

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED 2], née [REDACTED]

and to Claimant [REDACTED 3]
represented by Mondex Corporation

in re Account of Theodor Auspitz-Arteneegg

Claim Numbers: 401192/RT; 402242/RT

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], (“Claimant [REDACTED 1]”) and [REDACTED 3] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published account of Theodor Auspitz-Arteneegg (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

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

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as the father of his maternal grandmother, Theodor Auspitz-Arteneegg, who was born on 23 March 1861 in Vienna, Austria, and was married to [REDACTED], née [REDACTED], who was born on 3 March 1875. Claimant [REDACTED 1] indicated that his great-grandfather, who was Jewish, was a person of independent means (*Privater*) and that he resided at Schwarzenbergstrasse 3 in Vienna I. He further stated that his great-grandfather had two children, [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED] (Claimant [REDACTED 1]’s maternal grandmother), who was born on 23 October 1902. According to the registration of death (*Todfallsaufnahme*) submitted by Claimant [REDACTED 1], Theodor Auspitz Arteneegg had in fact three children, [REDACTED], née [REDACTED], [REDACTED], née [REDACTED], and [REDACTED], née [REDACTED], who was born on 12 October 1907. Claimant [REDACTED 1] stated that his great-

grandfather died on 27 July 1939 in Bad Gastein, Austria, and his great-grandmother died in 1945 in Lausanne, Switzerland.

Claimant [REDACTED 1] submitted copies of documents in support of his claim, including: (1) his great-grandfather's last will, dated 26 November 1938, which contains his great-grandfather's signature, indicating that Theodor Auspitz bequeathed his entire estate to his son-in-law [REDACTED]; (2) his great-grandfather's registration of death, indicating that Theodor Auspitz-Arteneegg, who was born on 23 March 1861 and who was Jewish, resided at Schwarzenbergstrasse 3 in Vienna I, that he died on 27 July 1939 in Badgastein, and that his daughters were [REDACTED], [REDACTED], and [REDACTED]; (3) a certificate of inheritance issued by the Vienna local court (*Amtsgericht*) on 17 May 1940, indicating the acknowledgement of [REDACTED] as the sole heir of the estate of Theodor Auspitz Alteneegg; (4) his mother's birth certificate, indicating that [REDACTED 2] was born on 3 April 1930, that her parents were [REDACTED] and [REDACTED], née [REDACTED], (5) his parents' marriage certificate, indicating that [REDACTED 2] and [REDACTED] married in Vienna on 23 May 1955; and (6) his own birth certificate, indicating that the Claimant [REDACTED 1]'s parents are [REDACTED] and [REDACTED 2].

Claimant [REDACTED 1] indicated that he was born on 20 January 1972 in Vienna. Claimant [REDACTED 1] is representing his mother, [REDACTED 2], née [REDACTED], who was born on 3 April 1930 in Vienna.

Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owner as Theodor Auspitz-Arteneegg, who was married to [REDACTED], née [REDACTED], who was born on 3 March 1876. Claimant [REDACTED 3] indicated that Theodor Auspitz-Arteneegg, who was Jewish, resided at Schwarzenbergstrasse 3 in Vienna I and Marco d'Avianogasse 1 in Vienna I and had one daughter, [REDACTED], née [REDACTED]. According to Claimant [REDACTED 3], [REDACTED], née [REDACTED], was married to [REDACTED], who previously was married to Claimant [REDACTED 3]'s mother [REDACTED], née [REDACTED].

Claimant [REDACTED 3] submitted copies of documents in support of her claim, including: (1) her father's birth certificate, indicating that [REDACTED] was born on 1 March 1898 in Bradford, United Kingdom; (2) her parent's marriage certificate, indicating that [REDACTED] and [REDACTED] married on 16 September 1925 in Knaresborough, United Kingdom; (3) her own birth certificate, indicating that her parents were [REDACTED] and [REDACTED], née [REDACTED]; (4) her father's death certificate, indicating that [REDACTED] died on 31 May 1946 in Chuckfield, United Kingdom, and (5) her marriage certificate, indicating that she married [REDACTED] on 10 February 1951.

Claimant [REDACTED 3] indicated that she was born on 22 May 1927 in Bristol, United Kingdom.

Information Obtained by the CRT

In a declaration of assets that Theodor Auspitz-Arteneegg was required to file pursuant to a Nazi decree (see below), he described himself as a person of independent means (*Privater*). The Claimants also describe their relative in these terms. However, according to research conducted by the CRT, Theodor Auspitz-Arteneegg and his brother, [REDACTED], were partners in the bank *Auspitz, Lieben & Co*, which following the *Creditanstalt* crash, became insolvent in 1931. As a consequence, the famous art collection of [REDACTED] was sold to the Dutch art dealer Kurt Walter Bachstitz. Because Bachstitz defaulted on the last two installments of the purchase price, [REDACTED] kept part of his collection back. This part of the collection was confiscated in 1938 as security for the flight tax assessed against him and his family and eventually was forfeited to the Reich in 1942. Other works of art belonging to Theodor and/or [REDACTED], which were lodged at the Palais at Schwarzenbergstrasse 3, which they had inherited from their parents and where the whole family continued to live, either suffered a similar fate or were sold to cover the family's living costs. Theodor Auspitz-Arteneegger, who died on 27 July 1939, left his entire estate to his son-in-law, [REDACTED], who was a Swiss citizen and resided in Lausanne. The clear implication was that the testamentary decision was made to protect the family's assets. This is supported also by the fact that after 13 March 1938 [REDACTED] was charged with dealing the family's affairs.

After the War, [REDACTED]' two daughters, to whom he had left his entire estate, claimed two paintings by Hans Makart that had been acquired by the Municipal Collections of Vienna in 1939. These paintings had been commissioned in 1872 by Theodor Auspitz-Arteneegg's father, [REDACTED], especially for Schwarzenbergstrasse 3. In 2004, the Restitution Commission of Vienna determined that they were to be restituted to the heirs of [REDACTED] because stickers on the back of the paintings were marked: "Owner [REDACTED]." Both paintings were returned to [REDACTED]' heirs on 11 May 2004. The return of these paintings to the heirs of the original owner is noteworthy in that the Restitution Commission in 2002 had stated that no documentation existed about how and when these works of art were confiscated or sold by the owner(s) or even whether they were part of the sale consequent upon the insolvency of the family bank. [REDACTED], who was born in 1869, was deported to Theresienstadt on 9 October 1942. While in the concentration camp he married [REDACTED]. He died on 17 December 1945 in Vienna.¹

Information Available in the Bank's Record

The CRT notes that the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report an

¹ See Fifth Report by the designated Municipal Councilor for Culture and Science regarding the transfer of works of art and cultural property from the Collections of the Museums of the City of Vienna and from the Vienna City and State Library according to the Municipal Council's decision of 29 April 1999, 22 November 2004, pp. 79 – 82. Available at http://www.wienmuseum.at/pdf/Restitutionsbericht_2004.pdf.

account belonging to Theodor Auspitz-Artenege during their investigation of the Bank. The Bank's documents were obtained from archival sources in Austria.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, 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"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Theodor Auspitz-Artenege, [REDACTED], and [REDACTED], née [REDACTED], numbered 20240, 18824, and 20214, respectively.

Theodor Auspitz-Artenege

According to these records, Theodor Auspitz-Artenege, who was Jewish and of independent means ("*Privater*"), was born on 16 March 1861, resided at Schwarzenbergstrasse 3 in Vienna I, and was married to [REDACTED], née [REDACTED], who also was also Jewish. The records further indicate that Theodor Auspitz-Artenege owned two houses in Vienna at Schwarzenbergstrasse 3 and Marc d'Avienogasse 1.

In addition, these records contain an excerpt of a statement from the Central European Country Bank in Vienna ("*Zentral-Europäische-Länderbank*") related to custody accounts held by Theodor Auspitz-Artenege. According to this statement, Theodor Auspitz-Artenege held securities located at the Bank in Zurich ("*loco Zürich erl. [erliegen] b/ [bei] [the Bank]*") consisting of *4 ½ % Konsolidierte Anleihen des Landes Rumänien von 1934*, with a nominal value of 100.00 Swiss Francs ("SF") and a market value as of 27 April 1938 of 6.86 Reichsmark ("RM") and *Teilzertifikat ditto* (partial certificates of the same), with a nominal value of SF 27.50 and a market value as of 27 April 1938 of RM 1.89. The records do not indicate the ultimate disposition of these securities accounts.

The asset declaration indicates that the Account Owner owned assets totaling RM 985,743.00 and that flight tax (*Reichsfluchtsteuer*) in the amount of RM 247,000.00 and atonement tax (*Judenvermögensabgabe*) of RM 80,734.93 was assessed against him.

[REDACTED]

The records related to [REDACTED] indicate that that she was Jewish and without occupation ("*Private*"), was born on 3 March 1876, resided at Schwarzenbergstrasse 3 in Vienna I and was married to Theodor Auspitz-Artenege, who also was Jewish. The records further indicate that [REDACTED] was the owner of a house at Walfischgasse 15 in Vienna I and owned a half share of house at Marktleiten 193 in Bad Ausee.

The records contain a security order (*Sicherheitsbescheid*) dated 24 June 1941 which indicates that [REDACTED] owned assets totaling RM 111,710.00 and a flight tax assessment in the amount of RM 27,927.00 and that the associated security, which was to be

paid immediately, was set at RM 28,000.00. This order took the place of a flight tax assessment, dated 14 October 1939, requiring a security deposit of RM 80,700.00 on total assets of RM 322,748.00.

[REDACTED], née [REDACTED]

According to these records, [REDACTED], who was Jewish and of independent means (“*Private*”), was born on 12 October 1907, and resided at Schwarzenbergstrasse 3 in Vienna I. The records indicate that [REDACTED] obtained British citizenship after she married [REDACTED] (first name not provided) some time after she filed her 1938 Census declaration on 13 July 1938.

The records indicate that [REDACTED] owned assets totaling RM 89,120.00 and that flight tax in the amount of RM 22,240.00 and atonement tax amounting to RM 10,608.74 were assessed against her.

The CRT’s Analysis

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner.

Claimant [REDACTED 1]

Claimant [REDACTED 1]’s great-grandfather’s name matches the published name of the Account Owner. Further, Claimant [REDACTED 1]’s great-grandfather’s city and country of residence and his street address match the unpublished city and country of residence and street address of the Account Owner. Claimant [REDACTED 1] also identified the Account Owner’s spouse, [REDACTED], née [REDACTED], which matches unpublished information about the Account Owner contained in the 1938 Census’ records.

In support of his claim, Claimant [REDACTED 1] submitted documents, including his great-grandfather’s death report, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided at the same address recorded in the 1938 Census records as the name and address of the Account Owner.² This document also provides independent verification that the person claimed to be the Account Owner was married to a person with the same name, including maiden name, recorded in the 1938 Census records as the name and maiden name of the Account Owner’s spouse. Claimant [REDACTED 1] also submitted a sample of his great-grandfather’s signature from his last

² The CRT notes that Claimant [REDACTED 1]’s great-grandfather’s date of birth, as provided by Claimant [REDACTED 1], is 23 March 1861, while the 1938 Census records indicate that the Account Owner was born on 16 March 1861. However, the CRT notes that the other detailed information provided by Claimant [REDACTED 1] corresponds with the information recorded in the 1938 Census records and therefore concludes that this minor discrepancy does not undermine the plausibility of the Claimant’s identification of the Account Owner.

will, which matches the signature sample of the Account Owner contained in the 1938 Census records.

Claimant [REDACTED 3]

The name of the father of Claimant [REDACTED 3]'s father's second wife matches the published name of the Account Owner. Additionally, the city and country of residence and street address of the father of Claimant [REDACTED 3]'s father's second wife match the unpublished city and country of residence and street address of the Account Owner. Claimant [REDACTED 3] further identified the Account Owner's spouse, [REDACTED], née [REDACTED], which matches unpublished information about the Account Owner contained in the 1938 Census records. Finally, Claimant [REDACTED 3] identified the Account Owner's daughter [REDACTED] married name, which matches unpublished information about the Account Owner's daughter as contained in the 1938 Census records.

In support of her Claim, Claimant [REDACTED 3] submitted documents, including her father's birth certificate, providing independent verification, that her father had the same last name as one of the account owner's daughters' married name, as recorded in the 1938 Census records.

The CRT notes that the Claimants provided matching information about the Account Owner and therefore determines that the Claimants identified the same individual as the Account Owner. The CRT further notes that the other claim to this account was disconfirmed because that claimant provided a different city and country of residence and a different date of birth than the city and country of residence and date of birth of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and that he resided in Nazi-dominated Austria. In support of his claim, Claimant [REDACTED 1] also submitted the Account Owner's death report, indicating that he was Jewish (*mosaisch*), and that he died in Austria on 27 July 1939. The CRT further notes that the Account Owner was forced to declare his assets pursuant to the 1938 Census and that his brother, [REDACTED], was deported to Theresienstadt in 1942.

The Claimants Relationship to the Account Owner

Claimant [REDACTED 1] has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was his great-grandfather. These documents include the Account Owner's death report, indicating that his daughter was [REDACTED]; his mother's birth certificate, indicating that [REDACTED 2] was the daughter of [REDACTED], whose father was Theodor Auspitz-Arteneegg; and, finally, his own birth certificate, indicating that his mother is [REDACTED 2].

Claimant [REDACTED 3] has plausibly demonstrated that her father was the husband of the Account Owner's daughter [REDACTED], née [REDACTED] by submitting specific information and documents, demonstrating that the Account Owner's daughter was married to Claimant [REDACTED 3]'s father. These documents include Claimant [REDACTED 3]'s father's birth certificate, indicating that her father was [REDACTED].

There is no information to indicate that the Account Owner has surviving heirs who have filed claims, other than the party whom Claimant [REDACTED 1] is representing.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that the Account Owner reported the account in the 1938 Census; that the Account Owner lived in Austria until he died in 1939 and therefore could not have repatriated the account without losing ultimate control over its proceeds; and given the application of Presumptions (d) and (h), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, or his heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that the Account Owner was represented party [REDACTED 2]'s grandfather, and that relationship 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 account. Further, the CRT notes that represented party [REDACTED 2], as the Account Owner's granddaughter, has a better entitlement to the account than Claimant [REDACTED 1], the Account Owner's great-grandson and Claimant [REDACTED 3], who, as the Account Owner's daughter's stepdaughter, is not a descendant of the Account Owner.

Amount of the Award

According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal 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. Bonds in default are to be awarded at market value.

In this case, the Account Owner held securities consisting of 4 ½ % *Konsolidierte Anleihen des Landes Rumänien von 1934*, with a nominal value of SF 100.00 and a market value as of 27 April 1938 of RM 6.86 and *Teilzertificat ditto* (partial certificates of the same), with a nominal value of SF 27.50 and a market value as of 27 April 1938 of RM 1.89. The CRT notes that these securities were in default and,³ pursuant to the Guidelines, are to be valued at their market value. The total market value of the securities was RM 8.75, which was equivalent to SF 15.37.⁴

Pursuant to Article 29 of the Rules, if the amount in a custody account is less than 13,000.00 Swiss Francs (“SF”) and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 13,000.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 162,500.00.

Division of the Award

According to Article 23(1)(c) of the Rules, if the account Owner’s spouse has not submitted a claim, the award shall be in favor of any descendants of the account Owner who have submitted a claim in equal shares by representation. In this case Claimant [REDACTED 1] is representing his mother, the Account Owner’s grandchild. Accordingly, represented party [REDACTED 2] is entitled to the total award amount. As noted above, Claimant [REDACTED 1] and Claimant [REDACTED 3] are not entitled to share in the award.

Scope of the Award

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

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
19 July 2007

³ See Moody’s Manual of Investments, American and Foreign: Government Securities, (New York: Moody’s Investors Service, 1940), p. 1,947.

⁴ The CRT uses official exchange rates when making currency conversions.