

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]

and to Claimant [REDACTED 3]

in re Account of Ernst Victor

Claim Numbers: 213981/CU; 213982/CU; 214900/CU; 214901/CU

Original Award Amount: 149,500.00 Swiss Francs

Award Amendment Amount: 185,455.12 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and upon the claims of [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published accounts of Ernst Victor (the “Account Owner”) at the [REDACTED] (the “Bank”).

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 27 January 2002, the Court approved an Award to the Claimants for a custody account owned by the Account Owner (the “January 2002 Award”). At the time of that award, the bank records available to the CRT did not contain information regarding the value of the awarded custody account. However, 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 January 2002 Award based upon this additional information recently forwarded to the CRT by the Bank.

¹ On 27 January 2002, the Court approved an award to Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) and Claimant [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) for the account of Ernst Victor (the “January 2002 Award”), which is the subject of this Award Amendment. In a separate decision, approved on 3 June 2003, the CRT awarded an additional account to the Claimants. See *in re Account of Ernst Victor* (approved on 3 June 2003) (the “June 2003 Award”). This award remains unaffected.

The January 2002 Award

In the January 2002 Award, the CRT determined that the Account Owner owned a custody account and one demand deposit account. The CRT further determined that the Claimants plausibly identified the Account Owner, that they plausibly demonstrated that they are related to the Account Owner, and that they 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 custody account and that Claimant [REDACTED 3] was entitled to half of the award amount, and Claimant [REDACTED 1] and represented party [REDACTED 2] were each entitled to one-fourth of the award amount.

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

Information Available in the Bank's Records

As detailed in the January 2002 Award, the Bank's records indicate the name and the city of domicile of the Account Owner. According to the Bank's records the Account Owner resided in Altona-Bahrenfeld, Germany. These records further indicate that the Account Owner held a custody account, which was opened on 15 June 1929 and closed on 9 December 1936; and a demand deposit account, which was opened on 18 June 1929 and closed on 20 June 1935.

As noted above, the Bank recently provided the CRT with additional documents regarding the custody account. These documents contained a custody account identification card ("*Leitkarte*") and valuations cards ("*Depotvalorenkarten*") for each security held within the custody account. According to these records, the Account Owner held a custody account, numbered 34762.

These documents indicate that at the time when the Account Owner was deemed to have lost control over the account, it contained held the following securities:

- *4% Schweizerische Bundesbahnen von 1934* bonds with a nominal value of SF 5,000.00, which were sold on 19 January 1935;
- *5% Canadian National Railway Company Guaranteed Gold Bonds due 1 October 1969* bonds with a nominal value of 2,000.00 United States Dollars ("US\$"), which were sent ("*zugesandt*") to *Herzfeld & Stern* on 21 January 1935;
- *5% Crédit Foncier Neuchâtelois de 1930 fällig 30. Juni 1950* bonds with a nominal value of SF 5,000.00, which were sold on 19 January 1935;
- *5% Stadt Zürich von 1929* bonds with a nominal value of SF 9,000.00, which were sold on 19 January 1935; and
- *6% Äussere staatlich garant. Goldanl. der Stadt Santiago de Chile von 1929* bonds with a nominal value of SF 9,000.00, which were transferred on 7 December 1936 to another account in the Bank, numbered 21637, the owner of which is not known.

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 four claims of the Claimants in one proceeding.

Basis for the Award Amendment

The CRT has determined that an Award Amendment may be made in favor of the Claimants. The CRT previously determined in the January 2002 Award that the claims are admissible in accordance with Article 18 of the Rules, that the Claimants have plausibly demonstrated that they are related to the Account Owner, and that it is plausible that neither the Account Owner nor his heirs received the proceeds of his accounts.

Value of the accounts in the January 2002 Award

In the January 2002 Award, the Account Owner held a custody account and a demand deposit account.² The value of the demand deposit account remains unaffected.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for the custody account in January 2002, 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 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. The market value of bonds shall be awarded if that value was above the nominal value on the date the account owner is deemed to have lost control over the account.

According to the additional information from the Bank, the Account Owner held custody account 34762 with the following securities:³

- *4% Schweizerische Bundesbahnen von 1934*, bonds with a nominal value of SF 5,000.00. These bonds were of good quality and were trading at 87.00% when sold on 19 January 1935. Since the bonds were of good quality and had market values below the nominal

² The CRT notes that the demand deposit account was awarded in the June 2003 Award. See footnote 2.

³ The CRT uses official exchange rates when making currency conversions.

value, the nominal value will be used to determine the value of this asset. The total nominal value of these bonds was SF 5,000.00;⁴

- *5% Canadian National Railway Company Guaranteed Gold Bonds due 1 October 1969*, bonds with a nominal value of US\$ 2,000.00. These bonds were of good quality and were trading at 117.88% when sent to *Herzfeld & Stern* on 21 January 1935. Since the bonds were of good quality and had market values above the nominal value, the market value will be used to determine the value of this asset. The total market value of these bonds was US\$ 2,357.60, which was equivalent to SF 7,261.41;⁵
- *5% Crédit Foncier Neuchâtelois de 1930 fällig 30. Juni 1950*, bonds with a nominal value of SF 5,000.00. These bonds were trading at 100.00% when sold on 19 January 1935. The total market value of these bonds was SF 5,000.00;⁶
- *5% Stadt Zürich von 1929*, bonds with a nominal value of SF 9,000.00. These bonds were of good quality and were trading at 93.00% when sold on 19 January 1935. Therefore, these bonds shall be valued at their total nominal value of SF 9,000.00;⁷ and
- *6% Äussere staatlich garant. Goldanl. der Stadt Santiago de Chile von 1929*, bonds with a nominal value of SF 9,000.00. These bonds were in default and trading at 17.50% when transferred on 7 December 1936. Therefore, these bonds shall be valued at their market value of SF 1,575.00.⁸

The CRT notes that the Bank's records do not indicate who owned the account numbered 21637, into which one of these securities was transferred. However, even if this account were owned by the Account Owner, the records do not indicate when the account was closed, or the disposition of the securities contained within it. Accordingly, the CRT concludes that the Account Owner did not receive these securities or their proceeds.

Therefore, the Bank's records indicate that the total value of the custody account in December 1938 was SF 27,836.41. The Article 29 value of SF 13,000.00, which was used in the January 2002 Award, is then subtracted from the actual historic value, resulting in a difference of SF 14,836.41. 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 185,455.12.

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 grandchildren of the Account Owner and Claimant [REDACTED 1] is representing his brother, [REDACTED 2]. Accordingly, Claimant [REDACTED 3] is entitled to one-half of the total award amount, and

⁴ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1935.

⁵ The market value for this security was obtained from the *New York Times*, 22 January 1935.

⁶ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1935.

⁷ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1935.

⁸ The market value for this security was obtained from *Zürcher Kursblatt*, 30 December 1936.

Claimant [REDACTED 1] and represented party [REDACTED 2] are each entitled to one-fourth of the total award amount.

Scope of the Award Amendment

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 Amendment

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
11 August 2008