

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant Gustaaf Borchardt¹
also acting on behalf of Hendrika Borchardt, Marijke Borchardt,
Ankie Beishuizen, Saskia Smit, and Albrecht Borchardt

in re Accounts of Julius Magnus

Claim Number: 223099/DE

Original Award Amount: 363,360.00 Swiss Francs

Award Amendment Amount: 201,250.00 Swiss Francs

This Certified Award Amendment is based upon the claims of Gustaaf Borchardt (the “Claimant”) to the published accounts of Julius Magnus (the “Account Owner”), at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Procedural History

On 3 June 2003, the Court approved an Award to the Claimant for a custody account jointly held by the Account Owner and Dr. Richard Cale and two demand deposit accounts and one custody account individually held by the Account Owner (the “June 2003 Award”). At the time of that award, the bank records available to the CRT did not contain information regarding the value of the individually held 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 June 2003 Award based upon this additional information recently forwarded to the CRT by the Bank.

The June 2003 Award

In the June 2003 Award, the CRT determined that the Account Owner owned a custody account jointly held by the Account Owner and Dr. Richard Cale and two demand deposit accounts and

¹ On 3 June 2003, the Court approved an award to Claimant Gustaaf Borchardt (the “Claimant”) for the accounts of Julius Magnus (the “June 2003 Award”), which is the subject of this Award Amendment.

one custody account individually held by the Account Owner. The 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 accounts, and that Represented Party Albrecht Borchardt was entitled to receive one-half of the award amount, that Represented Party Hendrika Borchardt was entitled to receive one-fourth of the award amount, and that the Claimant and Represented Parties Marijke Borchardt, Ankie Beishuizen, Saskia Smit were each entitled to receive one-sixteenth of the award amount.

Finally, the CRT determined that the Bank's records did not indicate the value of the accounts, and therefore presumed that the value of this custody account was 13,000.00 Swiss Francs ("SF").

Information Available in the Bank's Records

As detailed in the June 2003 Award, the Bank's records indicate that the Account Owner was *Justizrat* Julius Magnus from Berlin. The records indicate that the Account Owner held one custody account jointly with Dr. Richard Cale and individually held two demand deposit accounts and one custody account. According to the banks records, one demand deposit account was closed on 20 September 1938 while the other accounts were closed at an unknown date. 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 these accounts in the Bank's system of open accounts, and they therefore presumed that it they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945.

As noted above, the Bank recently provided the CRT with additional documents regarding the individually held custody account, numbered 24964. These documents contained a custody account identification card ("*Leitkarte*") and valuations cards ("*Depotvalorenkarten*") for each security held within the custody account.

These documents indicate that at the time when the Account Owner was deemed to have lost control over the custody account numbered 24964 it contained the following securities:

- 3.5% *Schweizerische Bundesbahnen A-K von 1899/1902*, bonds with a face value of 5,000.00 Swiss Francs ("SF"), which were transferred to another account at the Bank numbered 15200 on 11 December 1936;
- 3.5% *Schweizerische Bundesbahnen Anleihe der Jura-Simplon-Bahn von 1894*, bonds with a face value of SF 5,000.00, which were transferred to another account at the Bank numbered 15200 on 15 April 1937;
- 4% *Stadt Bern von 1930*, bonds with a face value of SF 1,000.00, which were sold on 16 September 1938;
- 5% *Bernische Kraftwerke A.G. von 1928*, bonds with a face value of SF 5,000.00, which were sold on 16 September 1938;

- 5% *Schweizerische Bundesbahnen 4. Elektr. Anl. von 1924*, bonds with a face value of SF 1,000.00, which were cashed in (*einkassiert*) on 15 April 1935;
- 5% *Schweizerische Kreditanstalt fällig 17 Januar 1935*, short-term paper with a face value of SF 1,000.00, which was cashed in on 19 January 1935;
- 12 *Central Schweizerische Kraftwerke, Luzern Aktien á Fr. 500*, shares with a face value of SF 500.00 per share, which were sold on 16 September 1938;
- 10 *Schweizerische Lokomotiv- & Maschinenfabrik in Winterthur Stamm-Aktien á Fr. 100*, shares with a face value of SF 100.00 per share, which were transferred to another account at the Bank numbered 1211 on 8 June 1937; and
- 10 *Schweizerische Lokomotiv- & Maschinenfabrik in Winterthur Stamm-Aktien á Fr. 100*, shares with a face value of SF 100.00 per share, which were sold on 16 September 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 and the parties he represents. The CRT previously determined in the June 2003 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 accounts.

Value of the accounts in the June 2003 Award

In the June 2003 Award, the Account Owner held one custody account jointly with Dr. Richard Cale, and individually held two demand deposit accounts and one custody account. The value of the custody account held jointly with Dr. Richard Cale, and the value of the two demand deposit accounts held individually by the Account Owner, remain unaffected.

Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for the individually held custody account in June 2003, 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. Stocks are valued at market value. Short-term paper, a type of security, is valued at its face value.

According to the additional information from the Bank, the Account Owner's custody account numbered 24964 contained the following securities:

- 3.5% *Schweizerische Bundesbahnen A-K von 1899/1902*, bonds with a face value of SF 5,000.00. These bonds were of good quality and were trading at 102% when transferred to an unknown account numbered 15200 on 11 December 1936. As these 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 5,100.00;²
- 3.5% *Schweizerische Bundesbahnen Anleihe der Jura-Simplon-Bahn von 1894*, bonds with a face value of SF 5,000.00. These bonds were of good quality and were trading at 104% when transferred to an unknown account numbered 15200 on 15 April 1937. As these 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 5,200.00;³
- 4% *Stadt Bern von 1930*, bonds with a face value of SF 1,000.00. These bonds were of good quality and were trading at 105% when sold on 16 September 1938. As these 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 1,050.00;⁴
- 5% *Bernische Kraftwerke A.G. von 1928*, bonds with a face value of SF 5,000.00. These bonds were of good quality and were trading at 104% when sold on 16 September 1938. As these 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 5,200.00;⁵
- 5% *Schweizerische Bundesbahnen 4. Elektr. Anl. von 1924*, bonds with a face value of SF 1,000.00. Since these bonds were cashed in on 15 April 1935, they will be valued at their face value. The total value of these bonds thus was SF 1,000.00.
- 5% *Schweizerische Kreditanstalt fällig 17 Januar 1935*, short-term paper with a face value of SF 1,000.00. This short-term paper was cashed in on 19 January 1935 and shall be valued at its face value of SF 1,000.00;
- 12 *Central Schweizerische Kraftwerke, Luzern Aktien á Fr. 500*, shares each with a face value of SF 500.00 per share, and a market value of SF 830.00 per share when sold on 16 September 1938, for a total market value of SF 9,960.00;⁶
- 10 *Schweizerische Lokomotiv- & Maschinenfabrik in Winterthur Stamm-Aktien á Fr. 100*, shares each with a face value of SF 100.00 per share, and a market value of SF 30.00 per

² The market value for this security was obtained from the *Zürcher Kursblatt*, 31 December 1936.

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

⁴ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938.

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 *Zürcher Kursblatt*, 30 December 1938.

share when they were transferred to account numbered 1211, the owner of which is unknown, on 8 June 1937, for a total market value of SF 300.00;⁷ and

- 10 *Schweizerische Lokomotiv- & Maschinenfabrik in Winterthur Stamm-Aktien á Fr. 100*, shares each with a face value of SF 100.00 per share, and a market value of SF 29.00 per share when sold on 16 September 1938, for a total market value of SF 290.00.⁸

The CRT notes that the Bank's records do not indicate who owned accounts 15200 and 1211, into which certain of the securities are shown to be transferred, and notes that these account numbers appears as the transfer destination for other, unrelated accounts. Even if these accounts were held by the respective owners of the accounts from which the securities originated, the records do not indicate when accounts 15200 or 1211 were closed, or the disposition of the securities contained within them. 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 numbered 24964 before its closure was SF 29,100.00. The Article 29 value of SF 13,000.00, which was used in the June 2003 Award, is then subtracted from the actual historic value, resulting in a difference of SF 16,100.00. 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 201,250.00.

Division of the Award

According to Article 23(1)(g) of the Rules, if none of the persons entitled to an award under Article 23(1)(a-f) has submitted a claim, as is the case here, the CRT may make an award to any relative of the Account Owner, whether by blood or marriage, who has submitted a claim, consistent with principles of fairness and equity. In the present case, the Claimant and his sisters, whom he is representing, are the grandchildren of the Account Owner's brother-in-law. The Claimant also represents his uncle, Albrecht Borchardt, who is the son of the Account Owner's brother-in-law, and his mother, Hendrika Borchardt, who is the daughter-in-law of the Account Owner's brother-in-law. None of these individuals is related to the Account Owner by blood; they are all related to the Account Owner only by marriage. However, they are also the only individuals to have made a claim to the Account Owner's accounts. Under the principles of fairness and equity, the CRT has determined that represented party Albrecht Borchardt shall receive one-half (1/2) of the total award amendment amount, represented party Hendrika Streggerda shall receive one-fourth (1/4) of the total award amendment amount, and the Claimant and his sisters, whom he represents, shall each receive one-sixteenth (1/16) of the total award amendment amount.

⁷ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1937.

⁸ The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938.

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 he 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 and payment by the Special Masters.

Claims Resolution Tribunal
29 September 2008