account Owner prior to the publication in February 2001 of the ICEP List; and that they also identified information which matches information contained in the Yad Vashem records. 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 these claimants as a family member, and all of this information supports the plausibility that Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5] are each related to the Account Owner, as they have asserted in their Claim Forms.

The Issue of Who Received the Proceeds

As detailed in the August 2002 Award, the CRT has concluded that it was plausible that the account proceeds were not paid to the Account Owner or his heirs.

Amount of the August 2002 Award

As detailed in the August 2002 Award, the Account Owner held one demand deposit account, which held a balance of SF 232.50 as of 1948, which was increased by an adjustment of SF 260.00, in accordance with Article 37(1) of the Rules, for a total adjusted balance of SF 492.50. Pursuant to Article 29 of the Rules, when the value of an account is less than the average value of the same or similar type of account, as was 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. Based upon the ICEP Investigation, in 1945 the average value of a demand deposit account was SF 2,140.00.

According to Article 31 of the Rules, account values are multiplied by an adjustment factor to bring award amounts up to current value. At the time of the August 2002 Award, the adjustment factor was 12, and the resulting award amount was SF 25,680.00. Since the August 2002 Award, the adjustment factor has been raised to 12.5.

Basis for the Award Amendment

The CRT has determined that an Award may be made in favor Claimant [REDACTED 2], Claimant [REDACTED 3], Claimant [REDACTED 4], and Claimant [REDACTED 5]. First, their claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, they have each plausibly demonstrated that they are the Account Owner's cousin, and that relationship justifies an Award. Third, the CRT determined in the August 2002 Award that it was plausible that neither the Account Owner nor his heirs received the proceeds of the account.

New Division of the Award

According to Article 23(1)(e) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner's parents have submitted a claim, the award shall be in favor of any descendants of the Account Owner's grandparents who have submitted a claim, in equal

shares by representation. Accordingly, Claimant [REDACTED 2] is entitled to one-third of the award amount; Claimant [REDACTED 3] is entitled to one-third of the award amount; and Claimant [REDACTED 4] and Claimant [REDACTED 5], who are siblings, are entitled to share equally one-third of the award amount, or one-sixth of the award amount each. Claimant [REDACTED 1], as the wife of the Account Owner's cousin [REDACTED], is related to the Account Owner by marriage only, and is therefore not entitled to share in the award amount.

The CRT notes that in the August 2002 Award, Claimant [REDACTED 1] was awarded the entire award amount, and that she is now determined to be less entitled to share in the award amount than Claimants [REDACTED 2], [REDACTED 3], [REDACTED 4], and [REDACTED 5]. Recognizing that more than seven years have passed since the August 2002 Award, the CRT does not seek outright repayment of the overpayment from Claimant [REDACTED 1]. However, the amount of overpayment shall be deducted from any award adjustment that may be forthcoming to Claimant [REDACTED 1].

Amount and Division of the Award Amendment

As detailed above and in the August 2002 Award, the 1945 value of the account at issue was determined to be SF 2,140.00. Claimants [REDACTED 2], [REDACTED 3], [REDACTED 4], and [REDACTED 5] are together entitled to the full award amount. 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 a total Award Amendment amount of SF 26,750.00. As detailed above, Claimant [REDACTED 2] is entitled to one-third of the award amendment amount; Claimant [REDACTED 3] is entitled to one-third of the award amendment amount; and Claimant [REDACTED 4] and Claimant [REDACTED 5], who are siblings, are entitled to share equally one-third of the award amendment amount, or one-sixth of the award amendment amount each.

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
16 April 2010