

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant Henry Bardach¹
also acting on behalf of Lotte Moise

in re Account of Kurt Bardach

Claim Number: 211116/WT

Original Award Amount: 156,000.00 Swiss Francs

Award Amendment Amount: 197,561.25 Swiss Francs

This Certified Award Amendment is based upon the claim of Henry Bardach (the “Claimant”) to the published accounts of Kurt Bardach (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

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 30 August 2002, the Court approved an Award to the Claimant for a custody account owned by the Account Owner (the “August 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 August 2002 Award based upon this additional information recently forwarded to the CRT by the Bank.

The August 2002 Award

In the August 2002 Award, the CRT determined that the Account Owner owned a custody account and a demand deposit account. The CRT further determined that the Claimant plausibly

¹ On 30 August 2002, the Court approved an award to Claimant Henry Bardach (the “Claimant”) for the account of Kurt Bardach (the “August 2002 Award”), which is the subject of this Award Amendment. On 15 September 2003, the Court approved an award to the Claimant for an additional account of Kurt Bardach, which is not affected by this award amendment.

identified the Account Owner, that he plausibly demonstrated that he is related to the Account Owner, and that he 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 the Claimant was entitled to one-half of the award amount and that his sister, represented party Lotte Moise, was entitled to one-half of the total award amount..

Finally, the CRT determined that the Bank's record 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 August 2002 Award, the Bank's record indicates the name, city of residence and professional title of the Account Owner. The record indicates that the Account Owner held one custody account, numbered L38613, which was closed on 2 November 1938, and one demand deposit account, which was 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 custody account portfolio holding cards ("*Depotvalorenkarten*") for each security held within the custody account.

These documents indicate that at the time the Account Owner was deemed to have lost control over the custody account, numbered L38613, it contained the following securities:

- *4% Stadt Copenhagen von 1910* bonds with a face value of 100.00 Pound Sterling ("£"), which were transferred on 3 December 1936 to another account within the Bank, numbered 2118, the owner of which is not known;
- *4.25% Elektrizitätswerk Olten-Aarburg A.-G. von 1931* bonds with a face value of SF 1,000.00, which were sold on 31 December 1935;
- *4.5% Belgische äussere Anleihe von 1930* bonds with a face value of SF 1,040.00 which were sold on 5 May 1937;
- *4.5% Kingdom of Denmark ext. loan gold bonds per 15. April 1962* with a face value of 1,000.00 United States Dollars ("US \$"), which were sent (*zugesandt*) on 31 October 1938;
- *4.5% Staatsbahnen von Elsass & Lothringen von 1932* bonds with a face value SF 5,000.00, which were sold on 22 June 1937;
- *4.5% Stadt Genf von 1914* bonds with a face value of SF 500.00, which were sold on 8 August 1933;
- *4.5% Stadt Genf von 1914* bonds with a face value of SF 2,000.00, which were sold on 28 September 1934;
- *4.5% Stadt Genf von 1914* bonds with a face value of SF 500.00, which were sold on 31 December 1935;

- 4.5% *Stadt Rotterdam von 1930 2. Ausgabe* bonds with a face value of 1,000.00 Dutch guilders (“Hfl.”), which were sold on 4 May 1936;
- 4.5% *Stadt Rotterdam von 1930 2. Ausgabe* bonds with a face value of Hfl. 1,500.00, which were cashed in (*einkassiert*) on 8 December 1936;
- 5% *Aciéries Reunies de Burbach-Eich-Dudelange (Arbed) S.A. von 1930* bonds with a face value of Hfl. 1,000.00, which were cashed in on 4 November 1936;
- 5% *Pfandbriefe N.V. Utrecht'sche Hypotheekbank Utrecht v. 1927/29* bonds with a face value of Hfl. 1,000.00, which were cashed in on 16 January 1935;
- 5% *Pfandbriefe N.V. Utrecht'sche Hypotheekbank Utrecht v. 1927/29* bonds with a face value of Hfl. 1,000.00, which were sold on 13 March 1935; and
- 5% *Stadt Medan (Sumatra, N. Ind.) von 1930* bonds with a face value of Hfl. 500.00, which were sold on 4 May 1937.

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 CRT previously determined in the August 2002 Award that the claim is admissible in accordance with Article 18 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), that the Claimant has plausibly demonstrated that he is 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 Account in the August 2002 Award

In the August 2002 Award, the Account Owner was awarded one custody account held by the Account Owner.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for the custody account in August 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 face value of bonds not in default shall be awarded if the market value was below the face 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 face 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's custody account, numbered L38613, held the following securities:

- *4% Stadt Copenhagen von 1910* bonds with a face value of £100.00. These bonds were of good quality and were trading at 107.27% when transferred on 3 December 1936. As the bonds were of good quality and had market values above their face value, the market value will be used to determine the value of this asset. The total market value of these bonds was £107.27, which was equivalent to SF 1,641.15;²
- *4.25% Elektrizitätswerk Olten-Aarburg A.-G. von 1931* bonds with a face value of SF 1,000.00. These bonds were of good quality and were trading at 91.50% when sold on 31 December 1935. As the bonds were of good quality and had market values below their face value, the face value will be used to determine the value of this asset. The total face value of these bonds was SF 1,000.00;³
- *4.5% Belgische äussere Anleihe von 1930* bonds with a face value of SF 1,040.00. These bonds were of good quality and were trading at 109.00% when sold on 5 May 1937. As the bonds were of good quality and had market values above their face value, their market value will be used to determine the value of this asset. The total market value of these bonds was SF 1,133.60;⁴
- *4.5% Kingdom of Denmark ext. loan gold bonds per 15. April 1962* with a face value of US \$1,000.00. These bonds were of good quality and were trading at 98.75% when sent (*zugesandt*) on 31 October 1938.⁵ As the bonds were of good quality and had market values below their face value, their face value will be used to determine the value of this asset. The total face value of these bonds was US \$1,000.00, which was equivalent to SF 4,370.00;⁶
- *4.5% Staatsbahnen von Elsass & Lothringen von 1932* bonds with a face value SF 5,000.00. These bonds were of good quality and were trading at 91.25% when sold on 22 June 1937. As the bonds were of good quality and had market values below their face value, their face value will be used to determine the value of this asset. The total face value of these bonds was SF 5,000.00;⁷
- *4.5% Stadt Genf von 1914* bonds with a face value of SF 500.00. These bonds were of good quality and were trading at 98.50% when sold on 8 August 1933. As the bonds were of good quality and had market values below their face value, their face value will be used to determine the value of this asset. The total face value of these bonds was SF 500.00;⁸
- *4.5% Stadt Genf von 1914* bonds with a face value of SF 2,000.00. These bonds were of good quality and were trading at 94.90% when sold on 28 September 1934. As the bonds were of good quality and had market values below their face value, their face value will be

² The market value for this security was obtained from *The Financial Times*, 8 December 1936.

³ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1935.

⁴ The market value for this security was obtained from *The New York Times*, 1 November 1938.

⁵ The market value for this security was obtained from the *Zürcher Kursblatt*, 31 December 1936.

⁶ The CRT uses official exchange rates when making currency conversions.

⁷ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1937.

⁸ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1933.

used to determine the value of this asset. The total face value of these bonds was SF 2,000.00;⁹

- 4.5% *Stadt Genf von 1914* bonds with a face value of SF 500.00. These bonds were of good quality and were trading at 75.00% when sold on 31 December 1935. As the bonds were of good quality and had market values below their face value, their face value will be used to determine the value of this asset. The total face value of these bonds was SF 500.00;¹⁰
- 4.5% *Stadt Rotterdam von 1930 2. Ausgabe* bonds with a face value of Hfl. 1,000.00. As these bonds were in good standing, but trading at an unknown price when sold on 4 May 1936, they shall be valued at their face value of Hfl. 1,000.00, which was equivalent to SF 2,083.70;
- 4.5% *Stadt Rotterdam von 1930 2. Ausgabe* bonds with a face value of Hfl. 1,500.00. Since these bonds were cashed in, they will be valued at their face value of Hfl. 1,500.00, which was equivalent to SF 3,125.55;
- 5% *Aciéries Reunies de Burbach-Eich-Dudelange (Arbed) S.A. von 1930* bonds with a face value of Hfl. 1,000.00. Since these bonds were cashed in, they will be valued at their face value of Hfl. 1,000.00, which was equivalent to SF 2,083.70;
- 5% *Pfandbriefe N.V. Utrecht'sche Hypotheekbank Utrecht v. 1927/29* bonds with a face value of Hfl. 1,000.00. Since these bonds were cashed in, they will be valued at their face value of Hfl. 1,000.00, which was equivalent to SF 2,083.70;
- 5% *Pfandbriefe N.V. Utrecht'sche Hypotheekbank Utrecht v. 1927/29* bonds with a face value of Hfl. 1,000.00, which were trading at an unknown rate when sold on 13 March 1935. As these bonds were in good standing they shall be valued at their face value of Hfl. 1,000.00, which was equivalent to SF 2,083.70; and
- 5% *Stadt Medan (Sumatra, N. Ind.) von 1930* bonds with a face value of Hfl. 500.00. These bonds were trading at an unknown rate when sold on 4 May 1937. Since these bonds were in good standing they shall be valued at their face value of Hfl. 500.00, which was equivalent to SF 1,199.80.

The CRT notes that, although the documentation for account L38613 records movements from and to account 2118, the Bank's records do not indicate who owned this latter account, into which one of these securities were transferred. 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 this security or its proceeds.

Therefore, the Bank's records indicate that the total value of the custody account numbered L38613, before its closure in November 1938 was SF 28,804.90. The Article 29 value of SF 13,000.00, which was used in the August 2002 Award, is then subtracted from the actual historic value, resulting in a difference of SF 15,804.90. 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 197,561.25.

⁹ The market value for this security was obtained from the *Zürcher Kursblatt*, 31 December 1934.

¹⁰ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1935.

Division of the Award Amount

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 Claimant is representing his sister. Accordingly, the Claimant is entitled to one-half of the total award amendment and his sister is entitled to one-half of the total award amendment.

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 his claim to determine whether there are additional Swiss bank accounts to which he 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
29 September 2008