

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1],

to Claimant [REDACTED 2],

and to Claimant [REDACTED 3]¹

in re Accounts of Ernst Jellinek

Claim Numbers: 500397/CU; 500398/CU; 500441/CU; 500442/CU; 500632/CU

Original Award Amount: 231,500.00 Swiss Francs

Award Amendment Amount: 1,212,401.88 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”), and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published accounts of Bruno and Frida Jellinek.² This Award Amendment is to the published accounts of Ernst Jellinek (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 28 July 2004, the Court approved an Award to the Claimants for a custody account, two demand deposit accounts and one safe deposit box owned by the Account Owner (the “July 2004 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

¹ On 28 July 2004, the Court approved an award to [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (the “Claimants”) for the accounts of Ernst Jellinek (the “July 2004 Award”), which is the subject of this Award Amendment.

² The CRT awarded these accounts to the Claimants in a separate decision. See *in re Accounts of Bruno and Frieda Jellinek* (approved on 12 May 2005).

and amends its findings set out in the July 2004 Award based upon this additional information recently forwarded to the CRT by the Bank.

The July 2004 Award

In the July 2004 Award, the CRT determined that the Account Owner owned one custody account, two demand deposit accounts and one safe deposit box. The CRT further determined that the Claimants 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 accounts and that Claimant [REDACTED 3] was entitled to one-half and Claimant [REDACTED 1] and Claimant [REDACTED 2] were each entitled to one quarter of the award amount.

Finally, the CRT determined that the Bank's records 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 July 2004 Award, the Bank's record indicates the name, the profession and the city of domicile of the Account Owner. According to this record, the Account Owner was a lawyer, who resided in Vienna, Austria. The Bank's record indicates that the Account Owner held two demand deposit accounts, one custody account, numbered L46074, and one safe deposit box, numbered 693. The Bank's record indicates that both demand deposit accounts were closed on 31 August 1938. The Bank's record also indicates that custody account L46074 was opened on 15 November 1931 and closed on 7 September 1938, and that the safe deposit box was opened on 21 August 1937 and closed on 5 December 1938.

As noted above, the Bank recently provided the CRT with additional documents regarding custody account L46074. These documents contained a custody account identification card ("*Leitkarte*") and valuations cards ("*Depotvalorenkarten*") for each security held within custody account L46074.

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

- *3.5% British War Loan* bonds with a face value of 1,300.00 Pound Sterling ("£"), which on 3 September 1938 were transferred to another account at the Bank, numbered 60837, the owner of which is unknown;
- *4% Argentine Republic external sinking fund bonds per 15 Februar 1972* bonds with a face value of 1,500.00 United States Dollars ("US \$"), which on 3 September 1938 were transferred to another account at the Bank, numbered 60837, the owner of which is unknown;

- 4% *Rumänische äussere vereinheitlichte amortisierbare Gold-Rente von 1889 (dat. von 1929) "Berliner Abkommen"* bonds with a face value of 5,000.00 Romanian Gold Lei ("GL"), which on 3 September 1938 were transferred to another account at the Bank, numbered 60837, the owner of which is unknown;
- 4% *Rumänische vereinheitlichte amortisierbare Gold-Rente von 1889/1910 (dat. von 1929) "Berliner Abkommen"* bonds with a face value of GL 233,500.00, which on 3 September 1938 were transferred to another account at the Bank, numbered 60837, the owner of which is unknown;
- 4% *Stadt Zürich von 1933* bonds with a face value of SF 15,000.00, which on 3 September 1938 were transferred to another account at the Bank, numbered 60837, the owner of which is unknown;
- 5% *International Telephone & Telegraph Corp. Gold Debentures, per 1 Febr. 1955* bonds with a face value of US\$ 4,000.00, which on 3 September 1938 were transferred to another account at the Bank, numbered 60837, the owner of which is unknown;
- 6% *Gatineau Power Company skg.f.d.deb. per 15. Juni 1941* bonds with a face value of US \$3,000.00, which were cashed-in (*einkassiert*) on 10 August 1938;
- 6% *Republic of Chile ext. Loan sink. fund gold bonds per 1. Mai 1963* bonds with a face value of US\$ 4,000.00, which on 3 September 1938 were transferred to another account at the Bank, numbered 60837, the owner of which is unknown;
- 30 shares of *Aluminum Limited 6% cum. pref. shares à \$100.00* shares with a face value of US \$3,000.00, which on 3 September 1938 were transferred to another account at the Bank, numbered 60837, the owner of which is unknown; and
- *Danziger Tabak-Monopol A.-G., Danzig Aktien à Dfl. 100.00* shares with a face value of Danzig Florins ("Dfl.") 11,000.00, which on 3 September 1938 were transferred to another account at the Bank, numbered 60837, the owner of which is unknown.³

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 six claims of the Claimants in one proceeding.

Basis for the Award Amendment

The CRT has determined that an Award Amendment may be made in favor of the Claimants. The CRT previously determined in the July 2004 Award that the claims are admissible in accordance with Article 18 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), that the Claimants have plausibly demonstrated that they are related to the Account Owner, and that it is plausible that neither the Account Owner nor his heirs received the proceeds of his accounts.

³ The CRT notes that the currency in Danzig, Poland, from 1923 until 1939 was Danziger Florin (*Danzig Gulden*).

Value of the accounts in the July 2004 Award

In the July 2004 Award, the Account Owner held one custody account, two demand deposit accounts and one safe deposit box. The values of all accounts other than custody account L46074 remain unaffected.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for the custody account in July 2004, 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. However, if a bond is in default, the award valuation shall be the market value on or as close as possible to the relevant date. Stocks are valued at market value.

According to the additional information from the Bank, the Account Owner held custody account L46074 with the following securities:⁴

- *3.5% British War Loan*, bonds with a face value of £ 1,300.00. These bonds were of good quality and were trading at 102.60% when transferred on 3 September 1938. 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 £ 1,326.81, which was equivalent to SF 28,353.98;⁵
- *4% Argentine Republic external sinking fund bonds per 15 Februar 1972*, bonds with a face value of US\$ 1,500.00. These bonds were of good quality and were trading at 81.00% when transferred on 3 September 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 US\$ 1,500.00, which was equivalent to SF 6,555.00;⁶
- *4% Rumänische äussere vereinheitlichte amortisierbare Gold-Rente von 1889 (dat. von 1929) “Berliner Abkommen”* bonds with a face value of GL 5,000.00. These bonds were in default and valued at 200 paper Lei per GL 500 when transferred on 3 September 1938.

⁴ The CRT uses official exchange rates when making currency conversions.

⁵ The market value for this security was obtained from *Financial Times*, 5 September 1938.

⁶ The market value for this security was obtained from the *New York Times*, 4 September 1938.

Therefore, these bonds shall be valued at their market value of Lei 2,000.00, which was equivalent to SF 63.80;⁷

- 4% *Rumänische vereinheitlichte amortisierbare Gold-Rente von 1889/1910 (dat. von 1929) "Berliner Abkommen"* bonds with a face value of GL 223,500.00. These bonds were in default and valued at 200 paper Lei per GL 500 when transferred on 3 September 1938. Therefore, these bonds shall be valued at their market value of Lei 89,400.00, which was equivalent to SF 2,851.95;⁸
- 4% *Stadt Zürich von 1933*, bonds with a face value of SF 15,000.00. These bonds were of good quality and were trading at 105.50% when transferred on 3 September 1938. Since the bonds were of good quality and had market values above the face value, the market value will be used to determine the value of this asset. The total market value of these bonds was SF 15,825.00;⁹
- 5% *International Telephone & Telegraph Corp. Gold Debentures, per 1 Febr. 1955*, bonds with a face value of US \$4,000.00. These bonds were of good quality and were trading at 69.88% when transferred on 3 September 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 US \$4,000.00, which was equivalent to SF 17,480.00;¹⁰
- 6% *Gatineau Power Company skg.f.d.deb. per 15. Juni 1941*, bonds with a face value of US \$3,000.00. Since the bonds were cashed in, they will be valued at their face value. The total face value of these bonds was US \$3,000.00, which was equivalent to SF 13,110.00;
- 6% *Republic of Chile ext. Loan sink. fund gold bonds per 1. Mai 1963*, bonds with a face value of US \$4,000.00. These bonds were in default and trading at 17.06% when transferred on 3 September 1938. Therefore, these bonds shall be valued at their market value of US \$682.50, which was equivalent to SF 2,982.53;¹¹
- 30 shares of *Aluminum Limited 6% cum. pref. shares à \$ 100.00*, which on 3 September 1938 had a market value of US\$ 104.75 each, for a total market value of US \$3,142.50, which was equivalent to SF 13,732.73;¹² and
- *Danziger Tabak-Monopol A.-G., Danzig Aktien à Dfl. 100.00*, shares with a face value of Danzig Florins ("Dfl.") 11,000.00. No market price quotations could be found for these shares. However, as the *Danziger Tabak-Monopol AG* was a profitable entity, earning in 1938 Dfl 118.87 per share, the CRT considers it reasonable to value these share at their face value.¹³ The total face value of these shares was Dfl 11,000.00, which was equivalent to SF 9,037.16.

⁷ The market value for this security was obtained from *Compass Romaenien* 1940, 104.

⁸ The market value for this security was obtained from *Compass Romaenien* 1940, 104.

⁹ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938.

¹⁰ The market value for this security was obtained from the *New York Times*, 4 September 1938.

¹¹ The market value for this security was obtained from Moody's Manual of Investments, American and Foreign: Government Securities, Moody's Investors Service, New York, 1940, pp. 1,749.

¹² The market value for this security was obtained from the *New York Times*, 4 September 1938.

¹³ *Handbuch der deutschen Aktiengesellschaften*, p. 7,802, Hoppenstedt, Berlin, 1938.

The CRT notes that these securities were transferred to another account at the Bank. The CRT notes that the Bank's records do not indicate the owner of the account to which these securities were transferred. However, even if this account was owned by the Account Owner, there is no record of either the closure date of this account or the ultimate 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 custody account L46074 in September 1938 was SF 109,992.15. The Article 29 value of SF 13,000.00, which was used in the July 2004 Award, is then subtracted from the actual historic value, resulting in a difference of SF 96,992.15. 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 1,212,401.88.

Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. Claimant [REDACTED 3] is the son of the Account Owner's brother, [REDACTED], and Claimant [REDACTED 1] and Claimant [REDACTED 2] are both children of [REDACTED], son of the Account Owner's brother, [REDACTED], and are thus grandchildren of [REDACTED]. Accordingly, Claimant [REDACTED 3] is entitled to one-half of the total award amount, and Claimant [REDACTED 1] and Claimant [REDACTED 2] are each entitled to one quarter of the total award amount.

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 for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
16 April 2010