

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED]¹

in re Account of Ernst Gross

Claim Number: 216728/CU

Original Award Amount: 156,000.00 Swiss Francs

Award Amendment Amount: 218,327.50 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED] (the “Claimant”) to the published account of Ernst Gross (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 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, however only one custody account was awarded. The

¹ On 30 August 2002, the Court approved an award to Claimant [REDACTED] (the “Claimant”) for the account of Ernst Gross (the “August 2002 Award”), which is the subject of this Award Amendment. The CRT notes that the December 2002 Award did not reach a decision for one demand deposit account. In a separate determination, the CRT awarded the demand deposit account to the Claimant. See *In re Accounts of Ernst Gross* (approved on 29 June 2004).

CRT further determined that the Claimant plausibly 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 account and that the Claimant was entitled to the entire 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 Record

As detailed in the August 2002 Award, the Bank's record indicates the name and the city of domicile of the Account Owner. According to this record, the Account Owner resided in Bingen am Rhein, Germany. This record further indicates that the Account Owner held a demand deposit account and a custody account, which were closed on 31 May 1933 and 6 April 1938, respectively.

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. According to these records, the Account Owner held a custody account, numbered 41047.

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

- 3% *Schweizerische Bundesbahnen Diff. von 1903* bonds with a face value of SF 3,000.00, which were cashed in (*einkassiert*) on 15 November 1935;
- 3% *Schweizerische Bundesbahnen Diff. von 1903* bonds with a face value of SF 2,500.00, which were sold (*verkauft*) on 23 April 1937;
- 3% *Schweizerische Bundesbahnen Diff. von 1903* bonds with a face value of SF 2,000.00, which were sold on 9 December 1937;
- 3% *Schweizerische Bundesbahnen Diff. von 1903* bonds with a face value of SF 13,000.00, which were transferred (*übertragen*) to another custody account, the owner of which is not known, numbered 15200, on 1 April 1938; and
- 4.5% *Canadian National Railway Company Twenty-Five Year Guaranteed Gold Bonds per 1. Febr. 1956* bonds with a face value of 2,000.00 United States Dollars ("US\$"), which were transferred to another custody account, the owner of which is not known, numbered 15200, on 1 April 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 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 account.

Value of the accounts in the August 2002 Award

In the August 2002 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 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 held custody account 41047 with the following securities:²

- 3% *Schweizerische Bundesbahnen Diff. von 1903*, bonds with a face value of SF 3,000.00, which were cashed in on 15 November 1935. Therefore, these bonds shall be valued at their face value of SF 3,000.00;
- 3% *Schweizerische Bundesbahnen Diff. von 1903* bonds with a face value of SF 2,500.00. These bonds were of good quality and were trading at 102.00% when sold on 23 April 1937. Since 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 SF 2,550.00;³

² The CRT uses official exchange rates when making currency conversions.

³ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1937.

- *3% Schweizerische Bundesbahnen Diff. von 1903* bonds with a face value of SF 2,000.00. These bonds were of good quality and were trading at 102.00% when sold on 9 December 1937. Therefore, these bonds will be valued at their market value of SF 2,040.00;⁴
- *3% Schweizerische Bundesbahnen Diff. von 1903* bonds with a face value of SF 13,000.00. These bonds were of good quality and were trading at 99.90% when transferred on 1 April 1938. Since 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 13,000.00;⁵ and
- *4.5% Canadian National Railway Company Twenty-Five Year Guaranteed Gold Bonds per 1. Febr. 1956* bonds with a face value of US\$ 2,000.00. These bonds were of good quality and were trading at 113.00% when transferred on 1 April 1938. Therefore, these bonds will be valued at their market value of US\$ 2,260.00, which was equivalent to SF 9,876.20.⁶

The CRT notes that the Bank's records do not indicate who owned account 15200, into which certain of the securities are shown to be transferred, and notes that this account number appears as the transfer destination for other, unrelated accounts. Even if this account was held by the respective owners of the accounts from which the securities originated, the records do not indicate when account 15200 was closed, or the disposition of the securities contained within it. Accordingly, the CRT concludes that the Account Owner did not receive these securities or their proceeds.

Therefore, the Bank's records indicate that the total value of the custody account was SF 30,466.20. 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 17,466.20. 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 218,327.50.

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 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).

⁴ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1937.

⁵ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938.

⁶ The market value for this security was obtained from the *New York Times*, 2 April 1938.

Certification of the Award Amendment

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

Claims Resolution Tribunal
25 September 2008