

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award and Award Amendment

to Claimant [REDACTED]¹
represented by [REDACTED]

in re Accounts of Marim and Malwine Ungar

Claim Numbers: 200160/WT; 203782/WT

Original Award Amount: 162,500.00 Swiss Francs

Award Amendment Amount: 0.00 Swiss Francs

This Certified Award and Certified Award Amendment are based upon the claims of [REDACTED] (the “Claimant”) to the published accounts of Marim and Malwine Ungar (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards and award amendments 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.

Procedural History

On 31 December 2003, the Court approved an award to the Claimant for one custody account held by the Account Owners (the “December 2003 Award”), but reserved decision regarding the disposition of an unknown type of account pending further consideration. In this Award and Award Amendment, the CRT addresses the disposition of that account and adopts and amends its findings set out in the December 2003 Award.

The December 2003 Award

In the December 2003 Award, the CRT determined that the Account Owners owned one custody account, numbered 41501 and one account of unknown type, numbered 61835. The CRT 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

¹ On 31 December 2003, the Court approved an award to Claimant [REDACTED] (the “Claimant”), for the account of Marim and Malvina Ungar (the “December 2003 Award”), which is the subject of this Award Amendment.

is plausible that the Account Owners did not receive the proceeds of custody account 41501, that was closed on 8 April 1938. The CRT determined that the account numbered 61835 was transferred on 16 June 1938 to the Bank's branch in London, the United Kingdom, but did not reach a determination regarding its ultimate disposition.

In the December 2003 Award, the CRT noted that the Bank's records did not indicate the value of custody account 41501, and therefore presumed that its value was 13,000.00 Swiss Francs ("SF"). The current value of this amount was calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 162,500.00. Finally, the CRT determined that the Claimant was entitled to the entire award amount.

Information Available in the Bank's Records

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of two customer cards, a list of custody accounts held by Bank customers from Austria, and a list of closed accounts.

These documents include notations indicating that custody account 41501 was, in fact, never opened by the Account Owners ("*Depot wurde gar nicht geführt*" and "*dieses Depot wird gar nicht eröffnet*"). These documents further indicate that account 61835 was, in fact, a custody account.

The CRT's Analysis

The Issue of Who Received the Proceeds

With regard to custody account 41501 that was awarded in the December 2003 Award, the additional records from the Bank indicate that this account was never actually opened by the Account Owners. Accordingly, the CRT determines that no award is appropriate for this account.

With regard to the account numbered 61835 that was described as an account of unknown type in the December 2003 Award, the additional records indicate that this account was, in fact, a custody account. As noted in the December 2003 Award, the Bank's records indicate that this account was transferred to the Bank's London branch on 16 June 1938, at which time the Account Owners may have been outside Nazi-dominated territory.² However, given that the Bank's records do not indicate to whom this account was closed, that the Account Owners fled their country of origin due to Nazi persecution, that the Account Owners may have had relatives remaining in their country of origin and that they may therefore have yielded to Nazi pressure to

² The CRT notes that in the December 2003 Award, the CRT stated that the Claimant explained that his parents (the Account Owners) fled Austria in 1940. Further review of the Claimant's submissions reveals the CRT's statement was in error. The Claimant stated that his parents fled Austria in 1938, shortly after its incorporation into the Reich in March 1938 (the "*Anschluss*").

turn over their accounts to ensure their safety, that the Account Owners and their heirs would not have been able to obtain information about their account after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 proceeds of custody account 61835 were not paid to the Account Owners or their 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.

Basis for the Award and Award Amendment

The CRT has determined that an Award and Award Amendment may be made in favor of the Claimant. First, the Claimant's claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that he is the son of the Account Owners, and that relationship justifies an Award. Third, with respect to the custody account awarded in the December 2003 award, the additional information obtained from the Bank indicates that the account was never opened; with respect to the account numbered 61835, the additional information indicates that the account was a custody account, and the CRT has determined that neither the Account Owners nor their heirs received the proceeds of custody account 61835.

Amount of the Award Amendment

As detailed in the December 2003 Award, 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. Based on 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"), in 1945 the average value of a custody account was SF 13,000.00.

In this case, the 1945 value of custody account 41501 that was awarded in the December 2003 Award (SF 13,000.00) is subtracted from the 1945 value of custody account 61835 that is awarded here (SF 13,000.00), leaving a net balance of 0.00. Accordingly, no additional payment is appropriate.

Certification of the Award Amendment

The CRT certifies this Award Amendment for approval by the Court.

Claims Resolution Tribunal
21 December 2009