

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: HOLOCAUST VICTIM ASSETS
LITIGATION

This Document Relates to: All Cases

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: Case No. CV 96-4849 (ERK)(MDG)
: (Consolidated with CV 96-5161
: and CV 97-461)
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: **MEMORANDUM & ORDER**
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**MEMORANDUM & ORDER APPROVING 15 AWARD AMENDMENTS CERTIFIED
BY THE CLAIMS RESOLUTION TRIBUNAL PURSUANT TO ARTICLE 31(2) OF
THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS AND
AUTHORIZING PAYMENT FROM THE SETTLEMENT FUND**

KORMAN, C.J.:

On 9 August 2000, I approved the Settlement Agreement between the parties and expressly retained jurisdiction over “the implementation of the settlement and distributions to plaintiff class members” as well as “the disposition of the settlement fund and escrow fund.”

Articles 29 and 31(1) of the Rules Governing the Claims Resolution Process, as amended, (the “Rules”) address the determination of the value of awardable accounts and award amounts. Article 29 sets forth value presumptions for accounts with unknown or low values. According to Article 29, if the 1945 value of an account to be awarded is unavailable from the bank records, or if the 1945 value is less than the average 1945 value of an account of similar type, the 1945 value of the account shall be determined to be, in the absence of plausible evidence to the contrary, the average 1945 value of an account of similar type. Article 31(1) provides, in part, that the amount of the award shall be adjusted by reducing the awards by the amount of any interest paid to the accounts for which the awards are being made, increasing the

awards by the amount of any fees and charges deducted, and multiplying the result by a factor to bring the awards to current values.

As set out in a letter to the Court from Special Master Helen B. Junz, which the Court hereby incorporates in its entirety, the Claims Resolution Tribunal (the "CRT"), in applying these Rules to determine award amounts, has developed certain guiding practices. Specifically, with respect to Article 29, the CRT has routinely reviewed returns submitted pursuant to a decree issued by the Nazi Regime on 26 April 1938, requiring all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). Where specific information on the value of assets held in Swiss banks was available from the 1938 Census returns, the CRT has taken these as the proper basis for determining award amounts in cases where bank records yielded no information on account values, or where the bank information cited lower values than those Account Owners had declared to the Nazi authorities. This means that in cases where an Account Owner declared a value lower than the average values provided for in Article 29 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), this lower value governed the determination of the amount awarded.

In her letter, Special Master Helen B. Junz moves this Court to amend this practice because of the existence of evidence that respondents to the 1938 Census tended not to declare all the assets they held and/or to undervalue declared assets in an effort to safeguard some of their wealth for the future, and requests the Court's approval to base future account valuations, in the absence of evidence to the contrary, on presumptive values in cases where the 1938 Census return shows a value below the presumptive amount, while continuing to base account valuations on the 1938 Census declarations in cases where these exceed the presumptive values.

With respect to Article 31(1), the CRT, in calculating the historic (1945) value of an account in cases where bank records provide a post-1945 value, routinely makes adjustments to

add back fees charged to the account and to deduct interest accruals. This adjusted (1945) value is then brought to current value by applying a factor (currently 12.5) that is calculated to compound average interest over the period since 1945. The deduction of interest accruals back to 1945 thus sought to protect the Settlement Fund from making awards that would have resulted in double counting of interest in the post-1945 period: once by the bank crediting an account with interest and then again through the CRT's application of the compound interest factor.

Special Master Helen B. Junz moves this Court to amend this practice because, while there is ample evidence in the bank records that fees continued to be charged over the life of an account – even to a point where the asset value of the account turned negative and the bank started charging interest on the balance due – there is virtually no evidence in the bank records of accounts actually being credited with accrued interest, and requests the Court's approval to suspend deduction of interest accruals when determining account valuation absent bank documentation showing interest actually having been credited to the account over the period in question.

The Court's approval of these amended practices also at this time would necessitate adjustment to 15 awards previously approved by the Court for amounts based on 1938 Census values that were below presumptive values for the type of account awarded. Accordingly, Special Master Junz also requests the Court's approval, pursuant to Article 31(2) of the Rules, of 15 Award Amendments listed in Annex A to this Order, which have been certified by the CRT and the resources to pay these Award Amendments through funds to be deposited in the Swiss Banks Settlement-Dormant Accounts-Payment Account from the Settlement Fund. The total amount of these 15 Award Amendments is US \$ 694,298.40 (SF 867,873.01 converted at a rate of 1.25 Swiss Francs per U.S. Dollar).

As set forth in the Award Amendments and as required by Article 31(3) of the Rules, the Certified Award Amendments shall be paid in full by the Special Masters after approval of such Award Amendments by the Court.

Therefore, it is hereby

ORDERED that the attached 15 Award Amendments are hereby approved for payment pursuant to Article 31(2) of the Rules; and


ORDERED that for the payment of these 15 Award Amendments certified by the CRT and hereby approved by the Court, the Signatories of the Settlement Fund are hereby directed to immediately transfer US \$ 694,298.40 from the Settlement Fund to the Swiss Banks Settlement-Dormant Accounts-Payment Account.

It is further ordered that the Special Masters shall provide the Court with the name and address of every class member receiving an Award Amendment, which information shall be filed with the Court under seal.

I will issue additional orders approving Awards and Award Amendments certified by the CRT and transferring further sums from the Settlement Fund as the CRT certifies them to this Court.

Dated: Brooklyn, New York
October 21, 2004

SO ORDERED:



Edward R. Korman
United States District Judge

descendants of the Account Owner who have submitted a claim, in equal shares by representation. Finally, Article 27(1) of the Rules directs the Claims Resolution Tribunal (the "CRT") to seek the most equitable and fair result under the circumstances.

The CRT, in applying Article 29 of the Rules to determine award amounts, has developed certain guiding practices, which have been incorporated into decisions subsequently approved by the Court. After several months of experience in assessing claims and reviewing bank documents, and noting that account values as reflected in the bank records have often been depleted by fees and other bank charges, the CRT, beginning in approximately July 2002, has generally concluded that values recorded in bank records that are below the average values provided in Article 29 of the Rules do not constitute plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules. Accordingly, and with the approval of this Court, in such cases, the CRT has generally awarded the average value for that type of account, as provided in Article 29. The CRT now recommends the adjustment of 39 awards approved by the Court prior to the adoption of this practice whose award amounts were based upon values in the bank records that were below the presumptive values for the type of account awarded. To amend the accounts that have already been awarded, the adjusted values used to calculate the award amounts have been subtracted from the Article 29 values. The current value of the resulting differences is calculated by multiplying them it by a factor of 12.5, in accordance with Article 31(1) of the Rules.

The CRT also recommends amending two awards to adjust the division of the award proceeds among entitled claimants, pursuant to Articles 23(1) and 27(1) of the Rules. In one award amendment, the CRT has corrected the division to reflect familial relationships accurately. In that case, the original award identified the three claimants as cousins, and awarded each of

them one-third of the account belonging to the Account Owner, who was the claimants' grandfather. In fact, two of the three claimants are siblings, and, pursuant to Article 23 of the Rules, should share one-half of the award amount, with the other half going to their cousin. In the other award amendment, the CRT has added an additional entitled family member, not included in the original award, who filed an Initial Questionnaire with this Court.

The 41 Award Amendments are listed in Annex A to this Order. This Court's approval of the resources to pay for increases in the award amount for 39 of these Award Amendments is sought. The total amount of these 39 Award Amendments is US \$ 1,724,424.74 (SF 1,948,599.96 converted at a rate of 1.13 Swiss Francs per U.S. Dollar).

If the Court approves these Award Amendments, the current value of the total 2,790 accounts, awarded thus far for CRT I and CRT II combined, will rise to US\$ 215,967,078.63. For CRT II alone, including the Awards submitted with this letter, a total of 1,586 Awards for 2,583 accounts totaling US\$ 204,267,078.63 will have been made to Victims or Targets of Nazi Persecution making up the Deposited Assets Class, with the average Award amounting to US\$ 128,793.87.¹ For CRT I, which took place from 1997 through 2000, a total of 207 accounts, with a value of US\$ 11.7 million, were awarded as accounts belonging to Victims of Nazi Persecution.

As set forth in the Award Amendments and as required by Article 31(3) of the Rules, the Certified Award Amendments shall be paid in full by the Special Masters after approval of such Award Amendments by the Court.

Therefore, it is hereby

ORDERED that the attached 41 Award Amendments are hereby approved pursuant to Article 31(2) of the Rules; and

¹ The total of 346 Certified Denials approved thus far remains unaffected.

ORDERED that for the payment of 39 of these 41 Award Amendments certified by the CRT and hereby approved by the Court, the Signatories of the Settlement Fund are hereby directed to immediately transfer US \$ 1,724,424.74 from the Settlement Fund to the Awards Payment Account of the Special Masters.

It is further ordered that the Special Masters shall provide the Court with the name and address of every class member receiving an Award Amendment, which information shall be filed with the Court under seal.

I will issue additional orders approving Awards and Award Amendments certified by the CRT and transferring further sums from the Settlement Fund as the CRT certifies them to this Court.

Dated: Brooklyn, New York
December 12, 2004

SO ORDERED:


Edward R. Korman
United States District Judge