

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award and Award Amendment**

to Claimant [REDACTED 1],  
also acting on behalf of [REDACTED 2]  
both represented by [REDACTED] and Eyal Frost

to the Estate of Claimant [REDACTED 4],  
represented by Eyal Frost

to Claimant [REDACTED 5],  
also acting on behalf of [REDACTED 6]

to Claimant [REDACTED 7],

and to Claimant [REDACTED 8]

## **in re Accounts of Herman Chwat**

Claim Numbers: 001119/HS; 002153/HS; 204932/HS; 212359/HS; 214600/HS; 221860/HS

Original Award Amount: 57,750.00 Swiss Francs

Award and Award Amendment Amount: 30,092.63 Swiss Francs

This Certified Award and Award Amendment is based on the claims of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”), [REDACTED 7], née [REDACTED] (“Claimant [REDACTED 7]”), [REDACTED 5] (“Claimant [REDACTED 5]”), [REDACTED 4], née [REDACTED] (“Claimant [REDACTED 4]”), and [REDACTED 8] (“Claimant [REDACTED 8]”) (together “the Claimants”) to the published account of Herman Chwat (the “Account Owner”). This Award and Award Amendment is to the Account Owner’s unpublished accounts at the London and Zurich branches of the [REDACTED] (the “Bank”).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 claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

## **Procedural History**

On 20 August 2003, the Court approved an Award to Claimant [REDACTED 1], Claimant [REDACTED 7], Claimant [REDACTED 5], and Claimant [REDACTED 4] for three accounts held by the Account Owner at the Bank, while reserving decision with respect to a fourth account held by the Account Owner (the “August 2003 Award”).

On 3 March 2006 the Court approved two Denial decisions (the “March 2006 Denials”) with respect to the Account Owner’s accounts. In one of these decisions, the CRT determined that the Claimants were not entitled to the proceeds of the Account Owner’s fourth account because it was closed prior to the Nazi occupation of Poland, the Account Owner’s country of residence. In the other March 2006 Denial, the CRT determined that Claimant [REDACTED 8] was not entitled to a share of the August 2003 Award.

#### The August 2003 Award

In the August 2003 Award, the CRT determined that the Account Owner held two safe deposit boxes, a custody account, and a demand deposit account; that the Claimants plausibly identified the Account Owner as their relative; that the Account Owner, who perished in Treblinka, was a Victim of Nazi Persecution; and that it was plausible that neither the Account Owner nor his heirs received the proceeds of the safe deposit boxes or the demand deposit account.

As detailed in the August 2003 Award, the value of the safe deposit boxes and the demand deposit account was not indicated in the Bank’s records. Accordingly, pursuant to Article 29 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), the CRT used the average values of the same or similar types of accounts in 1945 to determine their value. Based on the investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a safe deposit box was 1,240.00 Swiss Francs (“SF”) and the average value of a demand deposit account was SF 2,140.00. The total 1945 value for the three accounts was thus SF 4,620.00. 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 57,750.00 for the August 2003 Award.

Further, in the August 2003 Award, the CRT determined that, according to Article 23(1)(d) of the Rules, Claimant [REDACTED 1], Claimant [REDACTED 1]’s sister [REDACTED 2] (“Represented Party [REDACTED 2]”), Claimant [REDACTED 5], and Claimant [REDACTED 4], as descendants of the Account Owner’s parents, were better entitled to the Award amount than Claimant [REDACTED 5]’s mother [REDACTED 6] (“Represented Party [REDACTED 6]”) and Claimant [REDACTED 7], both of whom were related to the Account Owner by marriage. As noted above, in one of the March 2006 Denials, the CRT determined that Claimant [REDACTED 8] was not entitled to a share of the August 2003 Award amount.

#### Appeal and Events following the August 2003 Award

Following the Court’s approval of the August 2003 Award, Claimant [REDACTED 1] and Claimant [REDACTED 4] appealed that decision, asserting (among other arguments) that the actual value of the accounts was higher than the awarded value, and declined to accept payment for the share of the August 2003 Award awarded to them and to Claimant [REDACTED 1]’s sister. Therefore, according to information provided to the CRT by the Office of Special Master Michael Bradfield, Claimant [REDACTED 5] is the only party to have received payment for the August 2003 Award.

During the pendency of Claimant [REDACTED 1]’s and Claimant [REDACTED 4]’s appeal, the Bank provided the CRT with additional documents about the Account Owner’s accounts. Based on a preliminary review of these new documents, it appeared that the three accounts awarded in the August 2003 Award had been awarded in error. Although the August 2003 Award was not rescinded, in April 2007 Special Master Bradfield transferred to the Swiss Banks Settlement Fund the unpaid portion of the August 2003 Award, corresponding to the amount originally awarded, but as yet unpaid, to Claimant [REDACTED 1], Claimant [REDACTED 4] and Claimant [REDACTED 1]’s sister. In April 2008 Special Master Bradfield informed Claimant [REDACTED 1] that the August 2003 Award was made in error, based on the preliminary conclusion that all three accounts were closed prior to the Nazi occupation of Poland. However, following a more detailed review of the new documents provided by the Bank, the CRT has concluded that in fact only two of the three accounts (namely, the two safe deposit boxes) were awarded in error. Additionally, the new Bank’s records indicate that the Account Owner held an account at the London branch of the Bank, which was not addressed in the August 2003 Award.

This Award and Award Amendment adopts and amends the findings of the August 2003 Award based upon the new documents received from the Bank regarding to the Account Owner’s accounts. This Award and Award Amendment does not affect the findings of the March 2006 Denials.

### **Information Available in the Bank’s Records**

At the time of the August 2003 Award, the Bank’s records available to the CRT consisted of a customer card and a report from the auditors who carried out the ICEP Investigation. These records indicated that the Account Owner held four accounts: a custody account, numbered 33896 that was closed on 22 June 1939; a demand deposit account; and two safe deposit boxes, numbered 1802 and 1803. The Bank’s records originally available to the CRT indicate that the custody account held gold coins. According to these records, a 1% annual fee was charged to the custody account, which was paid by the sale of coins in the custody account and presumed transfer of the proceeds to the demand deposit account, the existence of which is also confirmed by a notation on the customer card that reads “*Konto-Korrent*” (“current account”).

These original records show that the demand deposit account was closed, but do not show when it or the two safe deposit boxes were closed, or to whom they were paid, nor do these records indicate the value of these accounts. On the basis of these records, the demand deposit account and two safe deposit boxes were awarded to the Claimants in the August 2003 Award, and the custody account was determined to have been paid to the Account Owner in one of the March 2006 Denials.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank to obtain additional information about the Account Owner’s accounts (“Voluntary Assistance”). Subsequent to the approval of the August 2003 Award and March 2006 Denials, the Bank provided the CRT with additional documents. These documents contain additional information about the Account Owner’s two safe deposit boxes, his custody account, and an additional demand deposit account held at the Bank’s London branch. The documents obtained through

Voluntary Assistance do not contain any additional information about the demand deposit account originally awarded in the August 2003 Award, including, specifically, its closure date. The documents obtained through Voluntary Assistance consist of opening contracts for safe deposit boxes and for a custody account, account cards, account statements, signature samples, documents related to insurance policies for gold coins, the transcript (*Protokoll*) of the closure of two safe deposit boxes, correspondence between the Bank's London and Zurich branches, letters from the Bank's London and Zurich branches to the Account Owner, and correspondence between the Bank's London branch and the Office of the Custodian of Enemy Property of the Department of Trade and Industry in the United Kingdom.

These records indicate that custody account 33896 was opened on 20 February 1933 with a deposit of United States gold coins worth 3,000.00 US Dollars ("US \$"). These records also indicate that the Account Owner rented safe deposit box 1802 on 1 June 1934 and safe deposit box 1803 on 12 June 1934, and that the Account Owner paid rental fees for these safe deposit boxes through 1 June 1939 and 12 June 1939, respectively. According to these records, the Account Owner deposited 500 US \$10.00 gold Eagle coins into safe deposit box 1803 on 21 June 1934. The records also show that safe deposit box 1802 contained United States gold coins that were insured against theft and fire for the amount of SF 26,000.00. These records show that, pursuant to the Account Owner's instructions in a letter from the Account Owner to the Bank dated 15 December 1938, on 17 December 1938, two Bank officials opened safe deposit boxes 1802 and 1803, sold their entire contents totaling US \$10,000.00 in gold coins, and transferred the proceeds of the sale to the *Bank Polski* in Lodz, Poland. The Bank's records indicate that the safe deposit box accounts were then closed.

These records also indicate that the Account Owner held a demand deposit account at the Bank's London branch, which was opened on 30 March 1939 by the Bank's Zurich branch acting on behalf of the Account Owner. The Bank's records indicate that the account had an initial balance of 31.77 Pound Sterling ("£").<sup>1</sup> According to these records, on 1 July 1940, the Bank ceased paying interest on this account, because of "the present conditions of our money market," and that, as of 22 May 1942, the account had a balance of £ 283.00. These records indicate that the Bank charged a fee of £ 0.50 on the account twice per year, which was increased at some point to £ 1.00. These records show that the account balance was steadily reduced by fees until 1974, when the Office of the Custodian of Enemy Property of the Department of Trade and Industry in the United Kingdom ordered the Bank to surrender the accounts of certain Polish account owners. The Bank's records indicate that the London branch of the Bank closed the Account Owner's demand deposit account on 9 April 1974 and transferred the remaining balance of £ 228.50 to the Office of the Custodian of Enemy Property.

## **The CRT's Analysis**

### The Issue of Who Received the Proceeds

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<sup>1</sup> Before the decimalization of the British pound in 1971, values in Pound Sterling ("£") were expressed in terms of pounds, shillings, and pence. The shilling is equivalent to £ 1/20th and one penny is equivalent to £ 1/240. The CRT has converted these amounts to the decimal values for ease of calculation.

With respect to the Account Owner's custody account, which was closed on 22 June 1939, as detailed in one of the March 2006 Denials, the CRT concluded that the Account Owner himself closed this account and received the proceeds.

As for safe deposit boxes 1802 and 1803, which were awarded in the August 2003 Award, the Bank's records obtained through Voluntary Assistance show that on 15 December 1938, the Account Owner instructed the Bank to close these accounts and to transfer the proceeds of the sale of the gold coins in them to the *Bank Polski* in Lodz, where he resided. The records show that the safe deposit boxes were then closed on 17 December 1938, approximately nine months before the Nazi occupation of Poland. Accordingly, the CRT concludes that the Account Owner himself closed the safe deposit boxes and received the proceeds. Therefore, the CRT concludes that no award is appropriate for the safe deposit boxes.

As for the Account Owner's demand deposit account at the Bank's London branch, the Bank's records indicate that the British Office of the Custodian of Enemy Property received the proceeds of the account in 1974, some 30 or more years after the Account Owner perished in Treblinka. Given that there is no evidence that the Office of the Custodian of Enemy Property paid the account to the Account Owner's heirs, that the Account Owner's heirs would not have been able to obtain information about his account after the Second World War from the Bank 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 (b), (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's 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 Claimants. First, as detailed in the August 2003 Award, the Claimants' claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, in the August 2003 Award Claimant [REDACTED 1] and Claimant [REDACTED 5] plausibly demonstrated that the Account Owner was their great-uncle and Claimant [REDACTED 4] plausibly demonstrated that the Account Owner was her uncle, and those relationships justify an Award. Third, although the Bank's records obtained through Voluntary Assistance indicate that two of the three accounts awarded in the August 2003 Award are not appropriate for an award, these records also indicate that the Account Owner held an additional account at the Bank's London branch. With respect to this additional account, the Bank's records indicate that the Account Owner did not receive the proceeds and the CRT has determined that it is plausible that the Account Owner's heirs did not receive the proceeds.

Further, as indicated in the August 2003 Award and the March 2006 Denials, Claimant [REDACTED 1], Represented Party [REDACTED 2], and Claimant [REDACTED 5], as the Account Owner's great-nieces and great-nephew, respectively, and Claimant [REDACTED 4], as the Account Owner's niece, have a better entitlement to the Account Owner's account than

Claimant [REDACTED 7], Claimant [REDACTED 8], and Represented Party [REDACTED 6], who are related to the Account Owner by marriage.

#### Amount of the Award and Award Amendment

The Bank's records obtained through Voluntary Assistance indicate that the Account Owner's London account had a balance of £ 283.00, which was equivalent to SF 4,887.41, as of 22 May 1942.<sup>2</sup>

As discussed above, the additional bank records received subsequent to the August 2003 Award indicate that the Account Owner's two safe deposit boxes, which were awarded to the Claimants in that decision, were, in fact, closed prior to the occupation of Poland, and that the Account Owner received the proceeds of these two accounts. Accordingly, the 1945 value of these two safe deposit boxes that was awarded in the August 2003 Award (SF 2,480.00) is subtracted from the value of the London account awarded here (SF 4,887.41), resulting in a 1945 net balance of SF 2,407.41. 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 an Award Amendment amount of SF 30,092.63.

As indicated above, Claimant [REDACTED 1], Claimant [REDACTED 4], and Claimant [REDACTED 1]'s sister have not received any payment for the August 2003 Award. Although the August 2003 Award was not rescinded, the original amount awarded to Claimant [REDACTED 1], Claimant [REDACTED 4], and Claimant [REDACTED 1]'s sister was returned to the Settlement Fund, following a preliminary determination that the August 2003 Award was made in error. However, as mentioned above, the CRT has subsequently concluded that the demand deposit account in the August 2003 Award was correctly awarded.

Accordingly, the Order approving this Award and Award Amendment will also request funds to make payment to Claimant [REDACTED 1], Claimant [REDACTED 4], and Claimant [REDACTED 1]'s sister for their share of the originally awarded accounts. As detailed above, the calculation of the Award Amendment amount takes into consideration the CRT's determination that the two safe deposit boxes were closed properly by deducting that amount from the amount awarded for the London demand deposit account. Therefore, no reduction is necessary from the original amount originally allocated to Claimant [REDACTED 1], Claimant [REDACTED 4], and Claimant [REDACTED 1]'s sister.

To summarize, the August 2003 Award and this present Award and Award Amendment together award one demand deposit account at the 1945 presumptive value of SF 2,140.00 and one demand deposit account (held in London) at the 1945 known value of SF 4,887.41, for a total 1945 value of SF 7,027.41, which, when multiplied by a factor of 12.5, comes to the current value of SF 87,842.63. This amount equals the combined totals of the August 2003 Award (SF 57,750.00) and the present Award and Award Amendment (SF 30,092.63).<sup>3</sup>

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<sup>2</sup> The CRT uses official exchange rates when making currency conversions.

<sup>3</sup> The CRT notes that the Award and Award Amendment amount of SF 30,092.63 already reflects the deduction made for the two safe deposit boxes originally included in the August 2003 Award.

### Division of the Award Amendment Amount

The CRT notes that the August 2003 Award specified that according to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1], Claimant [REDACTED 5] and Claimant [REDACTED 4] are all descendants of the Account Owner's parents, and Claimant [REDACTED 1] is representing her sister. Accordingly, Claimant [REDACTED 1] and her sister are entitled to share one-third of the total Award Amendment amount, or one-sixth of the Award Amendment amount each, and Claimant [REDACTED 5] and Claimant [REDACTED 4] are each entitled to one-third of the total Award Amendment amount. As detailed in the August 2003 Award and in one of the March 2006 Denials, Claimant [REDACTED 7], Claimant [REDACTED 8], and Represented Party [REDACTED 6] are not entitled to a share of the Award Amendment amount.

As noted above, the Order approving this Award and Award Amendment shall include a request for funds to pay Claimant [REDACTED 1], Claimant [REDACTED 4], and Claimant [REDACTED 1]'s sister for the amount due from the August 2003 Award. As also noted above, the amount for the two safe deposit boxes that were closed properly is deducted from the amount awarded in this Award and Award Amendment for the London demand deposit account. Thus, no deduction is necessary for the original payments to Claimant [REDACTED 1], Claimant [REDACTED 4], and Claimant [REDACTED 1]'s sister. All payments shall be made pursuant to the Division of the Award set out in the August 2003 Award.

The division of the August 2003 Award amount and the award amount in the present Award and Award Amendment is summarized in the table below, which may contain slight discrepancies from the actual payment amounts due to rounding.

<b>Name of Party</b>	<b>Share of August 2003 Award</b>	<b>Share of present Award and Award Amendment</b>	<b>Total Share of all awarded accounts</b>
CL [REDACTED 1]	9,625.00*	5,015.44	14,640.44
[REDACTED 2]	9,625.00*	5,015.44	14,640.44
CL [REDACTED 5]	19,250.00	10,030.88	29,280.88
[REDACTED 6]	0.00	0.00	0.00
CL [REDACTED 4]	19,250.00*	10,030.87	29,280.87
CL [REDACTED 7]	0.00	0.00	0.00
CL [REDACTED 8]	0.00	0.00	0.00
<b>Totals</b>	<b>57,750.00</b>	<b>30,092.63</b>	<b>87,842.63</b>

\* These payments were held and the amounts subsequently returned to the Swiss Banks Settlement Fund in April 2007.

## **Certification of the Award Amendment**

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

Claims Resolution Tribunal  
28 May 2010