

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award Amendment**

to Claimant Nina Kubli<sup>1</sup>  
also acting on behalf of Maria Messinger-Holme,  
Gioia Messinger, and Amalia Briançon

**in re Accounts of Samuel Messinger, *Selig***

Claim Numbers: 201330/MBC; 201331/MBC

Original Award Amount: 271,140.56 Swiss Francs

Award Amendment Amount: 147,359.00 Swiss Francs

This Certified Award Amendment is based upon the claims of Nina Kubli, née Messinger (the “Claimant”) to the published accounts of Samuel Messinger, *Selig* and Georg Messinger. This Award Amendment is to the published accounts of Samuel Messinger, *Selig* (the “Account Owner”), over which Malvine Messinger (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (the “Bank”).<sup>2</sup>

All award amendments are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

## **Procedural History**

On 14 May 2002, the Court approved an award to the Claimant for a custody account jointly belonging to Samuel and Georg Messinger (the “May 2002 Award”). In the May 2002 Award, the CRT also reserved decision with regard to a demand deposit account owned by the Account Owner.<sup>3</sup> In this Award Amendment, the CRT adopts and amends its findings to address the

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<sup>1</sup> On 14 May 2002, the Court approved an award to Claimant Nina Kubli (the “Claimant”) for the accounts of Samuel Messinger, *Selig* (the “May 2002 Award”), which is the subject of this Award Amendment.

<sup>2</sup> The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Georg Messinger is indicated as having three accounts and Samuel Messinger, *Selig*, is indicated as having two accounts. Upon careful review, the CRT determines that Georg Messinger was in fact not an account owner; Samuel Messinger owned one custody account and one demand deposit account, and after his death, those accounts were then transferred to the Estate of Samuel Messinger, the only beneficiary of which was Georg Messinger. The CRT previously awarded the custody account to the Claimant. See *In re Accounts of Georg and Samuel Messinger* (approved on 14 May 2002).

<sup>3</sup> The CRT will address the claim to this account in a separate determination.

entitlement of the Claimant and the persons she represents. Upon further review of the Bank's records, the CRT determines that both the custody and demand deposit accounts were in fact solely owned by the Account Owner. Consequently, the CRT further determines that the Claimant's mother, whom she represents, is not entitled to the May 2002 Award amount and that the Claimant and her two sisters, whom she also represents, are each entitled to one-third of the May 2002 Award amount.

### **The May 2002 Award**

In the May 2002 Award, the CRT determined the Account Owner jointly held a custody account with Georg Messinger. 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, in the May 2002 Award, the CRT determined that it is plausible that the Account Owner, the Power of Attorney Holder or their heirs did not receive the proceeds of the custody account. The CRT determined that the value of the custody account was 23,577.44 Swiss Francs ("SF") as of 27 April 1938, and that the May 2002 Award amount was SF 271,140.56. Finally, the CRT determined that the Claimant and her two sisters were each entitled to one-sixth of the May 2002 Award amount, and that the Claimant's mother was entitled to one-half of the May 2002 Award amount.

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

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). On 10 February 2005, the Bank provided the CRT with additional documents.

The Bank's records indicated the names and addresses of the Account Owner and the Power of Attorney Holder, as well as the name of the Account Owner's son. The Bank's records also list the Account Owner's professional title, and an alternate contact in a different country for the Account Owner's son. Finally, these records further indicate that the Account Owner held a custody account, which had a value of SF 23,577.44 as of 27 April 1938, and a demand deposit account, which had a balance of SF 110.00 as of 17 February 1945. The Bank's records indicate that the two accounts were blocked in the 1945 freeze of assets held in Switzerland by citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze"), and that the custody account was subsequently closed on 26 October 1954, and that the demand deposit account, which had a balance of SF 22.00 as of 22 March 1955, was closed on 13 May 1959.

### **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 two claims of the Claimant in one proceeding.

#### The Claimant's Identification of the Account Owner

As detailed in the May 2002 Award, the Claimant has plausibly identified the Account Owner.

#### Status of the Account Owner as a Victim of Nazi Persecution

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

#### The Claimant's Relationship to the Account Owner

As detailed in the May 2002 Award, the CRT determined that the Claimant has plausibly demonstrated that she is related to the Account Owner.

#### The Issue of Who Received the Proceeds

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

#### Basis for the Award Amendment

The CRT has determined that an Award Amendment may be made in favor of the Claimant and represented parties Gioia Messinger and Amalia Briançon. The CRT previously determined in the May 2002 Award that the claims are admissible in accordance with Article 23 of the Rules,<sup>4</sup> and that the Claimant has plausibly demonstrated that she is related to the Account Owner. In addition, the CRT has determined that it is plausible that neither the Account Owner's heirs, nor the Power of Attorney Holder, nor her heirs received the proceeds of the Account Owner's custody account.

Further, the CRT notes that the Claimant and her sisters, as grandchildren of the Account Owner, have a better entitlement to the account than the Claimant's mother, Maria Messinger-Holme, the daughter-in-law of Account Owner Samuel Messinger.

#### Amount of the May 2002 Award

As detailed in the May 2002 Award, the Account Owner held one custody account. Based on review of the Bank's record, the CRT determined that the value of the account at issue was SF 23,577.44, as of 27 April 1938.

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<sup>4</sup> This was subsequently renumbered as Article 18 of the Rules Governing the Claims Resolution Process, as amended (the "Rules").

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 May 2002 Award, the adjustment factor was 11.5, and the resulting award amount was SF 271,140.56.

Since the May 2002 Award, the adjustment factor has been raised to 12.5.

#### New 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. As indicated above, the Claimant and her sisters, Gioia Messinger and Amalia Briancon, whom she represents, have a better entitlement to the May 2002 Award than their mother, Maria Messinger-Holme. Accordingly, the Claimant and her sisters are each entitled to one-third of the May 2002 Award amount, and Maria Messinger-Holme is not entitled to share in the May 2002 Award.

#### Amount and Division of the Award Amendment

The CRT recognizes that Article 31(1) of the Rules adjusts account values based upon the length of time that has passed since 1945 and the awarding of the account. In this case, even though represented party Maria Messinger-Holme was awarded in May 2002, the Claimant and the other parties she represents, who are the subject of this award amendment, received only part of the shares to which they were entitled. Therefore, the CRT finds that the adjustment factor of 12.5, not 11.5, is the more appropriate factor to bring the value of their shares of the awarded account to current value.

Recognizing that almost four years have passed since the May 2002 Award, the CRT determines that the Claimant and her sisters, Gioia Messinger and Amalia Briancon, are entitled to a payment from the Settlement Fund equaling their shares of the award amount that they did not receive in May 2002. As noted above, the total 1945 value of the Account Owner's account was SF 23,577.44. In the May 2002 Award, the Claimant, Gioia Messinger and Amalia Briancon received one-half of this amount. The Claimant, Gioia Messinger, and Amalia Briancon, are entitled the entire amount, however, and they are therefore entitled to the remaining one-half of this amount, or SF 11,788.72. 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 147,359.00.

The Claimant, Gioia Messinger, and Amalia Briancon are entitled to the full amount of the Award Amendment. Specifically, as detailed above, the Claimant is entitled to one-third of the Award Amendment amount, and Gioia Messinger and Amalia Briancon, whom the Claimant represents, are each entitled to one-third of the Award Amendment 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).

### **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  
6 May 2006