

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]¹

in re Account of Hans Baumann

Claim Numbers: 204043/GO;² 789811/GO³

Original Award Amount: 49,375.00 Swiss Francs

Award Amendment Amount: 24,687.50 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the accounts of Hans Baumann, Helen Baumann and Ruth Baumann,⁴ and the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the account of Ernst Baumann. This Award Amendment is to the published account of Hans Baumann (the “Account Owner”), at the Lugano 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.

¹ On 6 Feb 2004, the Court approved an award to [REDACTED 2] (“Claimant [REDACTED 2]”) for the account of Hans Baumann (the “February 2004 Award”), which is the subject of this Award Amendment.

² In separate decisions, Claimant [REDACTED 2] was awarded accounts belonging to Ernst Engelbert-Baumann and *M. & Mme. Ernst Baumann*. See *In re Account of Ernst Engelbert-Baumann* (approved on 24 October 2002) and *In re Account of M. & Mme. Ernst Baumann* (approved on 8 April 2004). Claimant [REDACTED 2] submitted one additional claim, which is registered under the Claim Number 209256, in which he claimed an account belonging to his grandfather, Siegfried Baumann. The CRT did not locate an account belonging to Siegfried Baumann in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

³ [REDACTED 1] (“Claimant [REDACTED 1]”) did not submit a Claim Form to the CRT. However, in 1999 he submitted an Initial Questionnaire (“IQ”), numbered ENG - 0824064, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those Initial Questionnaires which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 789811.

⁴ The CRT will treat the claims to the accounts of Helen and Ruth Baumann in a separate determination.

Procedural History

On 6 Feb 2004, the Court approved an Award to Claimant [REDACTED 2] for the Account Owner's accounts (the "February 2004 Award"). In this Award Amendment, the CRT adopts and amends its findings to address the entitlement of Claimant [REDACTED 1]. The CRT notes that although Claimant [REDACTED 1] had filed a timely claim to the awarded account, his claim was not available for consideration in the February 2004 Award. Subsequent review of Claimant [REDACTED 1]'s claim indicates that he is entitled to share in the original award amount, as detailed below.

The February 2004 Award

In the February 2004 Award, the CRT determined that the Account Owner owned one account, the type of which was not indicated. The CRT further determined that Claimant [REDACTED 2] plausibly identified the Account Owner, that he plausibly demonstrated that he is related to the Account Owner, and that the Account Owner was a Victim of Nazi Persecution. Additionally, the CRT determined that the Account Owner did not receive the proceeds of his one account of unknown type. The CRT noted that the Bank's record indicated that the value of the account was 1,243.50 Swiss Francs ("SF"), and that according to Article 29 of the Rules Governing the Claims Resolution Process (the "Rules"), if the amount in an account of unknown type was less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. The CRT therefore presumed that the value of the account was SF 3,950.00, and that the February 2004 Award amount was SF 49,375.00. Finally, the CRT determined that Claimant [REDACTED 2] was entitled to the entire of the award amount.

Information Provided by Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted an Initial Questionnaire ("IQ") identifying the Account Owner as his paternal grandfather, Hans Baumann, who was born in 1889 and was married to [REDACTED]. Claimant [REDACTED 1] stated that his grandparents had two children: a son (Claimant [REDACTED 1]'s father), and a daughter, [REDACTED]. Claimant [REDACTED 1] explained that his grandfather, who was Jewish, was an art dealer and that he resided in Vienna, Austria. Claimant [REDACTED 1] stated that his own father left Austria in late 1937 and emigrated to the United States. Claimant [REDACTED 1] explained that his paternal grandparents attempted to enter Switzerland but were turned back. Claimant [REDACTED 1] stated that his grandparents were later deported to a concentration camp, where they both perished. Claimant [REDACTED 1] stated that his aunt, [REDACTED], perished in 1942.

Claimant [REDACTED 1] indicated that he was born on 7 June 1961.

Information Available in the Bank's Record

As detailed in the February 2004 Award, the Bank's record indicates that the Account Owner was Hans Baumann, but does not indicate the Account Owner's place of residence. The Bank's record indicates that the Account Owner held one account, the type of which is not indicated. This record further indicates that the account was transferred to a suspense account on 9 July 1997 and that the amount of the account on the date of its transfer was SF 1,243.50. Finally, the Bank's record indicates that the account remains suspended.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of 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 Claimants in one proceeding.

Claimant [REDACTED 1]'s Identification of the Account Owner

Claimant [REDACTED 1]'s grandfather's name matches the published name of the Account Owner. The CRT notes that the Bank's records do not contain any specific information about the Account Owner other than his name.

The CRT notes that Claimant [REDACTED 1] filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Hans Baumann, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 1] has based his present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as his relative, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Claimant [REDACTED 1] had reason to believe that his relative owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant [REDACTED 1].

The CRT notes that Claimant [REDACTED 2]'s relative and Claimant [REDACTED 1]'s relative are not the same person. However, given that the Claimants have identified all published information about the Account Owner that is available in the Bank's records; that the information provided by each claimant supports and in no way contradicts any information available in the Bank's records; that there is no additional information in the Bank's records which would provide a basis for the CRT to make any further determinations as to the identity of the Account Owner; and that there are no other claims to this account, the CRT finds that Claimant [REDACTED 2] and Claimant [REDACTED 1] have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 1] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 1] stated that his paternal grandfather was Jewish and that he was deported to a concentration camp, where he perished. Claimant [REDACTED 1] further stated that his grandfather's wife and daughter also perished in the Holocaust.

Claimant [REDACTED 1]'s Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information, demonstrating that the Account Owner was Claimant [REDACTED 1]'s paternal grandfather. There is no information to indicate that the Account Owner has other surviving heirs.

The CRT notes that Claimant [REDACTED 1] filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 1], prior to the publication in February 2001 of the ICEP List. The CRT further notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to Claimant [REDACTED 1] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 1] is related to the Account Owner, as he has asserted in his IQ.

The Issue of Who Received the Proceeds

As detailed in the February 2004 Award, the CRT has concluded that the account's proceeds were not paid to the Account Owner or his heirs.

Amount of the February 2004 Award

As detailed in the February 2004 Award, the Account Owner held one account of unknown type. Pursuant to Article 29 of the Rules, when the value of an account is less than the average value of the same or similar type of account, as is the case here, 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 an account of unknown type was SF 3,950.00.

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 February 2004 Award, the adjustment factor was 12.5, and the resulting award amount was SF 49,375.00.

Basis for the Award Amendment

The CRT has determined that an Award may be made in favor Claimant [REDACTED 1]. First, Claimant [REDACTED 1]'s claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that he is

the Account Owner's grandchild, and that relationship justifies an Award. Third, the CRT determined in the February 2004 Award that the account remains open and dormant.

New Division of the Award

According to Article 26 of the Rules, in cases where the identity of the account owner cannot be precisely determined due to the limited information contained in the bank documents, and where several unrelated claimants have established a plausible relationship to a person with the same name as the account owner, the award will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each Claimant has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED 1] is entitled to one-half of the Award amount, and Claimant [REDACTED 2] is entitled to one-half of the Award amount.

The CRT notes that in the February 2004 Award, Claimant [REDACTED 2] was awarded the full award amount, and that he is now determined to be entitled to only one-half of the award amount. Recognizing that more than six years have passed since the February 2004 Award, and that there is no indication that Claimant [REDACTED 2] was aware that another equally entitled person had filed a claim, the CRT does not seek outright repayment of the overpayment from Claimant [REDACTED 2]. However, the amount of overpayment shall be deducted from any award adjustment that may be forthcoming to Claimant [REDACTED 2].

Amount and Division of the Award Amendment

As detailed above and in the February 2004 Award, the 1945 value of the account at issue was determined to be SF 3,950.00. Claimant [REDACTED 1] is entitled to one-half of the Award amount, or SF 1,975.00. 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 a total Award Amendment amount of SF 24,687.50.

As detailed above, Claimant [REDACTED 1] is entitled to the full Award Amendment amount.

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 May 2010