

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Martin Isepp
also acting on behalf of the Estate of Konstanze Margarethe Becher¹
and on behalf of Marlene Bagdikian

in re Accounts of Helene Isepp

Claim Numbers: 401416/GO; 501766/GO

Award Amount: 281,320.63 Swiss Francs

This Certified Award is based upon the claims of Martin Johannes Sebastian Isepp (the “Claimant”) to the accounts of Bertha Hammerschlag and Helene Isepp.² This Award is to the unpublished accounts of Helene Isepp (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted two Claim Forms identifying the Account Owner as his mother, Helene Isepp, née Hammerschlag, who was born on 30 December 1899 in Vienna, Austria, and was married to Sebastian Isepp in 1925 in Vienna. The Claimant stated that his parents had two children: Martin Isepp (the Claimant), and his sister, Konstanze Isepp. According to the Claimant, his mother, who was Jewish, was a voice instructor and she and her family resided at Neustiftgasse 3 in Vienna. The Claimant explained that in September 1938, after the incorporation of Austria into the German Reich in March 1938 (the “*Anschluss*”), his mother, together with her family, fled to the United Kingdom. The Claimant stated that his father died on 3 December 1954 in London, the United Kingdom, that his mother died on 16 March 1968 in London, and that his sister died on 12 October 2005 in London, the United Kingdom.

In support of his claim, the Claimant submitted copies of documents, including: (1) his mother’s birth certificate, indicating that Helene Hammerschlag was born on 30 December 1899 in Vienna; (2) his mother’s certificate of residence (*Heimatschein*), issued on 22 July 1915,

¹ The CRT notes that Konstanze Margarethe Becher died on 12 October 2005.

² In a separate decision, the CRT awarded the accounts of Bertha Hammerschlag to the Claimant. See *In re Accounts of Bertha Hammerschlag* (approved on 23 June 2006).

indicating that Helene Hammerschlag resided in Vienna; (3) his father's certificate of residence, issued on 18 July 1920, indicating that Sebastian Isepp resided in Austria; (4) his sister's birth and baptism certificates, indicating that Konstanze Margarete Isepp was born on 29 October 1927 in Vienna, and that Helene Isepp was her mother; (5) a certificate issued by a District Administration Office (*Bezirkshauptmannschaft*) of Vienna on 2 August 1938, indicating that Sebastian Isepp, his wife, Helena Isepp, née Hammerschlag, and their children Martin Johannes Sebastian Isepp and Konstanze Margarete Isepp all resided in Vienna; (6) his own certificate of residence, issued on 18 August 1938, indicating that Martin Johannes Sebastian Isepp resided in Vienna; and (7) a deed of family arrangement, issued in 1974, indicating that Helene Isepp died on 16 March 1968, and that her children, Martin Johannes Sebastian Isepp and Konstanze Margarete [sic] Davidson were her sole heirs.

The Claimant also submitted copies of two statements from the Bank, which are further described below, relating to Helene Isepp's ownership of assets at the Bank.

The Claimant indicated that he was born on 30 September 1930 in Vienna. The Claimant is representing the estate of his sister, Konstanze Margarethe Becher, formerly Davidson, née Isepp, who was born on 29 October 1927 in Vienna. The Claimant is also representing his cousin (the daughter of Helene Isepp's sister, Margarethe Ungar), Marlene Bagdikian.

Information Available in the Bank's Records

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 account belonging to Helene Isepp during their investigation of the Bank. The documents evidencing accounts belonging to Helene Isepp were obtained by the Claimant and forwarded to the CRT.

The records consist of a statement from the Bank dated 25 August 1938 and an account statement from the *Länderbank Wien* (formerly *Mercurbank*) in Vienna dated 12 September 1938. According to these records, the Account Owner was Helene Isepp, who resided at Neustiftgasse 3 in Vienna VII.

According to the statement from the Bank, the Account Owner held a custody account, numbered 51966, which contained 7% *Austrian Govt. 1930* bonds with a nominal value of 6,000.00 United States Dollars ("US \$"). According to this statement, coupons on the bonds with a value of US \$174.96 had come due on 1 July 1938, and the Bank credited this amount, minus US \$ 0.86 in fees for a total of US \$174.10, to a separate dollar account held in the Account Owner's name. These records do not contain information about the disposition of these accounts.

According to the statement from the *Länderbank Wien* (formerly *Mercurbank*), dated 12 September 1938, three series of bonds held by the Account Owner had, upon their release, been received (*wir erkennen Sie hiermit auf Stückkonto*) in an account belonging to the *Länderbank*

at the Bank in Zurich (“*aus Ihrer Freistellung zu unseren Gunsten bei der Schweizerischen Kreditanstalt, Zürich.*”). According to this statement, the bonds in question were:

- *4% Argentine Rep. extl. Skg. Fd. Bds., due 2/15, 1972* bonds with a nominal value of US \$1,500.00;
- *4½% Argentin [sic] Rep. ext. Conversion Loan Bond, due 11/15, 1971* bonds with a nominal value of US \$1,000.00; and
- *4% Argentinische äussere Staatsanleihe von 1933* bonds with a nominal value of 4,000.00 Swiss Francs (“SF”).

The statement indicates that the bonds denominated in US dollars were deposited in New York (“*in New York ruhend*”), while the bonds denominated in Swiss Francs were deposited in Zurich (“*in Zürich ruhend*”). It is not clear from this statement at which bank these bonds were originally deposited.

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 Helene Isepp, numbered 41764.

These records indicate that Helene Isepp was born on 30 December 1899, that she was Jewish, that she was married to Sebastian Isepp, who was Catholic, and that she resided at Neustiftgasse 3 in Vienna, Austria. These records also indicate that Helene Isepp owned a two-fifths share of a rental property in Zurich, Switzerland, her share being valued at 28,905.00 Reichsmark (“RM”), and that she owned several securities. Among these securities, Helene Isepp listed:

- *4% Argentinische äussere Staatsanleihe v. 1933* bonds with a nominal value of SF 4,050.00 and an undetermined market value;
- *4½% Argent. Republic skg. Fed. Est. Loan Bonds per 1971* bonds with a nominal value of US \$1,000.00 and a market value of RM 2,228.90; and
- *4% Argent. Republic ext. skg. Fd. Bonds per 1972* bonds with a nominal value of US \$1,500.00 and a market value of RM 2,968.13.

The records further contain a letter from Helene Isepp, who at that time resided in London and was represented by her attorney, Dr. Gunther Spitzky, to the Office of the Ministry for Economics and Labor, charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or “VVSt.”), dated 14 December 1938. In that letter, Helene Isepp explained that her securities constituted her only assets and that an (unspecified) part of them had been deposited at the Bank and another (unspecified) part at the *Länderbank* in Vienna. According to the letter, since 27 April 1938, some of these securities had been sold on order of the Foreign Exchange Control Office and some voluntarily (“*teils über Auftrag der Devisenstelle, teils freiwillig verkauft*”). According to the letter, of the proceeds of these sales, a

remainder of RM 8,960.32 was held in an *Auswanderersperrkonto* (blocked emigrant's account) at the *Länderbank Wien*. Helene Isepp wrote that she had since left the country and currently resided in Hampstead. According to the letter, her total assets now consisted of RM 8,960.32, and that her [atonement tax] contribution ("*Kontribution*") now totaled RM 1,792.06, of which accordingly an amount of RM 448.00 was due on 15 December 1938. Helene Isepp wrote that Dr. Spitzky had already applied for the release of that amount from the blocked emigrant's account, but that this had not yet occurred. She noted that as soon as these funds were released, payment would be forthcoming. These records do not contain further information about the disposition of this account.

In addition, these records contain Seizure Order (*Beschlagnahmeverfügung*), dated 26 February 1941, issued by the Gestapo relating to all Helene Isepp's assets.

The Austrian State Archive also contains documents concerning the assets of Sebastian Isepp, numbered 41765. According to these records, Sebastian Isepp was born on 18 December 1884, was married to Helene Isepp, née Hammerschlag, who was Jewish, and resided at Neustiftgasse 3 in Vienna VII. According to a note written by Sebastian Isepp included in these records, he had worked under contract as an official ("*Vertragsbeamter*") at the *Kunsthistorisches Museum* in Vienna since 1 June 1928, but the contractual relationship would end on 30 September 1938, because notice of termination had been given on 30 June 1938. These records make no mention of assets held by Sebastian Isepp in a Swiss bank account.

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 two claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's mother's name and city and country of residence match the unpublished name and city and country of residence of the Account Owner contained in the 1938 Census records. The Claimant identified the Account Owner's date of birth and the name of her spouse, which matches information contained in the 1938 Census records. The CRT notes that the Claimant submitted account statements evidencing his mother's ownership of accounts at the Bank.

In support of his claims, the Claimant submitted documents, including copies of his sister's birth and baptism certificates, a certificate issued by a District Administration Office of Vienna, and a deed of family arrangement, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same town recorded in the records

evidencing the account as the name and city of residence of the Account Owner. The CRT notes that there are no other claims to these accounts.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, that she resided in Austria after the *Anschluss*, and that she fled Austria to the United Kingdom in September 1938. The CRT notes that the Account Owner and her husband were required to register her assets pursuant to the 1938 Census and that the Account Owner's husband was fired from his position at the *Kunsthistorisches Museum* in Vienna because he was Jewish.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's mother. These documents include copies of: (1) his sister's birth and baptism certificates, indicating that Konstanze Margarete Isepp's mother was Helene Isepp; (2) a certificate issued by a District Administration Office of Vienna on 2 August 1938, indicating that Helena Isepp had two children, Martin Johannes Sebastian Isepp and Konstanze Margarete Isepp; and (3) a deed of family arrangement, indicating that Helene Isepp's sole heirs were her children Martin Johannes Sebastian Isepp and Konstanze Margarete Davidson. There is no information to indicate that the Account Owner has surviving heirs other than the parties whom the Claimant is representing.

The Issue of Who Received the Proceeds

The CRT notes that there are documents from three sources evidencing the existence of a Swiss bank account held by Helene Isepp: the statement from the Bank, dated 25 August 1938; the statement from the *Länderbank*, dated 12 September 1938; and a document contained in Helene Isepp's 1938 Census file. According to the statement from the Bank, Helene Isepp held a custody account, numbered 51966, and a demand deposit account denominated in US dollars. The statement from the *Länderbank* indicates that Helene Isepp owned three bonds issues, two of which had been deposited in New York, and one in Zurich. Finally, the document contained in Helene Isepp's 1938 Census file indicates that she had held securities at both the Bank and at the *Länderbank*, but it does not specify the name or value of the securities that were held at each bank. Based on these records, the CRT concludes that certain securities referred to these documents were held in the custody account numbered 51966 referenced in the Bank's statement dated 25 August 1938, namely:

- 7% *Austrian Govt. 1930* bonds with a nominal value of US \$6,000.00 (referenced in the Bank's statement)
- 4% *Argentine Rep. extl. Skg. Fd. Bds., due 2/15, 1972* bonds with a nominal value of US \$1,500.00 and a market value of RM 2,968.13 (referenced in the *Länderbank's* statement as being held in New York and in the 1938 Census file);

- *4½% Argentin [sic] Rep. ext. Conversion Loan Bond, due 11/15, 1971* bonds with a nominal value of US \$1,000.00 and a market value of RM 2,228.90 (referenced in the *Länderbank*'s statement as being held in New York and in the 1938 Census file); and
- *4% Argentinische äussere Staatsanleihe von 1933* bonds with a nominal value of SF 4,000.00 and an undetermined market value (referenced in the *Länderbank*'s statement as being held in Zurich and in the 1938 Census file, in the latter with a nominal value of SF 4,050.00)

With respect to this account and the securities it contained, the CRT notes that the document submitted by Helene Isepp's lawyer to the VVSt., dated 14 December 1938, states that Helene Isepp had sold all her securities (which were held at both the Bank and at the *Länderbank*), some voluntarily, some on order of the Foreign Currency Control Office, and that the remaining proceeds of these sales, RM 8,960.32, were being held in a blocked emigrant's account. The document indicates that Helene Isepp anticipated the release of at least a portion of this amount, from which she intended to make an outstanding atonement tax payment of RM 448.00.

From this, it is clear that Helene Isepp expected to receive some portion of the proceeds of the sale of her securities. However, it is not clear whether these funds were ever released to her, what portion of the RM 8,960.32 that was held in the blocked emigrant account was actually released to her, or what portion of those funds originated from the sale of the securities held at the Bank. In any case, it is clear that the accounts were known to Nazi authorities and that the securities in the custody account were sold and either transferred to the *Länderbank* or placed in a blocked emigrant's account. With respect to both the custody and the demand deposit accounts, the facts 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 Nazi-controlled Austria until she fled in September 1938 to the United Kingdom, and therefore could not have repatriated the account without losing ultimate control over its proceeds; given that the 1938 Census records indicate that in 1941 the Gestapo seized the remaining assets of Account Owner; 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 her 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 the Claimant and the represented party, the Estate of Konstanze Margarethe Becher. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has

plausibly demonstrated that the Account Owner was the mother of the Claimant and his sister, Konstanze Margarethe Becher, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed accounts.

The CRT notes that the Claimant and the Estate of Konstanze Margarethe Becher, as the direct descendants of the Account Owner, are more entitled to the award amount than represented party Marlene Bagdikian, who is the descendant of the Account Owner's parents.

Amount of the Award

In this case, the Account Owner held one custody account and one demand deposit account at the Bank.

With respect to the custody account 51966, the statement from the Bank indicates that, as of 25 August 1938, the custody account contained 7% *Austrian Govt. 1930* bonds with a nominal value of US \$6,000.00, and a market value of US \$1,245.00,³ which at the time was equivalent to SF 5,440.65.⁴ As detailed above, the statement from the *Länderbank* and documents in Helene Isepp's 1938 Census file indicate the custody account also contained the following bonds:

- 4% *Argentine Rep. extl. Skg. Fd. Bds., due 2/15, 1972* bonds with a nominal value of US \$1,500.00 (equal to SF 6,555.00) and a market value of RM 2,968.13 (equal to SF 5,209.07) (referenced in the *Länderbank's* statement as being held in New York and in the 1938 Census file);
- 4½% *Argentin [sic] Rep. ext. Conversion Loan Bond, due 11/15, 1971* bonds with a nominal value of US \$1,000.00 (equal to SF 4,370.00) and a market value of RM 2,228.90 (equal to SF 3,911.72) (referenced in the *Länderbank's* statement as being held in New York and in the 1938 Census file); and
- 4% *Argentinische äussere Staatsanleihe von 1933* bonds with a nominal value of SF 4,000.00 and an undetermined market value (referenced in the *Länderbank's* statement as being held in Zurich and in the 1938 Census file, in the latter with a not quite legible nominal value of SF 4,050.00)

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 awarded at market value. The 7% *Austrian Govt. 1930* bond was in default, but the other three bonds were in good standing.⁵ Accordingly, the 7% *Austrian Govt. 1930*

³ The market value of these bonds is taken from the 30 December 1938 issue of the *Kursblatt der Zürcher Effektenbörse*.

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

⁵ The default status of the 7% *Austrian Govt. 1930* bond is taken from the New York Times, 3 January 1939. The status of the Argentinean bonds is documented in *Moody's Manual of Investments, American and Foreign Government Securities*, Moody's Investors Service, 1940, New York, New York, pp. 1,690, 1,691.

bonds are to be valued at market value, and the other three at nominal value. The combined value of the bonds is SF 20,365.65.⁶ 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 amount of SF 254,570.63 for this account.

With respect to the 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 on the ICEP Investigation, in 1945 the average value of a demand deposit account was SF 2,140.00. 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 amount of SF 26,750.00 for this account.

Consequently, the total award amount in this case is SF 281,320.63.

As noted above, although it is clear that Helene Isepp expected to receive some portion of the assets that had been blocked in her emigrant account, it is not clear if she ever received it or what portion, if any, of those assets originated from her Swiss bank accounts. Accordingly, no deduction is made for any portion of the assets that may have been released to Helene Isepp from her blocked emigrant account.

Division of the Award

According to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. In this case, the Claimant submitted a copy of a deed of family arrangement, issued in 1974, indicating that Helene Isepp died on 16 March 1968, and that Martin Johannes Sebastian Isepp and Konstanze Margerete Davidson were her sole heirs. Accordingly, the Claimant and the represented party (the estate of his sister, Konstanze Margarethe Becher), are each entitled to one-half of the total award amount.

As noted above, represented party Marlene Bagdikian is not entitled to share in the award amount.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on his claims to determine whether there are additional Swiss bank accounts to which he 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).

⁶ This sum values the 4% *Argentinische äussere Staatsanleihe von 1933* bonds at a nominal value of SF 4,000.00, the value noted on the *Länderbank* statement, because there can be little question of the face value of bonds, and because the value provided by Helene Isepp in her 1938 asset declaration, which could be read as US \$4,050.00, is not fully legible.

Certification of the Award

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

Claims Resolution Tribunal
17 March 2008