

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1],

to Claimant [REDACTED 2],

to Claimant [REDACTED 3],¹

and to Claimant [REDACTED 4]

in re Accounts of Otto Herrmann

Claim Numbers: 700651/MBC; 700661/MBC; 732593/MBC; 203084/MBC

Original Award Amount: 220,250.00 Swiss Francs

September 2008 Award Amendment Amount: 250,000.00 Swiss Francs

Award Amendment Amount: 235,125.00 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED 1], née [REDACTED], (“Claimant [REDACTED 1]”) to the accounts of Max Herrmann and Otto Herrmann; the claims of [REDACTED 2] (“Claimant [REDACTED 2]”), and [REDACTED 3] (“Claimant [REDACTED 3]”) to the account of Otto Schlosser; and the claim of [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”), to the accounts of Otto Herrmann. This award is to the published accounts of Otto Herrmann (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.

¹ On 14 December 2005, the Court approved an award to [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”), and [REDACTED 3] (“Claimant [REDACTED 3]”) for the accounts of Otto Herrmann (the “December 2005 Award”). On 29 September 2008, the Court approved an Award Amendment to Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] based upon additional information received from the Bank regarding the contents of the Account Owner’s custody account (the “September 2008 Award Amendment”). Both of those decisions are the subject of this present Award Amendment.

Procedural History

On 14 December 2005, the Court approved an Award to Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] for the Account Owner's accounts (the "December 2005 Award"). On 29 September 2008, the Court approved an Award Amendment to Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] based upon new information received from the Bank regarding the contents of the Account Owner's custody account (the "September 2008 Award Amendment").

In the present Award Amendment, the CRT adopts and amends its findings to address the entitlement of Claimant [REDACTED 4]. The CRT notes that although Claimant [REDACTED 4] had filed a timely claim to the awarded accounts, his claim was not included in either the December 2005 Award or September 2008 Award Amendment. Subsequent review of Claimant [REDACTED 4]'s claim indicates that he is entitled to share in the December 2005 Award amount and the September 2008 Award Amendment amount, as detailed below.

The December 2005 Award

In the December 2005 Award, the CRT determined that the Account Owner owned one custody account, one demand deposit account, and two safe deposit boxes. The CRT further determined that Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3], who are siblings, plausibly identified the Account Owner, that they plausibly demonstrated that they are related to the Account Owner, and that they 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, demand deposit account, or two safe deposit box accounts. The CRT noted that the Bank's record did not indicate the value of the accounts, and therefore presumed that their combined value was 17,620.00 Swiss Francs ("SF"). Finally, the CRT determined that Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] were each entitled to one-third of the award amount.

The September 2008 Award Amendment

In the September 2008 Award Amendment, the CRT noted that, subsequent to the December 2005 Award, it received additional information from the Bank regarding the value of the Account Owner's custody account. The CRT determined that the additional records indicated that the custody account contained securities with a total value of SF 33,000.00 as of April 1939. From this amount, the CRT subtracted SF 13,000.00, which was the value awarded for the custody account in the December 2005 Award, resulting in a difference of SF 20,000.00. The current value of that amount was determined by multiplying it by a factor of 12.5, to produce the September 2008 Award Amendment amount of SF 250,000.00. Finally, the CRT determined that Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] were each entitled to one-third of the September 2008 Award Amendment amount.

Information Provided by Claimant [REDACTED 4]

Claimant [REDACTED 4] submitted a Claim Form identifying the Account Owner as his father, Otto Herrmann. Claimant [REDACTED 4] stated that his father was Jewish, that he was born on 8 February 1909 in Trutnov, Czechoslovakia (today the Czech Republic), and that he lived in 1939 through 1940 in Klatovy, Czechoslovakia (today the Czech Republic). Claimant [REDACTED 4] explained that his father was a textile salesman, and that he conducted business with Swiss textile firms. Claimant [REDACTED 4] stated that his father was married to [REDACTED], and that together they had two sons, [REDACTED] and Claimant [REDACTED 4].

Claimant [REDACTED 4] explained that, in 1940, his parents fled Czechoslovakia for the Dominican Republic and that in October 1941, they moved to New York. Claimant [REDACTED 4] stated that his father died in New Jersey in February 1991.

Claimant [REDACTED 4] submitted documents in support of his claim, including: (1) two burial certificates, indicating that Otto Herrmann was buried in New Jersey in 1991; (2) an application form to the Foreign Claims Settlement Commission of the United States (the “Foreign Claims Commission”) completed by members of the Herrmann family, indicating that Otto Herrmann and his wife [REDACTED] arrived in the United States on 10 March 1941 from Czechoslovakia; (3) a decision of the Foreign Claims Commission, dated April 1961, in which Otto Herrmann was awarded 18.95 United States Dollars (“US \$”) for the value of Czech securities that had been seized by the Czech government; and (4) a letter from the Foreign Claims Commission to Otto Herrmann, dated March 1982, regarding his claim for compensation for those Czech securities.

Claimant [REDACTED 4] indicated that he was born on 14 July 1946 in New York.

Information Available in the Bank’s Records

As detailed in the December 2005 Award and the September 2008 Award Amendment, the Bank’s records indicate that the Account Owner was Otto Herrmann, who resided in Pilsen, Czechoslovakia. The records indicate that the Account Owner held one custody account, which was closed on 17 April 1939, one demand deposit account, which was closed on 20 April 1939, and two safe deposit boxes, the closure dates of which are not indicated. As detailed in the September 2008 Award Amendment, the records that the Bank provided to the CRT subsequent to the December 2005 Award indicate that the Account Owner’s custody account was numbered L58264, and that as of its closure on 17 April 1939, it contained securities with a total value of SF 33,000.00. These additional records do not indicate the value of the other three accounts owned by the Account Owner.

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 four claims of the Claimants in one proceeding.

Claimant [REDACTED 4]'s Identification of the Account Owner

Claimant [REDACTED 4]'s father's name and country of residence match the published name and country of residence of the Account Owner. The CRT notes that Claimant [REDACTED 4] stated that his father resided in Klatovy, while the Bank's records indicate that the Account Owner resided in Pilsen. The CRT further notes, however, that Klatovy is located only approximately forty kilometers from Pilsen. Accordingly, the CRT considers it plausible that Claimant [REDACTED 4]'s father could have used Pilsen as his city of residence for the purposes of maintaining a bank account.

In support of his claim, Claimant [REDACTED 4] submitted documents, including his father's burial certificate and his father's correspondence with the Foreign Claims Commission, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same country recorded in the Bank's records as the name and country of residence of the Account Owner.

The CRT notes that Claimant [REDACTED 4]'s father and Claimant [REDACTED 1]'s, Claimant [REDACTED 2]'s, and Claimant [REDACTED 3]'s maternal uncle 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 the Claimants supports the 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 the other claims to these accounts were disconfirmed because those claimants identified other countries or much more distant cities of residence than did the Claimants, the CRT finds that Claimant [REDACTED 4] and Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3] have plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 4] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 4] stated that his father was Jewish, and that he and his wife were forced to flee Czechoslovakia in 1941 for the Dominican Republic, and that they then emigrated to the United States.

Claimant [REDACTED 4]'s Relationship to the Account Owner

Claimant [REDACTED 4] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was his father. The CRT notes that Claimant [REDACTED 4] indicated that he has another surviving relative, but that because he is not represented in Claimant [REDACTED 4]'s claim, the CRT will not treat his potential entitlement to the Account Owner's accounts in this decision.

The CRT further notes that Claimant [REDACTED 4] stated that his father resided in Klatovy, which is only approximately 40 kilometers from the unpublished city of residence (Pilsen) of the Account Owner contained in the Bank's records. The CRT also notes that Claimant [REDACTED 4] submitted a copy of his father's correspondence with the Foreign Claims Commission, which provides independent verification that Claimant [REDACTED 4]'s relative bore the same name as the Account Owner, and that he had resided in Czechoslovakia. Finally, the CRT 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 4] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 4] is related to the Account Owner, as he has asserted in his Claim Form.

The Issue of Who Received the Proceeds

As detailed in the December 2005 Award, the CRT has concluded that it is plausible that the accounts' proceeds were not paid to the Account Owner or his heirs.

Amount of the December 2005 Award and the September 2008 Award Amendment

As detailed in the December 2005 Award, the Account Owner held one custody account, one demand deposit account, and two safe deposit boxes. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case here when the December 2005 Award was issued, 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, the average value of a demand deposit account was SF 2,140.00, and the average value of a safe deposit box account was SF 1,240.00, resulting in a total average value of SF 17,620.00 for the four accounts at issue.

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 December 2005 Award, the adjustment factor was 12.5, and the resulting amount of the December 2005 Award was SF 220,250.00.

As detailed in the September 2008 Award Amendment, the additional records received from the Bank regarding the Account Owner's custody account showed that, as of the date of its closure, the custody account contained securities worth SF 33,000.00. From this amount, the CRT subtracted SF 13,000.00, which was the value awarded for the custody account in the December 2005 Award, resulting in a difference of SF 20,000.00. The current value of that amount was

determined by multiplying it by a factor of 12.5, to produce the September 2008 Award Amendment amount of SF 250,000.00.

Accordingly, the combined value of the December 2005 Award and the September 2008 Award Amendment, both of which were issued to Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 3], was SF 470,250.00.

Basis for the Present Award Amendment

The CRT has determined that an Award may be made in favor Claimant [REDACTED 4]. First, Claimant [REDACTED 4]'s claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 4] has plausibly demonstrated that he is the Account Owner's son, and that relationship justifies an Award. Third, the CRT determined in the December 2005 Award that it is plausible that neither the Account Owner nor his heirs received the proceeds of the accounts.

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 may provide for a pro rate share of the full amount in the Account to each Claimant or group of Claimants who would be otherwise entitled under these Rules. Accordingly, Claimant [REDACTED 4] is entitled to one-half of the total award amount.

The CRT notes that in the December 2005 Award and September 2008 Award Amendment, Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 3] were each awarded one-third of the award amount, and that they are now determined to be entitled to equally share one-half of the award amount, or one-sixth of the award amount each. Recognizing that more than four years have passed since the December 2005 Award and more than 18 months since the September 2008 Award Amendment, and that there is no indication that Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 3] were aware that another equally entitled person had filed a claim, the CRT does not seek outright repayment of the overpayment from Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 3]. However, the amount of overpayment shall be deducted from any award adjustment that may be forthcoming to Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 3].

Amount and Division of the Award Amendment

As detailed above and in the December 2005 Award and September 2008 Award Amendment, the 1945 value of the four accounts at issue was determined to be SF 37,620.00. Claimant [REDACTED 4] is entitled to one-half of this amount, or SF 18,810.00. 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 235,125.00.

As detailed above, Claimant [REDACTED 4] is entitled to this entire 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