

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2]
represented by Joel Levi

to Claimant [REDACTED 3]

and to Claimant [REDACTED 4]¹
also acting on behalf of [REDACTED 5]

in re Account of Selma Rosenberg

Claim Numbers: 212615/JG, 213817/JG, 750789/JG²

Original Award Amount: 162,500.00 Swiss Francs

Award Amendment Amount: 38,750.00 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”), upon the claim of [REDACTED 3], née [REDACTED] (“Claimant [REDACTED 3]”), and upon the claim of [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) to the published account of Selma Rosenberg (the “Account Owner”) at the [REDACTED] (the “Bank”).

¹ On 28 May 2004, the Court approved an award to Claimant [REDACTED 1] (“Claimant [REDACTED 1]”), Claimant [REDACTED 3] (“Claimant [REDACTED 3]”), and Claimant [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) for the account of Selma Rosenberg (the “May 2004 Award”), which is the subject of this Award Amendment.

² Claimant [REDACTED 3] did not submit a CRT Claim Form. However, in 1999 she submitted an Initial Questionnaire (“IQ”), numbered GER-0040139, to the Court in the United States. Although this IQ was not a Claim Form, 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 IQ was forwarded to the CRT and has been assigned claim number 750789. Further, in 1998 she submitted an ATAG Ernst & Young claim form (“ATAG Form”), numbered C-BSL-H-80-728-095-424, to the Claims Resolution Tribunal for Dormant Accounts in Switzerland (“CRT I”), which arbitrated claims to certain dormant Swiss bank accounts between 1997 and 2001. On 30 December 2004, the Court ordered that claims submitted to but not treated by either CRT I, the Independent Committee of Eminent Persons (“ICEP”), or ATAG Ernst & Young shall be treated as timely claims under the current Claims Resolution Process (the “CRT”) as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). Order Concerning the Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets (30 December 2004).

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 May 2004, the Court approved an Award to the Claimants for a custody account owned by the Account Owner (the “May 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 and amends its findings set out in the May 2004 Award based upon this additional information recently forwarded to the CRT by the Bank.

The May 2004 Award

In the May 2004 Award, the CRT determined that the Account Owner owned one custody account. 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 each 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 her account. The CRT also determined that Claimant [REDACTED 1] and the party he represents were each entitled to one-sixth of the award amount; Claimant [REDACTED 3] was entitled to one-third of the award amount; and Claimant [REDACTED 4] and the party he represents were each entitled to one-sixth of the award amount.

Finally, the CRT determined that the Bank’s record 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 May 2004 Award, the Bank’s record indicates the name and city of residence of the Account Owner. The record indicates that the Account Owner held one custody account, numbered L 39392, which was closed on 29 December 1936.

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

These documents indicate that at the time the Account Owner was deemed to have lost control over the custody account numbered L39392 it contained the following securities:

- 4.5% *Schweizerische Bundesbahnen 2. Elektrifikations-Anleihe 1922* bonds with a face value of SF 8,000.00, which were cashed in (*einkassiert*) on 3 August 1933;
- 5% *Schweizerische Bundesbahnen 4. Elektrifikations-Anleihe 1924* bonds with a face value of SF 3,000.00, which were cashed in on 15 April 1935; and
- 3.5% *Schweizerische Bundesbahnen 1910* bonds with a face value of SF 5,000.00, which were sold on 23 December 1936.

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 three 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 May 2004 Award that the claims are admissible in accordance with Article 18 of 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 her heirs received the proceeds of her account.

Value of the accounts in the May 2004 Award

In the May 2004 Award, the Account Owner held one custody account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for the custody account in May 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 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.

According to the additional information from the Bank, the Account Owner held one custody account numbered L39392 with the following securities:

- 4.5% *Schweizerische Bundesbahnen 2. Elektrifikations-Anleihe 1922* bonds with a face value of SF 8,000.00. Since these bonds were cashed in, they will be valued at their face value. The total value of these bonds thus was SF 8,000.00;³
- 5% *Schweizerische Bundesbahnen 4. Elektrifikations-Anleihe 1924* bonds with a face value of SF 3,000.00. Since these bonds were cashed in, they will be valued at their face value. The total value of these bonds thus was SF 3,000.00;⁴
- 3.5% *Schweizerische Bundesbahnen 1910* bonds with a face value of SF 5,000.00. These bonds were of good quality and were trading at 102.00% when sold on 23 December 1936. 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 SF 5,100.00.⁵

Therefore, the Bank's records indicate that the total value of the custody account numbered L39392 before its closure in December 1936 was SF 16,100.00. The Article 29 value of SF 13,000.00, which was used in the May 2004 Award, is then subtracted from the actual historic value, resulting in a difference of SF 3,100.00. 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 38,750.00.

Division of the Award Amendment

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 of the Claimants has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, each of the Claimants is entitled to one-third of the total award amendment amount, to be shared by any relevant parties that he or she is representing.

The CRT notes that Claimant [REDACTED 1] is representing his sister, [REDACTED 2], née [REDACTED], in these proceedings. According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. As indicated in the May 2004 Award, Claimant [REDACTED 1] submitted Selma Rosenberg's certificate of inheritance naming her daughter, [REDACTED], as her sole heir; a certificate of inheritance of [REDACTED] naming her brother, [REDACTED], as her sole heir; a certificate of inheritance of [REDACTED] naming his widow, [REDACTED], as his sole heir; and a certificate of inheritance of [REDACTED] naming her children, [REDACTED 1], and [REDACTED 2], née [REDACTED], as her sole heirs. Therefore, Claimant [REDACTED 1] and Claimant [REDACTED 1]'s sister are each entitled to receive one-sixth of the total award amendment

³ The market value for this security was obtained from the *Neue Zürcher Zeitung*.

⁴ The market value for this security was obtained from the *Zürcher Kursblatt*, 31 December 1934.

⁵ The market value for this security was obtained from the *Zürcher Kursblatt*, 31 December 1936.

amount.

The CRT further notes that Claimant [REDACTED 4] is representing his sister-in-law, [REDACTED 5], in these proceedings. According to Article 23(2)(c), if a claimant bases a claim of entitlement on a chain of inheritance documents but has not submitted an unbroken chain of wills or other inheritance documents, the CRT may use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with principles of fairness and equity. The CRT notes that according to Article 23(1)(f), if a child of the Account Owner is deceased, but that child's spouse has submitted a claim, that child's spouse shall be considered a child of the Account Owner for the purpose of Article 23. As noted in the May 2004 Award, there is an unbroken chain of wills from Claimant [REDACTED 4]'s mother to him; there is a broken chain of wills from [REDACTED 5]'s mother-in-law to her; and Claimant [REDACTED 4] specifically requested that his sister-in-law receive one half of any award payment. Given the aforementioned rules, the CRT finds that Claimant [REDACTED 4] and [REDACTED 5] are each entitled to one-sixth 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 Amendment for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
29 September 2008