

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award Amendment

to Claimant [REDACTED]

in re Accounts of Marianne Kuffner, Hedwig Lindenthal, and Eva Mandl

Claim Numbers: 224285/MC; 224431/MC; 224432/MC; 224433/MC; 224435/MC¹

Original Award Amount: 1,351,071.00 Swiss Francs

Award Amendment Amount: 749,672.25 Swiss Francs

This Certified Award Amendment is based upon the claims of [REDACTED], born [REDACTED], (the “Claimant”) to the accounts of Hans Lindenthal, Hedwig Lindenthal, Camilla Kuffner, Eva Mandl, and Marianne Kuffner.² This Award Amendment is to the unpublished accounts of Marianne Kuffner (“Account Owner Kuffner”), Hedwig Lindenthal (“Account Owner Lindenthal”), and Eva Mandl (“Account Owner Mandl”) (together the “Account Owners”) at the [REDACTED] (“Bank 1”); and to the unpublished account of Account Owner Mandl at the [REDACTED] (“Bank 2”) (together the “Banks”).

All award amendments 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 owners, and the banks have been redacted.

Procedural History

On 26 November 2002, the CRT approved an award to the Claimant for the Account Owners’ accounts at Bank 1 (the “November 2002 Award”). At the time of that award, the bank records available to the CRT did not contain information regarding the value of the awarded accounts. However, Bank 1 subsequently made available to the CRT additional information about the awarded custody accounts, including detailed documentation on the portfolios held in those custody accounts. In addition, since the November 2002 Award, the CRT has received additional information regarding the Account Owners’ assets from Austrian archival sources,

¹ On 26 November 2002, the CRT approved an award to Claimant [REDACTED] (the “Claimant”) for the accounts of Marianne Kuffner, Hedwig Lindenthal, and Eva Mandl, which is the subject of this Award Amendment. See *In re Accounts of Marianne Kuffner, Hedwig Lindenthal, and Eva Mandl* (approved on 26 November 2002).

² The CRT did not locate accounts belonging to Hans Lindenthal or Camilla Kuffner in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”).

which are further described below. Finally, based upon the information contained in the additional documents obtained from Bank 1, the CRT requested documents regarding Account Owner Mandl's assets from Bank 2, and those documents are also described below. In this Award Amendment, the CRT adopts and amends its findings set out in the November 2002 Award based upon this additional information.

The November 2002 Award

In the November 2002 Award, the CRT determined that Account Owner Kuffner held three demand deposit accounts and one custody account, numbered L42043; that Account Owner Lindenthal held two demand deposit accounts and one custody account, numbered L42044; and that Account Owner Mandl held one safe deposit box, three demand deposit accounts, and two custody accounts. All accounts were held at Bank 1. The CRT determined that Bank 1's records did not indicate the value of any of the accounts. The CRT further determined that the 1938 Census records indicated that the value of Account Owner Kuffner's custody account at Bank 1 was 55,229.25 Swiss Francs ("SF").

The CRT further determined that the Claimant plausibly identified the Account Owners, that he plausibly demonstrated that he is related to the Account Owners, and that he made a plausible showing that the Account Owners were Victims of Nazi Persecution. Additionally, the CRT determined that it was plausible that the Account Owners and their heirs did not receive the proceeds of their accounts, and that the Claimant was entitled to the entire award amount.

In the November 2002 Award, the CRT noted that, pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for twelve of the thirteen accounts treated in that award, 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation"), in 1945 the average value of a custody account was SF 13,000.00; the average value of a demand deposit account was SF 2,140.00; and the average value of a safe deposit box was SF 1,240.00. Thus, the combined 1945 average value for the twelve accounts of unknown value in that decision was SF 57,360.00. In addition, the November 2002 Award determined that the value of Marianne Kuffner's custody account at Bank 1 was SF 55,229.25. The total 1945 value for all thirteen accounts was therefore SF 112,589.25. The current value of this amount was calculated by multiplying it by a factor of 12 in use at the time, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 1,351,071.00.

Information Provided by the Claimant

As detailed in the November 2002 Award, the Claimant submitted five Claim Forms, identifying Account Owner Mandl as his paternal aunt, Eva Mandl, née Lindenthal; Account Owner Lindenthal as his paternal grandmother, Hedwig Lindenthal, née Kuffner; and Account Owner Kuffner as his paternal grandmother's sister, Marianne Kuffner.

The Claimant stated that his paternal great-grandparents [REDACTED] and [REDACTED], who were Jewish, had three children: Marianne, Hedwig, and [REDACTED]. The Claimant explained that Hedwig Kuffner had two children, Eva Mandl, née Lindenthal, and [REDACTED] (the Claimant's father).

According to the Claimant, the Kuffner family resided in Vienna, Austria, prior to the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”). The Claimant stated that [REDACTED] was a part owner of the *Ottakringer Brewery (Ottakringer Brauerei)* in Ottakring,³ Vienna, Austria, and that her grandson, [REDACTED] (the Claimant's father), was a brewery manager there.

The Claimant stated that Marianne and Hedwig Kuffner fled Austria following the *Anschluss* for France, and that they both were arrested there and deported to Auschwitz, where they both perished. The Claimant explained that in 1938, Eva Mandl, together with her husband [REDACTED], fled Vienna for Liechtenstein, where they remained in Vaduz until 1940, when they emigrated to London, England. The Claimant stated that Eva Mandl passed away in 1993 in Canada. The Claimant also stated that [REDACTED] (who later changed his name to John Linton) passed away in 1977 in Australia.

In support of his claims, the Claimant submitted several documents, as detailed in the November 2002 Award, which included: (1) an inheritance certificate, approved by a Berlin court on 17 November 1960, indicating that the equal heirs of Hedwig Lindenthal, who was declared deceased as of 8 May 1945, were her children Eva Marsden, formerly Mandl, née Lindenthal, and [REDACTED], formerly [REDACTED]; (2) a name change certificate, indicating that [REDACTED], who was born in Vienna, officially changed his name to [REDACTED] as of 3 February 1939; and (3) a letter dated 19 February 1939 written by [REDACTED], which states that at the time he resided in Vaduz, Liechtenstein at a *pension* (hotel), and mentions that ‘Eva’ would in the coming days visit her mother, who had arrived in Monte Carlo.

The Claimant indicated that he was born on 8 September 1929 in Vienna.

Additional Information regarding the Kuffner Family

According to research conducted by the CRT, the Kuffner family was one of the wealthiest and culturally most important families in Austria.⁴ [REDACTED] came to Vienna in 1848 together

³ Ottakring became the 16th district of Vienna in 1892, but still maintained its individuality.

⁴ See, e.g., Ulrike Felber, Peter Melichar, Markus Priller, Berthold Unfried, and Fritz Weber, *Oekonomie der Arisierung. Teil 2: Wirtschaftssektoren, Branchen, Falldarstellungen*, Historikerkommission: Vienna, 2004, pp. 804 ff. (hereinafter, “Unfried”). The book is a study on changes in ownership in Austrian industry from 1938 to 1945, prepared under the auspices of the Austrian Historical Commission, which includes a chapter on aryanization and restitution in the foodstuff industry contributed by Berthold Unfried. The Historians Commission was established jointly by the Austrian Federal Chancellor, the Vice-Chancellor, the Speaker of the National Assembly and the Speaker of the Federal Council Parliament in 1998 to investigate and report on the whole complex of expropriations in Austria during the Nazi era and on restitution and/or compensation (including other financial or social benefits) after 1945 by the Republic of Austria. There are many other publicly-available sources of information regarding the Kuffner family of Vienna. See, for example, the official website of the *Ottakringer*

with his brother [REDACTED] and cousin [REDACTED]. There [REDACTED] and [REDACTED] bought the much indebted Ottakringer brewery in 1850 and expanded it into a large enterprise. [REDACTED] became mayor of Ottakring and was knighted in 1878. His son [REDACTED], after studying astronomy in Vienna, ran the enterprise after his father's death in 1882. But astronomy remained his first love, and he built a private Observatory (today the Kuffner Observatory) in 1884-86. Apart from conducting his business affairs, [REDACTED] had many interests. Among others, he was a well known philanthropist, a member of the Board of the Jewish Community, an accomplished musicologist and an enthusiastic Alpine climber. The Ottakringer brewery was incorporated in 1905 with a capital of 10 million Kronen. [REDACTED]' sons also entered the business, with [REDACTED] running the Vienna firm. Shortly after the *Anschluss*, on 8 April 1938, the Ottakringer Brewery was sold in an early aryanization for 14 million Schilling ("S"), an amount the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle*) ("VVSt.") later considered too low, demanding an extra S 3.5 million as aryanization tax. [REDACTED] and [REDACTED] were arrested by the Gestapo and released only after they "requested," in exchange for immediate release and permission to leave Austria, that the Gestapo confiscate 35% of their assets. Accordingly, [REDACTED] and his family on 23 May 1938 joined the so-called *Gildemeester Aktion*, which arranged emigration of Jews from Austria in exchange for their ceding the management of their assets to the Reich. The trustee the trustee for the *Gildemeester Aktion* was the *Bank Krentschker* in Vienna. The Austrian archive file on [REDACTED] contains an accounting by *Bank Krentschker* of the changes in [REDACTED]'s assets between the date of his 1938 Census declaration and 12 November 1938, dated 11 January 1939, by which time [REDACTED] resided in Switzerland. According to that accounting, [REDACTED]'s share of the payment to the Gestapo was RM 2,720,999.85 on total reported assets if RM 7,774,285.28. [REDACTED]'s son [REDACTED] ([REDACTED]'s twin brother) had accompanied his father (the other brother, [REDACTED], died shortly before the *Anschluss*) to Switzerland, where [REDACTED] died in March 1939. Most of the rest of the family fled to the United States; an exception were the widow and daughters of [REDACTED], [REDACTED]'s cousin. This is the family branch of which the Claimant is a descendant. [REDACTED] died in 1923. His widow [REDACTED] fled with her daughters, Hedwig Lindenthal and Marianne Kuffner, to France. There they were caught by the occupation and Hedwig and Marianne were arrested, interned in Drancy and from there deported, on 17 December 1943 and 7 September 1942, respectively, to Auschwitz, where they perished. Both [REDACTED] and [REDACTED] had important art collections. Both collections were confiscated, though for a part of the [REDACTED] collection, which was acquired by the Albertina museum, graphics worth a fraction of what was acquired were bartered and released to their owner for export upon emigration. After the War, this "swap" was used to prevent any restitution of the important pieces the Albertina had "acquired" in return.

Brewery, which includes a history of the brewery and of the Kuffner family's ownership of the brewery prior to 1938, at <http://www.ottakringer.at/brauerei.htm>. See also http://www.burgenkunde.at/wien/w_palais_kuffner/w_palais_kuffner.htm; http://www.kuffner.ch/img/Artikel_MEKS_301199.pdf; and http://kuffner-sterne.at/sterne/vks_ksw_mv.html.

Information Available in the Banks' Records

Bank 1

Account Owner Kuffner

As detailed in the November 2002 Award, Bank 1's record indicates that the account owner was *Fräulein* (Miss) Marianne Kuffner, who resided in Vienna, Austria. The record indicates that Account Owner Kuffner held one demand deposit account in Swiss Francs, two demand deposits accounts in United States Dollars, and one custody account numbered L42043. The demand deposit accounts in United States Dollars and the custody account were closed on 10 April 1938, 20 January 1939, and 5 December 1938, respectively. The closure date of the demand deposit account in Swiss Francs is unknown.

As noted above, subsequent to the November 2002 Award, Bank 1 provided the CRT with additional documents regarding the custody account numbered L42043. These documents contained a custody account identification card ("*Leitkarte*") and custody account portfolio holding cards ("*Depotvalorenkarten*") for the securities held in the account. According to these documents, at the time Account Owner Kuffner was deemed to have lost control over the custody account, it contained the following securities:

- 4.5% Consolidated Gas Co. of New York Gold debenture Bonds 1951, with a total face value of 10,000.00 United States Dollars ("US \$"), which were cashed in on 2 June 1938; and
- 100 common shares of *American Tobacco Co. 'B'*, each with a face value of US \$25.00, which were sold on 2 December 1938.

Account Owner Lindenthal

As detailed in the November 2002 Award, Bank 1's record indicates that the account owner was *Frau* (Mrs.) Hedwig Lindenthal, who resided in Vienna, and that she held two demand deposits accounts in United States Dollars and one custody account numbered L42044, which were closed on 10 April 1938, 10 October 1938, and 8 October 1938, respectively. Bank 1 also provided additional documents regarding Account Owner Lindenthal's custody account, including a custody account identification card and custody account portfolio holding cards, which indicate that at the time Account Owner Lindenthal was deemed to have lost control over the account, it contained the following securities:

- 4.5% Consolidated Gas Co. of New York Gold debenture Bonds 1951, with a total face value of US \$10,000.00, which were cashed in on 2 June 1938; and
- 100 common shares of *American Tobacco Co. 'B'*, each with a face value of US \$25.00, which were sold on 5 October 1938.

Account Owner Mandl

As detailed in the November 2002 Award, Bank 1's record indicates that the account owner was *Frau* Eva Mandl, who resided in Vienna, and that she held one safe deposit box, three demand

deposit accounts, and two custody accounts, numbered 59332 and 56956. Bank 1 provided additional documents concerning both custody accounts and the safe deposit box. With regard to the custody accounts, the documents included a custody account identification card and custody account portfolio holding cards. According to these records, custody account number 59332 was closed on 28 March 1938 and contained the following security:

- 100 *Donau-Save-Adria Railway, Vienna* bonds with variable interest, which were sold on 24 March 1938.

The records show that custody account number 56956 was closed on 14 April 1938 and contained the following securities:

- 6 shares *Bank für Elektrische Unternehmungen, Zurich*, each with a face value of SF 500.00, which were transferred to the Zurich branch of Bank 2 on 6 April 1938;
- 4 shares *Aluminium-Industrie-Aktien Gesellschaft, Neuhausen*, each with a face value of SF 1,000.00, which were transferred to the Zurich branch of Bank 2 on 6 April 1938;
- 40 common shares *Atchinson, Topeka and Santa Fe Railway Co.*, each with a face value of US \$100.00, which were transferred to the Zurich branch of Bank 2 on 9 April 1938; and
- 500 shares *Trifailer Kohlenwerks Gesellschaft, Ljubljana*, each with a face value of Dinar 200.00, which were transferred to the Zurich branch of Bank 2 on 6 April 1938.

With regard to Account Owner Mandl's safe deposit box, Bank 1 provided a safe deposit box opening card, which indicates that *Frau* Eva Mandl-Lindenthal of Vienna held a safe deposit box numbered S790 that was opened on 21 March 1938 and closed on 25 February 1939. The card does not indicate to whom the account was closed, or the contents of the account.

The CRT notes that in the November 2002 Award, the CRT noted that Bank 1's record indicated that one of Account Owner Mandl's demand deposit accounts was closed on 10 April 1938, and that the closure dates of the two other demand deposit accounts were unknown. Upon further careful review of Bank 1's records, the CRT has determined that the two other demand deposit accounts were closed in 1934, and therefore prior to the *Anschluss*.

Bank 2

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of Bank 2 ("Voluntary Assistance") to obtain additional information about Account Owner Mandl's securities which, according to Bank 1's records, were transferred from Bank 1 to Bank 2. Bank 2 provided the CRT with documents, which consist of a printout from Bank 2's database of custody accounts, and two lists of closed custody accounts.

According to these records, Eva Mandl, who resided in Zurich, Switzerland, opened a custody account, numbered 21225, on 6 April 1938, that was subsequently closed on 25 May 1938. The records do not indicate the value of that account.

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”). As detailed in the November 2002 Award, in the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Marianne Kuffner, numbered 44703. The Austrian State Archive also contains documents concerning the assets of Hedwig Lindenthal, numbered 44965, which were not available to the CRT at the time of the November 2002 Award but which are described below.

Account Owner Kuffner

As detailed in the November 2002 Award, Marianne Kuffner’s 1938 Census records include her asset declaration. The securities reported as owned by Marianne Kuffner in her Census record appear on a list of market values certified by the *Zentral Europäische Länderbank*, an Austrian bank located in Vienna. In the November 2002 Award, the CRT noted that notations next to the names of some of the securities read “in Switzerland” (*in der Schweiz*), and therefore concluded that the securities were held in a Swiss bank. Based upon further review, and based upon 1938 Census records of other asset holders, it is clear that this conclusion was in error. The notations next to the names of the securities are located in the column entitled “price quotation” (*Kurs*), not in the column naming the security, and therefore do not indicate the place where the securities were held, but rather where the price quotation for the specific security was obtained. Thus, all Swiss franc denominated securities on the *Länderbank*’s list carry this notation; similarly, all French franc denominated securities show the remark “in Paris”; those denominated in Belgian francs show “in Brussels”; those denominated in Czech krone “in Prague”; and so on. Similar notations in other Census submissions have always been interpreted as the location of the price quotation, which unfortunately does not indicate the location of the securities themselves.

Based upon the additional documents received from Bank 1, it is clear that Marianne Kuffner reported some of her Swiss-held securities in the list certified by the *Zentral Europäische Länderbank*, but without reporting that they were part of a Swiss bank account in her name. Thus, two US securities, identified in the new records from Bank 1, appear in her Census record as “in New York,” *i.e.*, priced in New York, without any connection to Bank 1. Specifically, the additional records from Bank 1 show that Account Owner Kuffner held 100 shares American Tobacco and US \$10,000 face value 4½% Cons. Gas Co. of NY bonds in her custody account numbered 42043 at Bank 1; and, according to Bank 1’s record, the American Tobacco shares were sold on 2 December 1938 and the Con. Gas bonds were cashed in on 2 June 1938. No other securities were shown as held or disposed of in the period of time after the *Anschluss*. According to Marianne Kuffner’s Census record, the 4½ Cons. Gas Co. of NY bonds had a total face value of US \$10,000.00 and were trading as of 27 April 1938 at 105.25%, for a total value of US \$10,525.00; and the 100 common shares of *American Tobacco Co. ‘B’*, had, as of 27 April 1938, a market price of US \$69.00, for a total market value of US \$6,900.00.

In summary, in the November 2002 Award, the CRT concluded that Account Owner Kuffner’s 1938 Census records indicated that she held SF 55,229.25 worth of securities in her custody

account at Bank 1. Upon review, and based upon additional records obtained from Bank 1, the CRT concludes that her custody account contained the above-named securities which, as of 27 April 1938, had a combined market value of US \$17,425.00, which, in 1938 was equal to SF 76,147.25.⁵

Account Owner Lindenthal

The records pertaining to Hedwig Lindenthal indicate that she was born on 23 March 1880 and resided at Pelikangasse 10 in Vienna IX. These records also contain a list of securities, the prices of which were certified by the *Zentral Europäische Länderbank* and which is similar to the list in Marianne Kuffner's Census file. According to this list, Hedwig Lindenthal reported the securities identified in the additional records obtained from Bank 1, specifically, the *4.5% Consolidated Gas Co. of New York Gold debenture bonds*, with a total face value of US \$10,000.00, which were trading as of 27 April 1938 at 105.25%, for a total value of US \$10,525.00; and 100 common shares of *American Tobacco Co. 'B'*, which as of 27 April 1938 each had a market value of US \$69.00, for a total market value of US \$6,900.00.

The CRT notes that Hedwig Lindenthal's Census file also contains an internal memorandum noting that she fled the country on 13 February 1939. According to decisions of the Vienna Gestapo dated 2 and 8 May 1941 and contained in the file, all assets belonging to Hedwig Lindenthal, née Kuffner, had been confiscated for the benefit of the Reich, and Hedwig Lindenthal had been stripped of her German citizenship following her departure from the Reich.

Account Owner Mandl

The CRT notes that in the records of the Austrian State Archive, there are also 1938 Census records for [REDACTED], [REDACTED] (the Claimant's father), and the minor [REDACTED] (the Claimant), numbered 34815, 41223, and 41222, respectively. None of these 1938 Census records contains evidence of accounts held in Swiss banks. There are no documents concerning the assets of Eva Mandl in the records of the Austrian State Archive.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of 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 five claims of the Claimant in one proceeding.

Identification of the Account Owners

As indicated in the November 2002 Award, the Claimant has plausibly identified the Account Owners.

⁵ The CRT uses official exchange rates when converting currencies.

Status of the Account Owners as Victims of Nazi Persecution

As indicated in the November 2002 Award, the Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, that Account Owner Kuffner and Account Owner Lindenthal fled Austria for France and perished in Auschwitz, and that Account Owner Mandl fled Austria in 1938. The CRT notes that Account Owner Kuffner and Account Owner Lindenthal reported their assets pursuant to the 1938 Census.

The Claimant's Relationship to the Account Owners

As indicated in the November 2002 Award, the Claimant has plausibly demonstrated that he is related to the Account Owners by submitting specific information and documents, demonstrating that Account Owner Lindenthal was his paternal grandmother, Account Owner Kuffner was his paternal grandmother's sister, and Account Owner Mandl was his paternal aunt.

The CRT notes that the Claimant indicated that he may have other surviving relatives, but because they are not represented in the Claimant's claims, the CRT will not treat their potential entitlement to the Account Owners' accounts in this decision. In addition, the CRT notes that in February 2007, it received a letter from the law firm *von Trott zu Solz Lammek*, indicating that the firm represented "the heirs of [REDACTED], née [REDACTED]," and including a power of attorney form signed by [REDACTED], whom the firm identified as "one of [REDACTED]'s daughter-in-law [*sic*]." The letter was forwarded to the Office of Special Master Michael Bradfield to be considered as an appeal of the November 2002 Award.⁶ The law firm did not identify the name of [REDACTED]'s spouse, nor did it identify any other names of its clients, if any. Since February 2007, the CRT has not received a claim from the party or parties represented by this law firm, nor any further details regarding the firm's clients and their exact relationships to the Account Owners addressed in the November 2002 Award and in this decision. Accordingly, the CRT will not treat their potential entitlement to the Account Owners' accounts in this decision.

The Issue of Who Received the Proceeds

Account Owner Kuffner and Account Owner Lindenthal

As detailed above and in the November 2002 Award, Bank 1's records indicate that Account Owner Kuffner's demand deposit accounts in United States Dollars and custody account were closed on 10 April 1938, 20 January 1939, and 5 December 1938, respectively. The closure date of the demand deposit account in Swiss Francs is unknown. The additional records from Bank 1 indicate that the *4.5% Consolidated Gas Co. of New York Gold debenture Bonds 1951*, with a total face value of US \$10,000.00, were cashed in on 2 June 1938, and that the 100 common shares of *American Tobacco Co. 'B'*, each with a face value of US \$25.00, were sold on 2 December 1938.

⁶ In a letter dated 3 August 2009, Special Master Michael Bradfield replied to the letter from *von Trott zu Solz*, stating that the firm's client's late claim was not eligible for consideration in the appeals process.

With regard to the accounts of Account Owner Lindenthal, Bank 1's records indicate that the two demand deposits accounts in United States Dollars and the custody account numbered L42044 were closed on 10 April 1938, 10 October 1938, and 8 October 1938, respectively. The additional records from Bank 1 indicate that the *4.5% Consolidated Gas Co. of New York Gold debenture Bonds 1951*, with a total face value of US \$10,000.00, were cashed in on 2 June 1938, and that the 100 common shares of *American Tobacco Co. 'B'*, each with a face value of US \$25.00, were sold on 5 October 1938.

With regard to the *4.5% Consolidated Gas Co. of New York Bonds*, these were called and retired prematurely at 105% on 1 June 1938 and duly cashed in on 2 June 1938 for both Account Owner Kuffner and Account Owner Lindenthal holdings. The proceeds would have been paid into one of the demand deposit accounts which Account Owner Kuffner and Account Owner Lindenthal each held. Therefore, the CRT determines that Account Owner Kuffner and Account Owner Lindenthal received the proceeds of the *4.5% Consolidated Gas Co. of New York Bonds* into their respective demand deposit accounts.

With regard to the *American Tobacco* shares in their custody accounts, and their demand deposit accounts, given that Account Owner Kuffner and Account Owner Lindenthal were deported and perished in Auschwitz; that they were forced to pay significant taxes to the Reich; that there is no record of the payment of these Account Owners' accounts to them; that the *American Tobacco* shares were sold following the *Anschluss*; that these Account Owners' heirs would not have been able to obtain information about their accounts after the Second World War due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; and given the application of Presumptions (d), (h), and (j), 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 these proceeds were not paid to Account Owner Kuffner and Account Owner Lindenthal or their 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.

Account Owner Mandl

With regard to two of the three demand deposit accounts held by Account Owner Mandl, Bank 1's record shows that they were closed in 1934, prior to the *Anschluss*. The CRT therefore concludes that Account Owner Mandl closed these accounts and received the proceeds herself.

According to the Claimant, Account Owner Mandl fled Austria in 1938 and settled first in Liechtenstein, then in England, and ultimately in Canada. According to the Banks' records, Account Owner Mandl's safe deposit box at Bank 1 was opened on 21 March 1938, and her custody account at Bank 2 was opened on 6 April 1938. Accordingly, the CRT concludes that Account Owner Mandl maintained control over her accounts at least through April 1938. The CRT notes that, according to Bank 2's records, Eva Mandl resided in Zurich when she opened a custody account, numbered 21225, on 6 April 1938.

Bank 1's records show that custody account numbered 59332 was closed on 28 March 1938, after the bonds it contained were sold on 24 March 1938; that the securities contained in custody account numbered 56956 were transferred to Bank 2 between 6 and 9 April 1938, and that custody account 56956 was subsequently closed; and that Account Owner Mandl's remaining demand deposit account at Bank 1 was closed on 10 April 1938, one day following the transfer of the securities from Bank 1 to Bank 2. Bank 2's records show that Account Owner Mandl's custody account was closed on 25 May 1938, approximately six weeks after it was opened and received the transfer of securities from Bank 1. The CRT therefore concludes that the sale of securities from custody account 59332 and the account's subsequent closure; the transfer of the securities from custody account 56956 to a custody account at Bank 2; the subsequent closure of custody account 56956 at Bank 1 and the custody account at Bank 2; and the closure of the demand deposit account was ordered by Account Owner Mandl, and that she received the proceeds of these accounts. The CRT notes that Account Owner Mandl's safe deposit box at Bank 1 was closed on 25 February 1939. Given that Account Owner Mandl had fled Austria to Lichtenstein, that she actively managed her accounts at both Bank 1 and Bank 2, the CRT concludes that she also accessed this account, closed it, and received the proceeds herself.

Basis for the Award Amendment

The CRT has determined that an Award Amendment may be made in favor of the Claimant. 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 Owners were his grandmother, aunt, and grandmother's sister, and those relationships justify an Award. Third, the CRT has determined that it is plausible that Account Owner Lindenthal and Account Owner Kuffner, and their heirs, did not receive the proceeds of their claimed accounts.

Amount of the November 2002 Award

As noted above, in the November 2002 Award, the CRT noted that, pursuant to Article 29 of the Rules, when the value of an account is unknown, as was the case for twelve of the thirteen accounts treated in that award, 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 custody account was SF 13,000.00; the average value of a demand deposit account was SF 2,140.00; and the average value of a safe deposit box was SF 1,240.00. Thus, the combined 1945 average value for the twelve accounts of unknown value in that decision was SF 57,360.00. In addition, the November 2002 Award determined that the value of Marianne Kuffner's custody account at Bank 1 was SF 55,229.25. The total 1945 value for all thirteen accounts was therefore SF 112,589.25. The current value of this amount was calculated by multiplying it by a factor of 12 in use at the time, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 1,351,071.00.

Since the November 2002 Award, the adjustment factor has been raised to 12.5.

Amount of the Award Amendment

The additional records received from Bank 1 provide information regarding the content of the custody accounts held by Account Owner Kuffner and Account Owner Lindenthal. According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, 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. Stocks are valued at market value.

According to the additional information received from Bank 1, the custody accounts of Account Owner Kuffner and Account Owner Lindenthal each held the following securities:

- *4.5% Consolidated Gas Co. of New York Gold debenture Bonds 1951*, with a total face value of US \$10,000.00, which were cashed in on 2 June 1938. These bonds were retired prematurely at 105% of their face value and duly cashed in. Accordingly, these bonds are valued at US \$10,500.00, which was equivalent to SF 45,885.00; and
- 100 common shares of *American Tobacco Co. 'B'*, each with a face value of US \$25.00, which were sold on 2 December 1938 (Account Owner Kuffner) and on 5 October 1938 (Account Owner Lindenthal). These shares were trading at US \$83.25 on 2 December 1938 and at US \$86.94 on 5 October 1938.⁷ Therefore these securities shall be valued at their respective market values of US \$8,325.00 and \$8,694.00, which was equivalent to SF 36,380.25 and SF 37,992.78, respectively.

As noted above, for both Account Owner Kuffner and Account Owner Lindenthal, the *4.5% Consolidated Gas Co. of New York Gold Bonds* were cashed in and the proceeds transferred to one of their respective demand deposit accounts. Therefore, the CRT determines that the value of Account Owner Kuffner's custody account was SF 36,380.25; that the value of Account Owner Lindenthal's custody account was SF 37,992.78; and that the value of one of these Account Owners' demand deposit accounts was SF 45,885.00 each.

With regard to Account Owner Kuffner, the November 2002 Award awarded three demand deposit accounts of unknown value and one custody account with a value of SF 55,229.25, for a total 1945 value of SF 61,649.25. Based upon the considerations detailed above, the CRT determines that the value of one of these demand deposit accounts is SF 45,885.00, that the value of the custody account was SF 36,380.25, and that the value of the other two demand deposit accounts was unknown, for a total 1945 value of SF 86,545.25. The 1945 value awarded in the November 2002 Award is subtracted from this amount, resulting in a 1945 award amendment amount of SF 24,896.00 for Account Owner Kuffner's accounts.

With regard to Account Owner Lindenthal, the November 2002 Award awarded two demand deposit accounts of unknown value and one custody account of unknown value, for a total 1945

⁷ The market values for these securities were obtained from the *New York Times*, 3 December and 6 October 1938, respectively.

value of SF 17,280.00. Based upon the considerations detailed above, the CRT determines that the value of one of these demand deposit accounts is SF 45,885.00, that the value of the custody account was SF 37,992.78, and that the value of the other demand deposit account was unknown, for a total 1945 value of SF 86,017.78. The 1945 value awarded in the November 2002 Award is subtracted from this amount, resulting in a 1945 award amendment amount of SF 68,737.78 for Account Owner Lindenthal's accounts.

With regard to Account Owner Mandl, the November 2002 Award awarded three demand deposit accounts of unknown value, one safe deposit box of unknown value, and one custody account of unknown value, for a total 1945 value of SF 33,660.00. Based upon the considerations detailed above, the CRT determines that Account Owner Mandl received the proceeds of these accounts, as well as the proceeds of the custody account at Bank 2, and that therefore no award is appropriate for these accounts.

The total 1945 award amendment value for Account Owner Kuffner's and Account Owner Lindenthal's accounts is SF 93,633.78. The value of Account Owner Mandl's accounts, or SF 33,660.00, is subtracted from this amount, for a total of SF 59,973.78. This amount is multiplied by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total Award Amendment amount of SF 749,672.25.

Certification of the Award Amendment

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

Claims Resolution Tribunal
21 December 2009