

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimants [REDACTED] and [REDACTED]¹
also acting on behalf of [REDACTED]

and to Estate of Claimant [REDACTED]

in re Accounts of Julius Winter

Claim Numbers: 000640/AV; 002219/AV; 650022/AV²

Original Award Amount: 181,680.00 Swiss Francs

Award Amendment Amount: 94,625.00 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED] (“Claimant [REDACTED]”) and [REDACTED], née [REDACTED] (“Claimant [REDACTED]”) to accounts of [REDACTED], and the claim of [REDACTED] (“Claimant [REDACTED]”) (together the “Claimants”) to accounts of [REDACTED].³ This Award Amendment is to the published accounts of Julius Winter (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

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 bank have been redacted.

Procedural History

On 2 January 2003 the Court approved an Award to Claimant [REDACTED], Claimant [REDACTED], and the party they represent to the Account Owner’s accounts (the “January 2003 Award”). In this Award Amendment, the CRT adopts and amends its findings to address

¹ On 2 January 2003, the Court approved an award to Claimant [REDACTED] (“Claimant [REDACTED]”) and Claimant [REDACTED] (“Claimant [REDACTED]”) for the accounts of Julius Winter (the “January 2003 Award”), which is the subject of this Award Amendment.

² [REDACTED] (“Claimant [REDACTED]”) submitted a claim, [REDACTED], on 16 March 2000, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was forwarded by the HCPO to the CRT on 19 March 2003 and has been assigned Claim Number [REDACTED]. It is not clear why the HCPO claim was not forwarded to the CRT until that date. On 13 February 2006, the CRT was informed by the HCPO that Claimant [REDACTED] had passed away in January 2006.

³ The CRT will treat the claims to these accounts in separate determinations.

the entitlement of Claimant [REDACTED]. The CRT notes that although Claimant [REDACTED] had filed a timely claim to the awarded accounts, his claim was not available for consideration in the January 2003 Award. Subsequent review of Claimant [REDACTED]'s claim indicates that he is entitled to share in the original award amount, as detailed below.

The January 2003 Award

In the January 2003 Award, the CRT determined that the Account Owner owned a custody account and a demand deposit account. The CRT further determined that Claimant [REDACTED] and Claimant [REDACTED] plausibly identified the Account Owner, that they plausibly demonstrated that they and the party they represent are 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 the custody account or demand deposit account. The CRT noted that the Bank's record did not indicate the value of the accounts, and therefore presumed that their value was 15,140.00 Swiss Francs ("SF"), and that the January 2003 Award amount was SF 181,680.00. Finally, the CRT determined that represented party [REDACTED], who claimed the account as his own, was entitled to the entire award amount.

Information Provided by Claimant [REDACTED]

Claimant [REDACTED] submitted a claim to the Holocaust Claims Processing Office ("HCPO") identifying the Account Owner as himself, [REDACTED], who was born on 31 August 1918 in Vienna, Austria. Claimant [REDACTED] indicated that his father, [REDACTED], was a butcher in Vienna, and that he had several bank accounts in Austrian banks. Claimant [REDACTED], who is Jewish, stated that he resided at Ottakringerstrasse 135 in Vienna, until 26 August 1938, when he left for Trnava, Czechoslovakia (now Slovakia). According to Claimant [REDACTED], he returned to Vienna on 15 October 1938, where he resided until 25 July 1939. Claimant [REDACTED] indicated that he subsequently fled to the United States. Claimant [REDACTED] submitted a copy of his birth certificate, identifying him as [REDACTED] and indicating that he was born in Vienna.

Claimant [REDACTED] previously submitted two Initial Questionnaires with the Court in 1999, asserting his entitlement to a Swiss bank account owned by [REDACTED].⁴

Information Available in the Bank's Record

As detailed in the January 2003 Award, the Bank's record indicates the name and city and country of residence of the Account Owner. The Bank's record indicates that the Account Owner held a custody account and a demand deposit account, and indicates the opening and closing dates of each account. The record does not indicate the value of the accounts.

⁴ As noted above, the CRT will treat the claims to this account in a separate determination.

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.

Claimant [REDACTED]'s Identification of the Account Owner

Claimant [REDACTED]'s name and country of residence match the published name and country of residence of the Account Owner. Claimant [REDACTED] identified the Account Owner's city of residence, which matches unpublished information about the Account Owner contained in the Bank's records. In support of his claim, Claimant [REDACTED] submitted documents, including his birth certificate, identifying him as [REDACTED] and indicating that he was born in Vienna, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner.

The CRT notes that Claimant [REDACTED] and represented party [REDACTED], whom Claimant [REDACTED] and Claimant [REDACTED] are representing, are not the same person. However, given that the Claimants have identified all published and unpublished 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; the CRT finds that Claimant [REDACTED], Claimant [REDACTED], and Claimant [REDACTED] have each plausibly identified the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

Claimant [REDACTED] has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED] stated that he is Jewish, and that he resided in Nazi-controlled Austria until 26 August 1938, and then returned to Austria from 15 October 1938 until 25 July 1939 before fleeing to the United States.

Claimant [REDACTED]'s Relationship to the Account Owner

Claimant [REDACTED] has plausibly demonstrated that he is the Account Owner by submitting specific information and documents, demonstrating that he is the Account Owner. These documents include his birth certificate, identifying himself as [REDACTED].

The Issue of Who Received the Proceeds

As detailed in the January 2003 Award, the CRT has concluded that it is plausible 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]. First, Claimant [REDACTED]'s claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED] has plausibly demonstrated that he is the Account Owner, and that justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

Amount of the January 2003 Award

As detailed in the January 2003 Award, the Account Owner held one custody account and one demand deposit account. 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 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 a custody account was SF 13,000.00. The total average value of the two accounts is therefore SF 15,140.00.

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 of the January 2003 Award, the adjustment factor was 12, and the resulting award amount was SF 181,680.00.

Since the January 2003 Award, the adjustment factor has been raised to 12.5.

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 group of Claimants has established a plausible relationship to a person with the same name as the Account Owner. Accordingly, Claimant [REDACTED] and Claimant [REDACTED] are entitled to one-half of the Award amount, and Claimant [REDACTED] is entitled to one-half of the Award amount.

With respect to Claimant [REDACTED]'s and Claimant [REDACTED]'s share of the award amount, in the January 2003 Award, the CRT determined that represented party [REDACTED], as the Account Owner himself, has a better entitlement to the account than Claimant

[REDACTED] and Claimant [REDACTED]. Accordingly, represented party [REDACTED] is entitled to their one-half share of the total award amount.

Amount and Division of the Award Amendment

The CRT recognizes that Article 31(1) of the Rules adjusts account values based upon the length of time that has passed since 1945 and the awarding of the accounts. In this case, even though represented party [REDACTED] was awarded in January 2003, Claimant [REDACTED], who is the subject of this award amendment, was not. Therefore, the CRT finds that adjustment factor of 12.5, not 12, is the more appropriate factor to bring the value of his share of the awarded accounts to current value.

Recognizing that three years have passed since the January 2003 Award, and that there is no indication that represented party [REDACTED] was aware that another equally entitled person had filed a claim, the CRT determines that Claimant [REDACTED] 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 two accounts was SF 15,140.00. Claimant [REDACTED] is entitled to half this amount, or SF 7,570.00. 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 94,625.00.

Claimant [REDACTED] 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 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 Master.

Claims Resolution Tribunal
3 March 2006