

# CLAIMS RESOLUTION TRIBUNAL

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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]

**in re Accounts of Ernst Moser<sup>1</sup>**

Claim Numbers: 208753/AX; 213135/AX; 702111/AX; 772522/AX; 777398/AX; 785616/AX;  
785617/AX<sup>2,3,4</sup>

Original Award Amount: 125,500.00 Swiss Francs

Award Amendment Amount: 62,750.00 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) to the accounts of Ernst Moser, and the claim of [REDACTED 2], née [REDACTED], (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Ernst Moser and Ludwig Rabl.<sup>5</sup> This Award Amendment is to the accounts of Ernst Moser (the “Account Owner”) at the [REDACTED] in Bern (“Bank I”), and at the [REDACTED] (“Bank II”) (together the “Banks”).

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<sup>1</sup> On 31 December 2003, the Court approved an Award to Claimant [REDACTED 1] and Claimant [REDACTED 2] to the accounts of Ernst Moser (the “December 2003 Award”), which is the subject of this Award Amendment.

<sup>2</sup> Claimant [REDACTED 3] did not submit a Claim Form to the CRT. However, in 1999 he submitted two Initial Questionnaires (“IQ”), numbered ENG 0610-049 and ENG 0610-050, 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 785616 and 785617.

<sup>3</sup> Claimant [REDACTED 1] submitted two Initial Questionnaires (“IQs”) with the Court in 1999 and a Claim Form to the CRT. The IQs were forwarded to the CRT and have been assigned claim numbers 772522 and 777398. In the IQs, Claimant [REDACTED 1] claimed an account belonging to himself and Ernst Moser. The CRT will treat the claims to Claimant [REDACTED 1]’s account in a separate determination.

<sup>4</sup> The CRT notes that Claimant [REDACTED 2] and Claimant [REDACTED 3] each submitted a claim form in 2005 to the account of Ernst Moser, whose name appears on the List of Account Owners Published in 2005 (“the 2005 List”). The CRT will treat the claims to this account in a separate determination.

<sup>5</sup> The CRT will treat the claim to the account of Ludwig Rabl in a separate determination.

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

## **Procedural History**

On 31 December 2003, the Court approved an Award to Claimant [REDACTED 1] and Claimant [REDACTED 2] to the Account Owner's accounts (the "December 2003 Award"). In this Award Amendment, the CRT adopts and amends its findings to address the entitlement of Claimant [REDACTED 3]. Subsequent review of Claimant [REDACTED 3]'s claim indicates that he is entitled to share in the original award amount, as detailed below.

## **The December 2003 Award**

In the December 2003 Award, the CRT determined that the Account Owner owned one demand deposit account and two accounts of unknown type. The CRT further determined that Claimant [REDACTED 1] and Claimant [REDACTED 2], who are siblings, had plausibly identified the Account Owner, that they plausibly demonstrated that they were 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. The CRT noted that the Banks' records indicated that the accounts had values below the average values set forth in Article 29 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), and therefore determined that their combined value was 10,040.00 Swiss Francs ("SF"), and that the December 2003 Award amount was SF 125,500.00. Finally, the CRT determined that Claimant [REDACTED 1] and Claimant [REDACTED 2] were entitled to equal shares of the December 2003 Award.

## **Information Provided by Claimant [REDACTED 3]**

Claimant [REDACTED 3] submitted two Initial Questionnaires to the Court in 1999 identifying the Account Owner as his father, Dr. *med.* (medical doctor) Ernst Moser, who was born on 17 July 1889. Claimant [REDACTED 3] indicated that his father, who was Jewish, was a dentist in Berlin, Germany before the Second World War. Claimant [REDACTED 3] indicated that his father resided at Bayreuther Strasse 27/28 in Berlin before the Nazis came to power in Germany. According to Claimant [REDACTED 3], his father was forced to wear the *Judenstern*, and was later forced to live in hiding in the homes of friends and strangers in Germany from 1943 to 1945. Claimant [REDACTED 3] indicated that his father repeatedly requested permission to enter Switzerland at the Swiss Consulate in Berlin, but was refused. Claimant [REDACTED 3] explained that his father twice took a train, once to Konstanz and once to Bregenz, in attempts to cross the border into Switzerland, but the border guards turned him away. Claimant [REDACTED 3] stated that his father's attempts were noted by Gestapo agents, who made notations in his file kept at the Reich's Main Security Office (*Reichssicherheitshauptamt*). These files were confiscated by American authorities in 1945, and the Claimant was later able to view

the notations about his father's attempted escapes. Claimant [REDACTED 3] indicated that his father died on 6 March 1951 in Berlin. Claimant [REDACTED 3] indicated that he was born on 8 July 1926.

### **Information Available in the Banks' Records**

As detailed in the December 2003 Award, the Banks' records indicate that the Account Owner was Ernst Moser, that he held one demand deposit account and two accounts of unknown type, and that two of the accounts were transferred to suspense accounts and the other was closed to profit and loss. The Banks' records also indicate the values of the accounts at the time of their transfer or closure.

### **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 seven claims of the Claimants in one proceeding.

#### Claimant [REDACTED 3]'s Identification of the Account Owner

Claimant [REDACTED 3]'s father's name matches the published name of the Account Owner. The CRT notes that the Bank's records do not contain any specific information about the Account Owner other than his name.

The CRT notes that Claimant [REDACTED 3] filed an IQ with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Ernst Moser, prior to the publication in February 2001 of the list of accounts determined by the Independent Committee of Eminent Persons to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that Claimant [REDACTED 3] 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 3] 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 3].

The CRT notes that Claimant [REDACTED 3]'s relative and Claimant [REDACTED 1]'s and Claimant [REDACTED 2]'s relative 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 each claimant supports and in no way contradicts any 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 there are no other claims to this account, the CRT finds that the Claimants have each plausibly identified the Account Owner.

#### Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED 3] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 3] stated that his father was Jewish, that he was forced to wear the *Judenstern*, and that he was later forced to live in hiding in the homes of friends and strangers in Germany from 1943-1945.

#### Claimant [REDACTED 3]'s Relationship to the Account Owner

Claimant [REDACTED 3] has plausibly demonstrated that he is related to the Account Owner by submitting specific biographical information demonstrating that the Account Owner was Claimant [REDACTED 3]'s father. The CRT notes that that Claimant [REDACTED 3] filed an IQ with the Court in 1999, identifying the relationship between the Account Owner and Claimant [REDACTED 3], 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 the Account Owner was well known to Claimant [REDACTED 3] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 3] is related to the Account Owner, as he has asserted in his IQs.

There is no information to indicate that the Account Owner has other surviving heirs.

#### The Issue of Who Received the Proceeds

As detailed in the December 2003 Award, two of the accounts were transferred to suspense accounts and one was closed to profit and loss. The CRT has therefore concluded that the accounts' proceeds were not paid to the Account Owner or his heirs.

#### Basis for the Award Amendment

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 3]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 3] has plausibly demonstrated that the Account Owner was his father, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

#### Amount of the December 2003 Award

As detailed in the December 2003 Award, the Account Owner held one demand deposit account and two accounts of unknown type. Pursuant to Article 29 of the Rules, if the amount in an account was less than the average value of the same or a 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 investigation conducted by the

Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), in 1945 the average value of a demand deposit account was SF 2,140.00 and the average value of an account of unknown type was SF 3,950.00. The total average value of the three accounts is therefore SF 10,040.00.

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 the December 2003 Award, the current value of this amount was 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 125,500.00.

#### 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 will provide for a pro rata share of the full amount in the account to each claimant or group of claimants who would be otherwise entitled under these Rules. In this case, each Claimant has established a plausible relationship to a person with the same name as the Account Owner. 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-fourth of the total Award amount.

#### Amount and Division of the Award Amendment

Recognizing that over two years have passed since the December 2003 Award, and that there is no indication that Claimant [REDACTED 1] and Claimant [REDACTED 2] were aware that another equally entitled person had filed a claim, the CRT determines that Claimant [REDACTED 3] is entitled to a payment from the Settlement Fund equaling his share of the award amount. As noted above, the total 1945 value of the Account Owner’s accounts was SF 10,040.00. Claimant [REDACTED 3] is entitled to one-half of this amount, or SF 5,020.00. 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 62,750.00.

Claimant [REDACTED 3] is entitled to the full amount of the Award Amendment.

#### **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 she 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  
12 May 2006