

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED]

in re Accounts of Oskar Kraus

Claim Number: 211297/MC

Original Award Amount: 716,197.20 Swiss Francs

Award Amendment Amount: 0.00 Swiss Francs

This Certified Award Amendment is based upon the claim of [REDACTED] (the “Claimant”) to the published accounts of Oskar Kraus (the “Account Owner”) at the Zurich branches of the [REDACTED] (“Bank 1”) and the [REDACTED] (“Bank 2”).

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

Procedural History

On 3 June 2003, the Court approved an Award to the Claimant for one custody account at Bank 1 and one custody account and one demand deposit account at Bank 2 held by the Account Owner (the “June 2003 Award”). The June 2003 Award failed to incorporate guidelines set forth in an Order of the Court dated 28 May 2002, which amended the Rules Governing the Claims Resolution Process (the “Rules”) to extend value presumptions, previously used only when the value of an account was unknown, to accounts whose 1945 values were less than the average 1945 value of an account of similar type, in the absence of plausible evidence to the contrary. Further, the June 2003 Award was approved prior to the issuance of the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Junz in 2005 and incorporated into decisions subsequently approved by the Court. Moreover, subsequent to the June 2003 Award, Bank 2 provided the CRT with additional documents regarding the contents of the Account Owner’s custody account. In this Award Amendment, the CRT adopts and amends its findings to address the value of the Account Owner’s two accounts at Bank 2.

The June 2003 Award

In the June 2003 Award, the CRT determined that the Account Owner owned one custody account at Bank 1 and one custody account and one demand deposit account at Bank 2; that the Claimant plausibly identified the Account Owner as his relative; that the Account Owner was a Victim of Nazi Persecution; and that it was plausible that neither the Account Owner nor his heirs received the proceeds of his three accounts. With regard to the Account Owner's custody account at Bank 1, the CRT noted that when the value of an account is unknown, as was the case for this account, 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, and the custody account at Bank 1 was accordingly valued at SF 13,000.00. With regard to the Account Owner's accounts at Bank 2, the CRT determined that the value of the Account Owner's demand deposit account was SF 389.50, and that the value of the Account Owner's custody account was SF 46,293.60. Therefore, the combined value of the three accounts at the two Banks was determined to be 59,683.10 Swiss Francs ("SF"). The present value of this amount was calculated by multiplying it by a factor of 12 in use at the time for a total award amount of SF 716,197.20.

Information Available in the Banks' Records

As detailed in the June 2003 Award, Bank 2's records indicate that the Account Owner held a custody account and a demand deposit account. Subsequent to the approval of the June 2003 Award, Bank 2 provided the CRT with additional documents regarding the Account Owner's custody account at Bank 2. These documents include 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 at Bank 2, it contained the following securities:

- *6% Badische Landeselektrizitätsversorgung Aktiengesellschaft (Badenwerk) Karlsruhe 1928 bonds*, with a face value of SF 1,000.00, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938;
- *6% I.G. Farbenindustrie A.G. Frankfurt am Main 1928 Conv. Obligationen (mit evet. Zusatzverzinsung)*, with a face value of 200.00 Reichsmark ("RM"), which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938;
- *600 Allgemeine Elektrizitäts-Gesellschaft, Berlin Stamm-Aktien* shares, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938;
- *1,000 Deutsche Reichsbahn-Gesellschaft 7% preferred* shares, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938;
- *1,000 Dynamit-Aktien-Gesellschaft vorm. Alfred Nobel & Co., Hamburg* shares, which were transferred to *Österreichische Kreditanstalt* on 9 August 1938;
- *3,500 Elektrizitäts A.G. vorm. Schuckert & Co., Nürnberg* shares, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938;

- 700 *Philipp Holzmann A.G., Frankfurt am Main Stamm-Aktien* shares, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938;
- 3% *Schweizerische Bundesbahnen 1938* bonds with a face value of SF 7,000.00, which were sold on 5 August 1938;
- 3.5% *Schweizerische Bundesbahnen 1932* bonds with a face value of SF 9,000.00, which were sold on 5 August 1938; and
- 4% *Schweizerische Bundesbahnen 1931* bonds with a face value of SF 9,000.00, which were sold on 5 August 1938.

The CRT's Analysis

Amount of the Award Amendment

With regard to the Account Owner's demand deposit account at Bank 2, according to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be presumed to be SF 2,140.00. Accordingly, the value of the Account Owner's demand deposit account is SF 2,140.00.

With regard to the Account Owner's custody account, according to the Guidelines for the Valuation of Securities, which was circulated to the CRT by Special Master Helen B. Junz after the June 2003 Award in June 2005, 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. Bonds that were in default are awarded at market value.

Accordingly, the securities contained in the Account Owner's custody account are valued as follows:

- 6% *Badische Landeselektrizitätsversorgung Aktiengesellschaft (Badenwerk) Karlsruhe 1928* bonds, with a face value of SF 1,000.00, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938. These bonds were in default, and were trading at 31.75% on 9 August 1938. Accordingly, these bonds are valued at their market value of SF 317.50;¹
- 6% *I.G. Farbenindustrie A.G. Frankfurt am Main 1928 Conv. Obligationen (mit evet. Zusatzverzinsung)*, with a face value of RM 200.00, which were transferred to *Österreichische Kreditanstalt* on 9 August 1938. These bonds were of good quality, and

¹ The market value for these securities was obtained from *Zürcher Kursblatt*, 30 December 1938.

were trading at 120% as of 9 August 1938. Accordingly, these bonds are be valued at their market value of RM 240.00, which was equivalent to SF 421.15;²

- 600 *Allgemeine Elektrizitäts-Gesellschaft, Berlin Stamm-Aktien* shares, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938. These shares were trading at 107% on 9 August 1938, for a total value of RM 642.00, which was equivalent to SF 1,126.58;³
- 1,000 *Deutsche Reichsbahn-Gesellschaft 7% preferred* shares, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938. These shares were trading at 122.13% on 9 August 1938, for a total value of RM 1,221.25, which was equivalent to SF 2,143.05;⁴
- 1,000 *Dynamit-Aktien-Gesellschaft vorm. Alfred Nobel & Co., Hamburg* shares, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938. These shares were trading at 79.75% on 9 August 1938, for a total value of RM 797.50, which was equivalent to SF 1,399.45;⁵
- 3,500 *Elektrizitäts A.G. vorm. Schuckert & Co., Nurnberg* shares, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938. These shares were trading at 161.5% on 9 August 1938, for a total value of RM 5,652.50, which was equivalent to SF 9,919.01;⁶
- 700 *Philipp Holzmann A.G., Frankfurt am Main Stamm-Aktien* shares, which were transferred to the *Österreichische Kreditanstalt* on 9 August 1938. These shares were trading at 140.75% on 9 August 1938, for a total value of RM 985.25, which was equivalent to SF 1,728.92;⁷
- 3% *Schweizerische Bundesbahnen 1938* bonds with a face value of SF 7,000.00, which were sold on 5 August 1938. These bonds were of good quality, and were trading at 97.9% on 5 August 1938. Accordingly, these bonds are valued at their face value of SF 7,000.00;⁸
- 3.5% *Schweizerische Bundesbahnen 1932* bonds with a face value of SF 9,000.00, which were sold on 5 August 1938. These bonds were of good quality, and were trading at 102.3% on 5 August 1938. Accordingly, these bonds are valued at their market value of SF 9,207.00;⁹ and
- 4% *Schweizerische Bundesbahnen 1931* bonds with a face value of SF 9,000.00, which were sold on 5 August 1938. These bonds were of good quality, and were trading at 105.75 % on 5 August 1938. Accordingly, they shall be valued at their market value of SF 9,517.50.¹⁰

² The market value for these securities was obtained from *Frankfurter Zeitung*, 10 August 1938. The CRT uses official exchange rates when converting currencies.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ The market value for these securities was obtained from *Zürcher Kursblatt*, 30 December 1938.

⁹ *Id.*

¹⁰ *Id.*

Therefore, the total value of the Account Owner's custody account at Bank 2 was SF 42,785.42.

In summary, in the June 2003 Award, the Account Owner's demand deposit account was undervalued by SF 1,750.50 (SF 2,140.00 minus SF 389.50), and his custody account was overvalued by an amount of SF 3,508.18 (SF 46,293.60 minus SF 42,785.42). Taken together, the two accounts were therefore overvalued in the June 2003 Award by an amount of SF 1,757.68 (1945 value).

The CRT notes that the June 2003 Award was based upon information available to the CRT at the time. Accordingly, the CRT does not seek outright repayment of the overpayment from the Claimant. However, because the original June 2003 Award was overpaid, no further amount is awarded in this Award Amendment. Moreover, the overpayment amount shall be deducted from any award amendment that may be forthcoming.

Certification of the Award Amendment

The CRT certifies this Award Amendment for approval by the Court.

Claims Resolution Tribunal
19 January 2010