

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
represented by Alan Gelfer

in re Accounts of Samuel Moos, Samuel and Willy Moos, and *Elias Moos*

Claim Number: 402230/CU

Award Amount: 816,939.75 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Sami Moos. This Award is to the published account of Samuel Moos (“Account Owner Samuel Moos”) at the [REDACTED] (“Bank I”), the unpublished account jointly held by Samuel Moos and Willy Moos (“Account Owner Willy Moos”) at the [REDACTED] (“Bank II”), and the published and unpublished accounts of the company named *Elias Moos* (“Account Owner *Elias Moos*”) (together the “Account Owners”) at Bank I and Bank II.¹

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying Account Owner Samuel Moos as his father, Samuel (Sami) Moos, who was born on 29 April 1889 in Hechingen, Germany, and was married to [REDACTED], née [REDACTED], in 1919 in Zurich, Switzerland. The Claimant indicated that his father’s parents were [REDACTED] and [REDACTED], née [REDACTED]. The Claimant indicated that his father, who was Jewish, fled Germany to Buenos Aires, Argentina, in 1939. The Claimant indicated that his father worked for a business named *Elias Moos S. A.* in Buenos Aires, which exported raw hides and skins. According to information provided by the Claimant, his parents resided in Argentina until 1955 before they moved to Zurich, Switzerland, where his father died in 1955 and his mother died in 1965. The Claimant further indicated that his parents had four children, [REDACTED], who was born on 16 September 1920 in Stuttgart,

¹ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons (“ICEP”) to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), the account owner is erroneously identified as Willy Moos. Upon careful review, the CRT has concluded that the German Archive records evidence that the account owner was, in fact, a company called *Elias Moos*, of which Willy Moos was a co-owner.

Germany; [REDACTED], who was born on 15 September 1923 and passed away in 2003; [REDACTED], who was born on 14 June 1930; and the Claimant, [REDACTED].

The Claimant indicated that he was born on 22 December 1925 in Hamburg, Germany.

Information Available in the Bank's Records

The CRT notes that the auditors who carried out the investigation of these banks 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 report accounts belonging to Samuel Moos and *Elias Moos* during their investigation of the Banks. The documents evidencing accounts belonging to Samuel Moos and *Elias Moos* at Bank I and II were obtained from the State Archive of Hamburg and the Brandenburg Main State Archive, and are further described below.

Information Available from the German Archives

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the archival records located as described above, there are documents concerning the assets of Samuel Moos and *Elias Moos*.

Bank I

The German archive records indicate that Account Owner Samuel Moos held one custody account at Bank I, and that Account Owner *Elias Moos* held one account of unknown type at Bank I.

The records from the Brandenburg Archive include a list of assets offered for sale to the Hamburg branch of the *Reichsbank*, dated 17 April 1939. With regard to the list of assets, the Account Owner was Samuel Moos, who resided at Langereihe 102 in Hamburg, Germany. This record indicates that Samuel Moos held an account at Bank I that contained seven shares of *Brown Boveri* stock with a nominal value of 70.00 Swiss Francs ("SF") each and which were valued at *circa* 250.00 Reichsmark ("RM") ("*Wert ca. RM. 250.—*"). A comment, dated 26 April 1940, by the *Reichsbank* in the margin of the list of assets indicates that the shares of stock, valued at SF 490.00 (the sum of the face value of the seven shares), were no longer in the custody account of Account Owner Samuel Moos at Bank I and that the matter would be handled further by the *Devisenstelle* of Hamburg. The records do not contain further information about the disposition of this account.

The records further contain a bank statement from Bank I, dated 31 December 1937, according to which Account Owner *Elias Moos*, located at Bei den Mühren 46/48 in Hamburg, held an account of unknown type with a balance of SF 127.00. The records also include identical letters, dated 14 and 15 December 1937, from Account Owner *Elias Moos* to the *Devisenstelle* in Hamburg, requesting permission to transfer the balance of SF 127.00 from its account at Bank I to an account held by Account Owner *Elias Moos* at Bank II, the reason given for consolidating

the accounts was simplification of bookkeeping. Permission was granted on 22 December 1937 as noted in the letter of 15 December 1937.

Bank II

The records from the Hamburg State Archive include foreign exchange transaction forms pertaining to *Elias Moos* reporting such transactions for the periods 1 June 1937 to 20 June 1937 and for 1 June 1938 to 30 June 1938 and indicating that the company *Elias Moos* held one custody account at Bank II. The file also contains a letter from Account Owner *Elias Moos* to the *Devisenstelle* Hamburg, dated 27 December 1937, indicating that Willy and Samuel Moos were the co-owners of Account Owner *Elias Moos*. The records further contain the *Devisenstelle* Hamburg's authorization, dated 6 July 1937, allowing Account Owner *Elias Moos* to use the proceeds of securities valued at SF 33,792.00 to meet a foreign currency liability to Bank II. The authorization noted since that the liability was incurred in December 1926 and fell due on 31 May 1937 [after the devaluation of the Swiss franc in 1937], *Elias Moos* was making a devaluation profit of RM 8,177.07, on which, pursuant to the law on devaluation profits (*Gesetz über Abwertungsgewinne*), tax of RM 6,133.25 was due to be paid to the *Golddiskont Bank* in Berlin.

The Hamburg State Archive records also contain a letter, dated 7 July 1937, from Account Owner *Elias Moos* addressed to the Bank *M. M. Warburg & Co.* in Hamburg, which states that Willy and Samuel Moos had ordered Bank II to transfer the securities listed below, which were held in a custody account they owned jointly at Bank II, to the custody account held by MM. Warburg at Bank II under the designation B (“*in Ihr [M.M. Warburg's] Depot, geführt unter B, einzulegen*”). This letter carries the handwritten notation: *Devisenstelle Abt.F IV* (Foreign Exchange Office, Section F IV) and, on a duplicate, *Devisenstelle Buchprfg* (Foreign Exchange Office Auditing). The securities so transferred were:

- 250 ordinary stock Courtaulds Ltd;
- 200 shares “Astra” Cia Argentina de Petroleo;
- US \$10,000.00 6 percent Gold Bonds Republic of Peru 1960 1. Dez;
- US \$10,000.00 7 percent Income Bonds European Mortgage Corporation Series C;
- US \$4,000.00 6 percent Gold Bonds City of Budapest 1962.

The records do not contain further information about the disposition of these assets.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified Account Owner Samuel Moos. The Claimant's father's name matches the published name of Account Owner Samuel Moos. The Claimant identified Account Owner Samuel Moos' country of residence, which matches information about Account Owner Samuel Moos contained in the German Archive records. The CRT notes that the name

Samuel Moos appears only once on the List of Account Owners Published in 2005 (the “2005 List”).

The Claimant has also plausibly identified Account Owner *Elias Moos*. The Claimant identified Account Owner *Elias Moos*’ name and location, which match information about Account Owner *Elias Moos* contained in the German archival records. The CRT notes that the Claimant identified *Elias Moos* as a company associated with his father, even though the company’s name was not published. The German archival records indicate that the company *Elias Moos* was co-owned by Willy and Samuel Moos.

The CRT notes that the Claimant has not identified Account Owner Willy Moos. However, given that Account Owners Willy and Samuel Moos had the same last name and were co-owners of a company, the CRT concludes that Willy Moos was related to Samuel Moos, and that the Claimant has therefore also identified Account Owner Willy Moos as his relative.

The CRT notes that the other claim to these accounts was disconfirmed because that claimant provided a different country of residence than the country of residence of Account Owner Samuel Moos.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that Account Owner Samuel Moos was a Victim of Nazi Persecution. The Claimant stated that his father was Jewish and that he resided in Nazi Germany before he fled to Argentina in 1939. The German Archive records show that Account Owner Samuel Moos was a co-owner of Account Owner *Elias Moos*, which was forced to pay a devaluation fee to the *Golddiskontbank* in Berlin by transferring assets because of its Jewish owners.

The Claimant’s Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to Account Owner Samuel Moos by submitting specific information, demonstrating that Account Owner Samuel Moos was the Claimant’s father.

As noted above, the Claimant indicated that his father, Account Owner Samuel Moos, worked for the company *Elias Moos*. The archival records, however, indicate that the Claimant’s father not only worked for the company, but was also its co-owner. As noted above, the CRT notes that the Claimant did not identify Willy Moos, the other co-owner of the company named in the archival records. However, the CRT determines that this does not affect the Claimant’s identification of his father as co-owner of the company.

The CRT notes that the Claimant indicated that he has other surviving relatives, but that because they are not represented in the Claimant’s claims, the CRT will not treat their potential entitlement to the Account Owners’ accounts in this decision. The CRT also notes that it has not received any claims from heirs of Account Owner Willy Moos, who was also the other co-owner of Account Owner *Elias Moos*.

The Issue of Who Received the Proceeds

With regard to the custody account held by Account Owner Samuel Moos at Bank I, the CRT notes that the archival records indicate that the securities in Account Owner Samuel Moos' account had been reported to Nazi authorities, and that a notation in the records, dated 26 April 1940, indicates that, as of that date, the shares of stock were no longer in the account.

With respect to the account of unknown type held by Account Owner *Elias Moos* at Bank I, the CRT notes that the documents in the archival records indicate that on 31 December 1937, the account had a balance of SF 127.00 and that this balance was transferred into the company's account at Bank II in order to simplify bookkeeping. The CRT accordingly concludes that this account was properly closed and that the Account Owner received the proceeds.

With regard to the custody account held by Account Owner *Elias Moos* at Bank II, the CRT notes that although the archival records indicate that Account Owner *Elias Moos* sold securities from that account to meet a capital liability to Bank II, there is no information about the content of the account, so that any remaining balance is unknown. The records do not indicate the ultimate disposition of the account, although they indicate that the account had been reported to Nazi authorities.

With respect to the sub-account jointly held by Willy and Samuel Moos in the custody account of M.M. Warburg at Bank II, the archival records do not indicate the ultimate disposition of the assets they held.

Given that Account Owner Samuel Moos, who was also co-owner of Account Owner *Elias Moos*, resided in Nazi Germany and fled to Argentina in 1939; that Account Owner Samuel Moos' account was included on a list available to Nazi authorities in April 1939, the same year that Account Owner Samuel Moos fled Germany; that the transactions on the company accounts took place before Account Owner Samuel Moos fled Germany; that there is no record of the payment of the Account Owners' accounts to him and its owners, nor any date of closure for the accounts, nor any bank records at all pertaining to the accounts from Bank I or Bank II (the records having come from archival sources in Germany); that the Account Owners and their heirs would not have been able to obtain information about their accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumption (h), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the accounts' proceeds were not paid to the Account Owners, their heirs, or their successors in interest. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the

Claimant has plausibly demonstrated that Account Owner Samuel Moos was his father and that his father was one of the owners of Account Owner *Elias Moos*, and that relationship justifies an Award. Third, the CRT has determined that neither Account Owner Samuel Moos nor Account Owner *Elias Moos* nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, Account Owner Samuel Moos held one custody account at Bank I and Account Owner *Elias Moos* held one account of unknown type at Bank I and one custody account at Bank II. Furthermore, Account Owners Willy and Samuel Moos jointly held named securities in a sub-account of a custody account held by M.M. Warburg at Bank II.

With respect to Account Owner Samuel Moos' custody account at Bank I, the archival records indicate that it contained seven shares of *Brown Boveri* stock, with a nominal value of SF 70.00 each. According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, stocks are valued at market value. The market value of these shares in April 1938 was SF 224.00.² The CRT notes that it is not clear that these were the only securities contained in this account. In any case, according to Article 29 of the Rules, if the amount in a custody account was less than SF 13,000.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00.

With respect to the custody account held by Account Owner *Elias Moos* at Bank II, pursuant to Article 29 of the Rules, when the value of an account is unknown, 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 on the investigation carried out pursuant to the instructions of ICEP in 1945 the average value of a custody account was SF 13,000.00.

With respect to the sub-account held by Willy and Samuel Moos in the custody account of M.M. Warburg at Bank II, according to the archival records this account contained:

- 250 ordinary stock Courtaulds Ltd with a market value of £ 640.63 on 7 July 1937, which was equivalent to SF 13,805.58;³
- 200 shares "Astra" Cia Argentina de Petroleo of unknown value;
- US \$10,000.00 6 percent Gold Bonds Republic of Peru 1960 1. Dez.; these bonds were in default and on 7 July 1937 had a market value of US \$1,962.50, which was equivalent to SF 8,556.50;⁴
- US \$10,000.00 7 percent Income Bonds European Mortgage Corporation Series C; these bonds were in default and in 1937 had a market value of US \$2,800.00, which was equivalent to SF 12,208.00;⁵

² Austrian State Archive, (Archive of the Republic, Finance), files number 10013, Olga Berlitzer Erben and 10014, Valerie Berlitzer, portfolio valuation as of 27 April 1938 by *Schweizer Kreditanstalt*, dated 3 June 1938.

³ Financial Times, 8 July 1937. The CRT uses official exchange rates when making currency conversions.

⁴ Wall Street Journal, 8 July 1937.

⁵ *Moody's Manual of Investments, American and Foreign: Banks - Insurance Companies - Investment Trusts - Real Estate - Finance and Credit Companies*, Moody's Investors Service, New York, 1940, p. 913-14.

- US \$4,000.00 6 percent Gold Bonds City of Budapest 1962; these bonds were in default and in 1937 had a market value of US \$1,097.50, which was equivalent to SF 4,785.10.⁶

Therefore, the total value of this sub-account (with the Argentinean shares unable to be valued) is SF 39,355.18.

The combined 1945 average value for the three accounts at issue is SF 65,355.18. 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 amount of SF 816,939.75.

Scope of the Award

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

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

Claims Resolution Tribunal
21 December 2007

⁶ *Moody's Manual of Investments, American and Foreign: Government Securities*, Moody's Investors Service, New York, 1940, pp. 1872, 1878.