

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], [REDACTED 3],
and [REDACTED 4] for the Estate of [REDACTED 5]

and to Claimant [REDACTED 6]²
represented by David J. Rowland

in re Account of Claere Kirstein

Claim Number: 213662/RS³

Original Award Amount: 162,500.00 Swiss Francs

Award Amendment Amount: 1,399,793.75 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED 1], née [REDACTED], (the “Claimant”) to the published account of Claere Kirstein (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 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 31 December 2003, the Court approved an Award to the Claimant and represented parties [REDACTED 2], [REDACTED 3], and [REDACTED 4] (acting for the estate of [REDACTED 5]) (the “Represented Parties”) for a custody account owned by the Account Owner (the “December 2003 Award”). On 1 June 2004, the Court approved an amendment to the December 2003 Award to address the entitlement of [REDACTED 6] (the “June 2004 Amendment”).

¹ On 30 December 2003, the Court approved an award to Claimant [REDACTED 1] (the “Claimant”) and represented parties [REDACTED 2], [REDACTED 3], and [REDACTED 4] (acting for the [REDACTED 5]), for the account of Claere Kirstein (the “December 2003 Award”), which is the subject of this Award Amendment.

² On 1 June 2004, the Court approved an amendment to the December 2003 Award to address the entitlement of Christel Gauger (the “June 2004 Amendment”), which is also the subject of this Award Amendment.

³ The Claimant submitted two additional claims, which are registered under the Claim Numbers 213663 and 213664. In two separate determinations dated 29 May 2008, the CRT treated the claims to these accounts.

At the time of both the December 2003 Award and the June 2004 Amendment, 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. Furthermore, the CRT obtained additional information regarding this account (“File 1510”) from the records of the Main Office of the *Reichsbank Leipzig (Reichsbankhauptstelle Leipzig)*, which include correspondence concerning the required sale of foreign currency denominated securities and delivery of foreign currency proceeds to designated German institutions.⁴ File 1510 includes correspondence with Cläre Kirstein regarding the transfer to, and sale through, the *Deutsche Golddiskontbank* of her foreign currency denominated securities, including securities held at the Bank. In this Award Amendment, the CRT adopts and amends its findings set out in the December 2003 Award and the June 2004 Amendment based upon all this additional information.

The December 2003 Award

In the December 2003 Award, the CRT determined that the Account Owner owned a custody account. The CRT further determined that the Claimant plausibly identified the Account Owner, that she plausibly demonstrated that she is related to the Account Owner, and that she 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 her account and that the Claimant and the Represented Parties 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”).

The June 2004 Amendment

In the June 2004 Amendment, the CRT revised the distribution of the December 2003 Award to include [REDACTED 6], who was not included in the December 2003 Award. The CRT concluded that, based upon testamentary documents submitted to the CRT, [REDACTED 6] was entitled to one-half of the December 2003 Award amount, and that the Claimant and the Represented Parties were jointly entitled to one-half of the December 2003 Award amount. The June 2004 Amendment did not alter the value of the December 2003 Award.

Information Available in the Bank’s Records

As detailed in the December 2003 Award, the Bank’s records indicate the name and city of residence of the Account Owner. The records indicate that the Account Owner held one custody account, which was closed in 1938 when the contents of the account were transferred to the

⁴ Sächsisches Staatsarchiv Leipzig, Reichshauptbankstelle Leipzig, file 1510.

Deutsche Golddiskontbank in Berlin, Germany. The Bank's records also contain a letter written in 1952 from [REDACTED], the Account Owner's daughter, indicating that her mother held a custody account at the Bank, and listing some of the securities contained in that account.⁵

As noted above, the CRT obtained additional information regarding this account from the *Reichsbank's* records in the State Archive of Saxony. These records consist of correspondence, as described below, between Cläre Kirstein, residing at Montbéstr. 8, Leipzig N 22, and the *Reichsbankhauptstelle Leipzig*, dated between 23 September 1938 and 22 October 1938. This correspondence relates to the *Reichsbank's* requirement that Cläre Kirstein sell all her foreign currency denominated securities, with one exception, via a *Reichsbank* related institution, the *Golddiskontbank*.

In a letter dated 23 September 1938, addressed to the *Reichsbankhauptstelle* in Leipzig, Cläre Kirstein, in compliance with the demand [to offer her foreign-currency denominated securities for sale to the authorities] offers her foreign currency denominated securities for sale. She requested, however, that she be permitted to retain some of these securities in order to support her son-in-law, who was no longer allowed to practice medicine in Germany, and who was in the process of emigration. In a response dated 24 September 1938, the *Reichsbankhauptstelle* demands that Cläre Kirstein sell her foreign securities without delay and provide the authorities with confirmation of the sales and advises that retention of the [foreign currency] proceeds in favor of a third person is not possible

In a letter dated 27 September 1938 to the *Reichsbankhauptstelle*, Cläre Kirstein complied with the authorities' demand that she provide a list of all foreign currency denominated securities she owned. This list included one security held at *Hardy & Co. G.m.b.H.* in Berlin ("*Hardy & Co.*"), and several Swiss franc denominated securities held at the Bank. The latter listing is exactly the same as that which is evidenced in the Bank's records, as described below. In her letter, Cläre Kirstein also advised that the 4% *Schweizerische Kreditanstalt Zürich* securities with a face value of SF 5,000.00, which were listed in her declaration of foreign securities of 16 October 1937, had matured in June 1938 and that she had received the proceeds. A handwritten notation, clearly made by the receiving official, records: "proceeds surrendered [next word illegible]" (*Erlös abgeliefert [...]*).

In a letter dated 28 September 1938, Cläre Kirstein informed the *Reichsbankhauptstelle* that she had instructed the Bank to send all the securities she held in her account to the *Deutsche Golddiskontbank* in Zurich.

In a letter dated 4 October 1938, the *Reichsbankhauptstelle* requested confirmation that the transfer of Cläre Kirstein's Swiss securities to the *Deutsche Golddiskontbank* in Berlin had taken place.

In a letter to Cläre Kirstein dated 7 October 1938, the *Reichsbankhauptstelle* enclosed a draft sales order, addressed to the *Deutsche Golddiskontbank*, requesting the bank to sell a list of Swiss franc denominated securities at the best obtainable price. The *Reichsbankhauptstelle* further advises that they agree that this sales order be submitted to them by 15 October and that it

⁵ The CRT notes that the list of securities provided by Marianne Baer in her 1952 letter is not legible.

would be in her interest to furnish proof of how long she owned these securities, as that could result in the approval of a special allowance. The CRT notes that the listed securities are exactly those securities that Claere Kirstein had indicated that she held at the Bank, and are also the same securities that are listed as belonging to Claere Kirstein in the additional Bank records which are outlined below.

The 7 October 1938 letter also advises Cläre Kirstein that her 7% *Deutsche Aussere Anleihe 1924 Schweizer Tranche* bonds were exempted from the sale obligation, but that she should instruct the *Golddiskontbank* to make these securities available to her account at a domestic bank.

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.

These new documents indicate that the Account Owner’s full name was *Frau* (Mrs.) Clara Kirstein-Stein, that the account owner of the account had, at one time, been Dr. Gustav Kirstein, and that a name change for the account had occurred on 10 March 1934. Accordingly, the name Dr. Gustav Kirstein was crossed out and the sole name on the account identification card is that of the Account Owner. The CRT notes that the Claimant indicated that the Account Owner’s maiden name was Stein, that the Account Owner’s husband was Dr. Gustav Kirstein, who died in 1934, and that the Account Owner committed suicide under threat of deportation in June 1939. The records further indicate that the custody account held by the Account Owner was numbered 27063 and that it was closed on 29 October 1938.⁶

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

- 4% *Schweizerische Kreditanstalt Zürich* bonds with a face value of SF 5,000.00, maturing on 13 June 1938, which were cashed in on 14 June 1938;
- 4% *Kanton Bern 1931* bonds with a face value of SF 10,000.00, which were sold on 26 October 1938;
- 4.5% *Eidgenössische Staatsanleihe 1927* bonds with a face value of SF 10,000.00, which were sold on 26 October 1938;
- 4.5% *Eidgenössische Staatsanleihe 1930* bonds with a face value of SF 10,000.00, which were sold on 26 October 1938;
- 3.5% *Eidgenössische Staatsanleihe 1932-1933 Serie 1-3* bonds with a face value of SF 15,000.00, which were sold on 26 October 1938;
- 4% *Kanton Genf 1931* bonds with a face value of SF 7,000.00, which were sold on 26 October 1938;
- 4.5% *Stadt Zürich 1930* bonds with a face value of SF 5,000.00, which were sold on 26 October 1938;

⁶ The CRT notes that the original Bank’s records appear to indicate that the historical account number of the custody account was 27563, and accordingly, in the December 2003 Award, the CRT indicated that the custody account held by the Account Owner was numbered 27563. The CRT notes that the documents recently received from the Bank are more legible and indicate that the historical account number of the custody account was 27063.

- 4.5% *Schweizerische Bundesbahnen 1927* bonds with a face value of SF 5,000.00, which were sold on 26 October 1938;
- 4.5% *Schweizerische Bundesbahnen 1928* bonds with a face value of SF 12,000.00, which were sold on 26 October 1938;
- 4.5% *Credit Foncier Vaudois 1930, Serie T Obligations Fonc.* bonds with a face value of SF 10,000.00, which were sold on 26 October 1938;
- 4.5% *Aluminium-Industrie A.G., Neuhausen 1930* bonds with a face value of SF 10,000.00, which were sold on 26 October 1938;
- 15 *Schweizerische Kreditanstalt Zürich* shares, each with a face value of SF 500.00, which were sold on 26 October 1938;
- 4 *Aluminium-Industrie Aktien-Gesellschaft Neuhausen* common shares, each with a face value of SF 1,000.00, which were sold on 27 October 1938; and
- 4 *Schweizerische Lokomotiv- und Maschinenfabrik Winterthur* common shares, each with a face value of SF 100.00, which were sold on 26 October 1938.

The CRT's Analysis

Basis for the Award Amendment

The CRT has determined that an Award Amendment may be made in favor of the Claimant, the Represented Parties, and [REDACTED 6], using the distribution set out in the June 2004 Amendment.⁷ The CRT previously determined in the December 2003 Award that the claim is admissible in accordance with Article 18 of the Rules, that the Claimant has plausibly demonstrated that she is related to the Account Owner, and that it is plausible that neither the Account Owner nor her heirs received the proceeds of her account.

Value of the accounts in the December 2003 Award

In the December 2003 Award, the Account Owner held one custody account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for the custody account in the December 2003 Award, 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 market value of bonds shall be awarded if that value

⁷ As indicated above, the June 2004 Amendment indicated that based upon testamentary documents, [REDACTED 6] was entitled to one-half of the award amount, and that the Claimant and represented parties [REDACTED 2], [REDACTED 3], and [REDACTED 4] (acting for the estate of [REDACTED 5]) (the "Represented Parties") were jointly entitled to one-half of the award amount, such that the Claimant and the Represented Parties were each entitled to one-eighth of the award amount. The CRT concludes that this award amendment should also be distributed in this manner.

was above the face value on the date the account owner is deemed to have lost control over the account. Stocks are valued at market value.

According to the additional information from the Bank, the Account Owner held a custody account containing the following securities:

- 4% *Schweizerische Kreditanstalt Zürich* bonds with a face value of SF 5,000.00, maturing on 13 June 1938, which were cashed in on 14 June 1938; these bonds were cashed in at their face value and therefore shall be valued at SF 5,000.00;
- 4% *Kanton Bern 1931* bonds with a face value of SF 10,000.00. These bonds were of good quality and were trading at 106.25% when sold on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 10,625.00;⁸
- 4.5% *Eidgenössische Staatsanleihe 1927* bonds with a face value of SF 10,000.00. These bonds were of good quality and were trading at 106.65% when sold on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 10,665.00;⁹
- 4.5% *Eidgenössische Staatsanleihe 1930* bonds with a face value of SF 10,000.00. These bonds were of good quality and were trading at 106.4% when sold on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 10,640.00;¹⁰
- 3.5% *Eidgenössische Staatsanleihe 1932-1933 Serie 1-3* bonds with a face value of SF 15,000.00. These bonds were of good quality and were trading at 102.7% when sold on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 15,405.00;¹¹
- 4% *Kanton Genf 1931* bonds with a face value of SF 7,000.00. These bonds were of good quality and were trading at 100.75% when sold on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 7,052.50;¹²
- 4.5% *Stadt Zürich 1930* bonds with a face value of SF 5,000.00. These bonds were of good quality and were trading at 104.1% when sold on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 5,205.00;¹³
- 4.5% *Schweizerische Bundesbahnen 1927* bonds with a face value of SF 5,000.00. These bonds were of good quality and were trading at 108.9% when sold on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 5,445.00;¹⁴
- 4.5% *Schweizerische Bundesbahnen 1928* bonds with a face value of SF 12,000.00. These bonds were of good quality and were trading at 108.25% when sold on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 12,990.00;¹⁵
- 4.5% *Credit Foncier Vaudois 1930, Serie T Obligations Fonc.* bonds with a face value of SF 10,000.00. These bonds were of good quality and were trading at 105.75% when sold

⁸ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 10,575.00;¹⁶

- 4.5% *Aluminium-Industrie A.G., Neuhausen 1930* bonds with a face value of SF 10,000.00. These bonds were of good quality and were trading at 104.35% when sold on 26 October 1938. Therefore, these bonds shall be valued at their total market value of SF 10,435.00;¹⁷
- 15 *Schweizerische Kreditanstalt Zürich* shares, each with a face value of SF 500.00, each of which had a market value on 26 October 1938 of SF 650.00, for a total market value of SF 9,750.00;¹⁸
- 4 *Aluminium-Industrie Aktien-Gesellschaft Neuhausen* common shares, each with a face value of SF 1,000.00, each of which had a market value on 27 October 1938 of SF 2,770.00, for a total market value of SF 11,080.00;¹⁹ and
- 4 *Schweizerische Lokomotiv- und Maschinenfabrik Winterthur* common shares, each with a face value of SF 100.00, each of which had a market value on 26 October 1938 of SF 29.00, for a total market value of 116.00.²⁰

Therefore, the Bank's records indicate that the total value of the custody account in October 1938 was SF 124,983.50. The Article 29 value of SF 13,000.00, which was used in the December 2003 Award, is then subtracted from the actual historic value, resulting in a difference of SF 111,983.50. 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 1,399,793.75.

Division of the Award

The CRT has determined that an Award Amendment may be made in favor of the Claimant, the Represented Parties, and [REDACTED 6], using the distribution set out in the June 2004 Amendment. In the June 2004 Amendment, the CRT determined that, based upon testamentary documents, [REDACTED 6] was entitled to one-half of the award amount, and that the Claimant and represented parties [REDACTED 2], [REDACTED 3], and [REDACTED 4] (acting for the estate of [REDACTED 5]) (the "Represented Parties") were each entitled to one-eighth of the award amount.

Scope of the Award Amendment

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on her claims to determine whether there are additional Swiss bank accounts to which she 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).

¹⁶ The market value for this security was obtained from the *Neue Zürcher Zeitung*, 9 November 1938.

¹⁷ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

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
28 October 2008