

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]
also acting on behalf of [REDACTED 3]

in re Accounts of Erna Guggenheim¹

Claim Numbers: 201314/RT/AC; 709121/RT/AC; 772795/RT/AC²

Original Award Amount: 73,080.00 Swiss Francs

Award Amendment Amount: 24,687.50 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 1], formerly [REDACTED 1] (“Claimant [REDACTED 1]”), to the accounts of Max and Erna Guggenheim, and the claim of Claimant [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”), to the accounts of Erna Guggenheim.³ This Award Amendment is to the account of Erna Guggenheim (“Account Owner 1”) at the [REDACTED] (“Bank 1”), and the account of another person named Erna Guggenheim (“Account Owner 2”) (together the “Account Owners”) at the Zurich-Wiedikon branch of the [REDACTED] (“Bank 2”) (together the “Banks”).⁴

¹ On 23 June 2003, the Court approved an award to Claimant [REDACTED 2] (“Claimant [REDACTED 2]”) for the accounts of Erna Guggenheim (the “June 2003 Award”), which is the subject of this Award Amendment.

² [REDACTED 1] (“Claimant [REDACTED 1]”) did not submit a Claim Form to the CRT. However, in 1999 he submitted two Initial Questionnaires (“IQ”), numbered GER-0022021 and ENG-0100183, to the Court in the United States. Although these IQs were not Claim Forms, 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 IQs were forwarded to the CRT and have been assigned claim numbers 709121 and 772795, respectively.

³ The CRT treated Claimant [REDACTED 1]’s claim to the account of Max Guggenheim in a separate determination.

⁴ The CRT notes that there is insufficient evidence in the Banks’ records to determine whether the accounts at the Banks were held by the same individual, and that in the June 2003 Award, the accounts were treated as having been held by the same person, because Claimant [REDACTED 2] identified all of the information contained in the records at both Banks. For the purposes of this award amendment, however, the CRT is treating the accounts separately, because Claimant [REDACTED 1] has only identified the information pertaining to the account held at Bank 2.

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 23 June 2003, the Court approved an Award to Claimant [REDACTED 2] for the Account Owners' accounts (the "June 2003 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 timely claims to the awarded accounts, his claims were not available for consideration in the June 2003 Award. Subsequent review of Claimant [REDACTED 1]'s claims indicates that he is entitled to share in the original award amount pertaining to the account held by Account Owner 2 at Bank 2, as detailed below.

The June 2003 Award

In the June 2003 Award, the CRT determined that Account Owner 1 owned a demand deposit account at Bank 1 and Account Owner 2 owned an account of unknown type at Bank 2. The CRT further determined that Claimant [REDACTED 2] plausibly identified the Account Owners, that she plausibly demonstrated that she is related to the Account Owners, and that she made a plausible showing that the Account Owners were Victims of Nazi Persecution. Additionally, the CRT determined that it is plausible that the Account Owners did not receive the proceeds of their accounts at the Banks. The CRT noted that Bank 1's record did not indicate the value of the demand deposit account, and therefore presumed that its value was 2,140.00 Swiss Francs ("SF"). The CRT further noted that Bank 2's records indicated the value of the account of unknown type as SF 11.00 as of 13 May 1980, and therefore determined that according to Article 29 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the value of the account was SF 3,950.00. The CRT determined that the June 2003 Award amount was SF 73,080.00. Finally, the CRT determined that Claimant [REDACTED 2]'s daughter, represented party [REDACTED 3], was entitled to the entire award amount.

Information Provided by Claimant Guggenheim

Claimant [REDACTED 1] submitted two Initial Questionnaires ("IQs") identifying the Account Owners as his mother, Erna Guggenheim, who was Jewish and who was married to [REDACTED]. Claimant [REDACTED 1] indicated that his parents resided at Siegfriedstrasse 18 in Worms, Germany, where they owned a family business called *Firma Daniel Guggenheim*. According to Claimant [REDACTED 1], his parents attempted to flee to Switzerland, but were denied entry, and so they fled to Palestine (now Israel) in 1935, and eventually emigrated to Argentina in 1939.

Claimant [REDACTED 1] indicated that he was born on 10 June 1920 in Worms.

Information Available in the Banks' Records

Bank 1

As detailed in the June 2003 Award, Bank 1's record indicates that Account Owner 1 was Erna Guggenheim, who resided in Donaueschingen, Germany. The record indicates that Account Owner 1 held one demand deposit account, numbered 334. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not find this account in Bank 1's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in Bank 1's record that the Account Owner or her heirs closed the account and received the proceeds themselves.

Bank 2

As detailed in the June 2003 Award, Bank 2's records indicate that Account Owner 2 was Erna Guggenheim. Bank 2's records do not indicate the city and country of residence of Account Owner 2. Bank 2's records indicate that Account Owner 2 held one account, numbered 5769, the type of which is not indicated. According to Bank 2's records, the account was transferred to a suspense account on 13 May 1980. The amount of the account at the date of its transfer was SF 11.00. 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 three claims of the Claimants in one proceeding.

Claimant Guggenheim's Identification of the Account Owners

Account Owner 1

The CRT concludes that Claimant [REDACTED 1] has not identified Account Owner 1 as his relative. Although the name of his mother matches the published name of Account Owner 1, the information provided by Claimant [REDACTED 1] differs from other published information about Account Owner 1 available in Bank 1's records. Specifically, Claimant [REDACTED 1] stated that his mother resided in Worms. In contrast, Bank 1's records show that Account Owner 1 resided in Donaueschingen, which is located almost 200 kilometers from Worms. Moreover, it should be noted that the CRT has awarded the account to Claimant [REDACTED 2], who more plausibly identified Account Owner 1 as her relative. All decisions are published upon release on the CRT's website at www.crt-ii.org. Consequently, the CRT is unable to conclude that Account Owner 1 and Claimant [REDACTED 1]'s mother are the same person.

Account Owner 2

Claimant [REDACTED 1]'s mother's name matches the published name of Account Owner 2. The CRT notes that Bank 2's records do not contain any specific information about Account Owner 2 other than her name.

The CRT notes that Claimant [REDACTED 1] filed IQs with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Erna and Max Guggenheim, 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 Account Owner 2 that is available in Bank 2's records; that there is no additional information in Bank 2's records which would provide a basis for the CRT to make any further determinations as to the identity of Account Owner 2; and that there were no the other claims to this account, the CRT finds that Claimant [REDACTED 2] and Claimant [REDACTED 1] have each plausibly identified Account Owner 2.

Status of Account Owner 2 as a Victim of Nazi Persecution

Claimant [REDACTED 1] has made a plausible showing that Account Owner 2 was a Victim of Nazi Persecution. The Claimant stated that Account Owner 2 was Jewish, that she resided in Nazi Germany, and that after being denied entry to Switzerland, she and her family fled to Palestine in 1935, eventually emigrating to Argentina in 1939.

Claimant [REDACTED 1]'s Relationship to Account Owner 2

Claimant [REDACTED 1] has plausibly demonstrated that he is related to Account Owner 2 by submitting specific biographical information demonstrating that Account Owner 2 was his mother.

The CRT further notes that Claimant [REDACTED 1] filed IQs with the Court in 1999, identifying the relationship between Account Owner 2 and Claimant [REDACTED 1], prior to the publication in February 2001 of the ICEP List. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner 2 was well known to Claimant [REDACTED 1] as a family member, and all of this information supports the plausibility that the Claimant is related to Account Owner 2, as he has asserted in his IQs.

The Issue of Who Received the Proceeds

As detailed in the June 2003 Award, the CRT has concluded that it is plausible that the accounts' proceeds were not paid to the Account Owners or their heirs.

Basis for the Award Amendment

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, Claimant [REDACTED 1]'s claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that he is Account Owner 2's son, and that relationship justifies an Award. Third, the CRT determined in the June 2003 Award that neither the Account Owners nor their heirs received the proceeds of the accounts.

The CRT notes that Claimant [REDACTED 2] more plausibly identified Account Owner 1, and that she and the party whom she represents are therefore entitled to the entire award amount for Account Owner 1's account. The CRT further notes that represented party [REDACTED 3], as the granddaughter of the Account Owners, is more entitled to the accounts than Claimant [REDACTED 2], the daughter-in-law of the Account Owners.

Amount of the June 2003 Award

As detailed in the June 2003 Award, Account Owner 1 held one demand deposit account, and Account Owner 2 held one account of unknown type. The CRT notes that Claimant [REDACTED 1] has not plausibly identified Account Owner 1. Consequently, only the amount in Account Owner 2's account of unknown type at Bank 2 is determined to be the basis for this Award Amendment.

Based on review of Bank 2's records, the CRT determined that the value of Account Owner 2's account of unknown type at Bank 2 was SF 11.00 as of 13 May 1980. 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 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 June 2003 Award, the adjustment factor was 12, and the resulting award amount was SF 47,400.00 for the account of unknown type.

Since the June 2003 Award, the adjustment factor has been raised to 12.5.

New Division of the Award

With respect to the demand deposit account at Bank 1, the CRT determined that Claimant [REDACTED 1] has not plausibly identified Account Owner 1, and is therefore not entitled to share in the award amount for Account Owner 1's account. As determined in the June 2003 Award, represented party [REDACTED 3] was entitled to the entire award amount for this account.

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 may provide for a pro rata share of the full amount in the account to each Claimant or group of Claimants who would otherwise be entitled under these rules. In relation to the account of unknown type at Bank 2, each Claimant has established a plausible relationship to a person with the name of Account Owner 2.

As noted in the June 2003 Award, represented party [REDACTED 3] is more entitled to the account than her mother, Claimant [REDACTED 2]. Accordingly, Claimant [REDACTED 1] and represented party [REDACTED 3] are each entitled to one-half of the total award amount related to Account Owner 2's account of unknown type.

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 Account Owner 2's account. In this case, even though Claimant [REDACTED 2] was awarded in June 2003, Claimant [REDACTED 1], who is the subject of this award amendment, was not. Therefore, the CRT finds that the adjustment factor of 12.5, not 12, is the more appropriate factor to bring the value of his share of the awarded account to current value.

Recognizing that over three years have passed since the June 2003 Award, and that there is no indication that Claimant [REDACTED 2] was aware that another equally entitled claimant had filed claims, the CRT determines that Claimant [REDACTED 1] is entitled to a payment from the Settlement Fund equaling his share of the award amount. As noted above, the CRT determined that the 1945 average value of an account of unknown type should be used to calculate the current value of the account, and that the 1945 average value of the account of unknown type was SF 3,950.00. Claimant [REDACTED 1] is entitled to one-half of this 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 an Award Amendment amount of SF 24,687.50.

Claimant [REDACTED 1] is entitled to the full amount of the Award Amendment.

Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the Claimant may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

Scope of the Award Amendment

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

Claims Resolution Tribunal
27 February 2007