

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to the Estate of Claimant Ernest Schneider¹
represented by William L. Flacker

in re Accounts of Ernst Schneider

Claim Number: 215503/MBC

Original Award Amount: 351,750.00 Swiss Francs

Award Amendment Amount: 714,037.25 Swiss Francs

This Certified Award Amendment is based upon the claim of the Estate of Ernest Schneider (the “Claimant”) to the published accounts of Ernst Schneider (the “Account Owner”) at the [REDACTED] (“Bank 1”) and at the [REDACTED] (“Bank 2”) (together the “Banks”).

All award amendments are published. Where a claimant has not requested confidentiality, as in this case, only the names of the banks have been redacted.

Procedural History

On 28 June 2006, the Court approved an Award to the Claimant for a custody account and a demand deposit account at Bank 1, and a custody account at Bank 2, all owned by the Account Owner (the “June 2006 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 at Bank 1. However, Bank 1 subsequently made available to the CRT additional information about this custody 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 2006 Award based upon this additional information subsequently forwarded to the CRT by Bank 1.

The June 2006 Award

In the June 2006 Award, the CRT determined that the Account Owner owned a custody account and a demand deposit account at Bank 1, and a custody account at Bank 2. The CRT further determined that the Claimant’s representative plausibly identified the Account Owner, that he

¹ On 28 June 2006, the Court approved an award to the Estate of Ernest Schneider (the “Claimant”) for the accounts of Ernst Schneider (the “June 2006 Award”), which is the subject of this Award Amendment.

plausibly demonstrated that his late client was the Account Owner, and that the Claimant's representative had 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 the Claimant was entitled to the entire award amount.

Finally, the CRT determined that Bank 1's record did not indicate the value of any of the accounts, and therefore presumed that the value of each custody account was 13,000.00 Swiss Francs ("SF") and that the value of the demand deposit account was SF 2,140.00. The final June 2006 Award amount was SF 351,750.00.

Information Available in Bank 1's Records

As detailed in the June 2006 Award, Bank 1's record indicates the name and addresses of the Account Owner. The record indicates that *Direktor* Ernst Schneider resided in Prague, Czechoslovakia, and in Vienna, Austria, and used a post office box in Zurich, Switzerland as a mailing address. The record indicates that the Account Owner held one custody account numbered L54352, which was closed on 10 April 1938, and one demand deposit account, which was closed on 20 April 1938.

As noted above, subsequent to the June 2006 Award, Bank 1 provided the CRT with additional documents regarding the custody account at that bank. These documents contained a custody account identification card ("*Leitkarte*") and custody account portfolio holding cards ("*Depotvalorenkarten*") for each security held within the custody account. The CRT notes that it did not receive any additional information regarding the Account Owner's account at Bank 2 from that bank.

These documents indicate that at the time the Account Owner was deemed to have lost control over the custody account at Bank 1,² it contained the following securities:

- *4% Niederösterreichische Invest.-Anleihe für Landeseisenbahnzwecke 1911 French-stamped* bonds with a face value of 13,000.00 Gold Francs ("GFr."), which were transferred on 9 April 1938 to *Breisach & Co.*, a bank in Vienna;
- *3% Ungarische Eiserne Tor-Anleihe 1895 C.C. Stücke* bonds with a face value of 12,000.00 Austrian Kronen ("öKr."), which were transferred on 9 April 1938 to *Breisach & Co.* in Vienna;
- *130 Österreichische Creditanstalt-Wiener Bankverein* preferred shares, each with a face value of 375.00 Schillings ("AS"), which were transferred on 9 April 1938 to *Breisach & Co.* in Vienna; and
- *130 Österreichische Creditanstalt-Wiener Bankverein Tilgungsscheine* with no face value, which were transferred on 9 April 1938 to *Breisach & Co.* in Vienna.

² The CRT notes that Bank 1's records show that the Account Owner resided in Vienna and Prague. The CRT has relied on the reference to Vienna for the purpose of determining the date over which the Account Owner was deemed to have lost control over the account.

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. The CRT previously determined in the June 2006 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's representative has plausibly demonstrated that his late client was 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 2006 Award

In the June 2006 Award, the Account Owner held one custody account and one demand deposit account at Bank 1, and one custody account at Bank 2. The value of the demand deposit account at Bank 1 and that of the custody account at Bank 2 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 at Bank 1 in June 2006, 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.

According to the additional information from Bank 1, the Account Owner held a custody account with the following securities:

- *4% Niederösterreichische Invest.-Anleihe für Landeseisenbahnzwecke 1911 French-stamped* bonds with a face value of GFr. 13,000.00. These bonds were in default, and no quotation is available, as no trades were registered in Austria or France either on the exchanges or over the counter. Therefore, no value is awarded for these securities.³
- *3% Ungarische Eiserne Tor-Anleihe 1895 C.C. Stücke* bonds with a face value of öKr. 12,000.00. These bonds were in default, and were trading at 22.3% when transferred on 9

³ The information about this security was obtained from the 1938 Census of Jewish-owned assets records at the Austrian State Archive, file of Jeanette Brunner, numbered 46182.

April 1938. Therefore, these bonds shall be valued at their total market value of AS 2,676.00, which was equivalent to SF 3,130.56;⁴

- *130 Österreichische Creditanstalt-Wiener Bankverein* preferred shares with a face value of AS 375.00. These shares were trading at AS 330.00 as of 9 April 1938, and accordingly shall be valued at their total market value of AS 42,900.00, which was equivalent to SF 50,187.28;⁵
- *130 Österreichische Creditanstalt-Wiener Bankverein Tilgungsscheine* with no face value. These shares were trading at AS 110.50 as of 9 April 1938, and accordingly shall be valued at their total market value of AS 14,365.00, which was equivalent to SF 16,805.14.⁶

Therefore, Bank 1's records indicate that the total value of the custody account in April 1938 was SF 70,122.98. The Article 29 value of SF 13,000.00, which was used in the June 2006 Award, is then subtracted from the actual historic value, resulting in a difference of SF 57,122.98. 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 714,037.25.

The CRT notes that this Award Amendment amount may be reduced by a deduction of previous overpayment(s) to the Claimant, as detailed in the cover letter accompanying this decision.

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
28 May 2010

⁴ The market value for this security was obtained from *Compass Österreich 1940*, at p. 106. The CRT uses official exchange rates when converting currencies.

⁵ The market value for this security was obtained from the 1938 Census of Jewish-owned assets record of Guido Fischel, file number 24678.

⁶ *Id.*