

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]; [REDACTED 3]; [REDACTED 4];
[REDACTED 5]; [REDACTED 6]; [REDACTED 7]; and [REDACTED 8]
represented by E. Randol Schoenberg

in re Account of *Österreichische Zuckerindustrie AG* Syndicate

Claim Numbers: 400686/JW and 401909/JW

Award Amount: 19,140,236.38 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1], née [REDACTED], (the “Claimant”) to the January 2005 published accounts of Gertrude Löw, née Burger (the “Account Owner”). This Award is to shares belonging to certain members of a syndicate of major Jewish shareholders (the “Syndicate”) of the *Österreichische Zuckerindustrie AG* (“ÖZAG”) which held an account at the Zurich branch of the [REDACTED] (the “Bank”). As further addressed below, the documents submitted by the Claimant show that the majority of the shareholders of ÖZAG, together with the Bank, concluded a syndicate agreement on 5 March 1938 (the “Syndicate Agreement”) designed to protect their shares in the company from falling under the control of the Reich.¹ Eighty-nine percent of ÖZAG’s shares were held under the Syndicate Agreement. Pursuant to the Agreement, 40,195 (slightly over half) of the company’s total shares were deposited with the Bank and held in the Bank’s name on behalf of the members of the Syndicate.

On 13 April 2005, the Court approved an Award (the “April 2005 Award”) to a group of claimants (the “April 2005 Award Claimants”) representing the heirs of the Bloch-Bauer and Pick families, who, as major shareholders of ÖZAG, had contributed 41.2 percent of the shares in the Syndicate. As further explained below, the April 2005 Award was based on documents submitted by the heirs of the Bloch-Bauer and Pick families that record the origin and purpose of the Syndicate and the details of the Syndicate Agreement referred to above. As already noted, almost nine-tenths of ÖZAG’s shares were held under the Syndicate Agreement, with 50.2 percent deposited with the Bank and held in the Bank’s name on behalf of the members of the Syndicate. The relatives of the Claimant in the present Award were also major shareholders accounting for slightly over 30 percent of the shares held in the Syndicate. This Award addresses the Claimant’s family’s shares under the Syndicate Agreement.

¹ The CRT notes that the nature of the Syndicate, its groups, and history are fully described in another award to different members of the Syndicate of *Österreichische Zuckerindustrie AG*. See *In re Account of Österreichische Zuckerindustrie AG*, approved by the United States District Court, Eastern District of New York (the “Court”) on 13 April 2005 (the “April 2005 Award”).

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.

Executive Summary of Opinion

This Award is one of three Award decisions that return to the Jewish shareholders of ÖZAG, or their heirs, the loss in value of their ÖZAG shares they suffered as a consequence of the Bank's active participation in the aryazation of ÖZAG, Austria's most important pre-War refiner of sugar.² The complicity of the Bank allowed the Nazi authorities to carry out the aryazation, as they had in many other cases, under the guise of law, with the Nazi authorities obtaining control of the company through purchases of shares at duress prices and outright confiscation under the pretext of criminal tax evasion. The Bank's actions were in clear violation of the legally binding commitments the Bank had made to these shareholders to protect their assets from seizure by, or forced transfer to, the Reich under a Syndicate Agreement entered into on 5 March 1938, immediately prior to Austria's incorporation into the German Reich (the "*Anschluss*"). The Bank was a signatory of the Syndicate Agreement, a party to the Agreement, a depository of a controlling number of the shares of ÖZAG and a fiduciary under the Agreement to act for the benefit of shareholders who had assigned their shares to the Bank under the Agreement.

Eighty-nine percent (71,246) of ÖZAG's shares were held under the Syndicate Agreement by four groups of Jewish owners: the Bloch-Bauers, Otto Pick, the Löw family and the Graetz Family Trust, and of these 40,195 (slightly over half of the company's total shares) were deposited with the Bank and held in the Bank's name on behalf of certain members of the Syndicate. None of the 71,246 shares held under the Syndicate Agreement could be sold or transferred without the consent of the Bank, nor could the Bank give its consent to any sales or transfers without the unanimous agreement of the beneficial owners. Furthermore, the Agreement specified that the duration of the Syndicate was until 31 March 1943, with the possibility of prolongation, and that "an earlier dissolution of the Syndicate is permitted only with unanimity." The clear objective was to set up a barrier to enforced sale or confiscation that depended almost entirely on the mutual expectation of the share owners, embodied in their Syndicate Agreement with the Bank, that the Bank not cooperate with, or give in to, the Nazi regime's demands or wishes.

Within days of the *Anschluss*, the worst fears of the Jewish ÖZAG shareholders were realized. Most Syndicate members fled the country, often after surrendering or abandoning all their possessions. Criminal tax proceedings were commenced within days against the company by Nazi functionaries in an avowed effort to drive down the price of ÖZAG shares in order to enable a distress sale at a fraction of true value to a hand-picked Nazi "purchaser," Clemens Auer – a Cologne businessman with close ties to the Nazi party. The tax proceedings were terminated once the Nazis gained control of the company. In a separate action, criminal tax proceedings were initiated against the Löw brothers, ending with the confiscation of their assets,

² See *In re Account of Österreichische Zuckerindustrie AG Syndicate*, approved by the Court on 13 April 2005; and *In re Account of Österreichische Zuckerindustrie AG Syndicate*, approved contemporaneously with this decision.

including their holdings of ÖZAG shares. Such tactics were a favored instrument in the Reich's reach for the assets of its Jewish population.

Sadly, the Bank did not live up to the expectations of the ÖZAG shareholders or to its legal and fiduciary commitments. The CRT found that the Bank had actively cooperated in the forced "take-over" of ÖZAG by unlawfully selling the shares it held under the Syndicate Agreement to the designated aryanizer, Auer, at a fraction of the shares' value, without obtaining the unanimous consent of the Syndicate Agreement's participants. Moreover, by transferring a controlling interest in ÖZAG through the sale, the Bank effectively removed any protection provided by the Syndicate Agreement and thereby facilitated the Nazi regime's acquisition of the remaining shares held at other depositories either by purchase at a similarly low price or by outright confiscation.

The CRT has determined that the Bank bears the responsibility for compensating the Claimants and their relatives for the Bank's direct and active complicity in the confiscation and loss of value of the 71,246 shares of ÖZAG held by the Bloch-Bauer, Pick, Löw and Graetz families.

This Award to members of the Löw family, 19,140,236.38 Swiss Francs, is among the largest approved by the Court to date. The amount of the Award reflects the value of the stock in question on the date the Bank violated the terms of the Syndicate Agreement by unlawfully transferring ownership to a designated aryanizer at a fraction of the shares' value, less any sums received by the Claimants and the persons she represents in connection with the shares. The Award includes the standard interest equivalent multiplier of 12.5 to bring the Award up to current value.

While this Award is nearly unique in its size, it is, unfortunately, representative of several general findings by the CRT. This Award is merely one of the striking examples of the betrayal of Jewish clients by Swiss banks. Having marketed themselves to the Jews of Europe as a safe haven for their assets, Swiss banks repeatedly turned Jewish-owned assets over to the Nazi regime in order to curry favor with it. They did this either in violation of their contractual obligations or by honoring account owners' requests to transfer to assets entrusted to them to Nazi entities with full knowledge that the written requests were coerced -- both of which violated Swiss law.³ An explanation for their conduct was provided by Paul Rossy, the chief executive officer of the Swiss National Bank, when he told a forum of economic leaders in July 1940 that "[t]he world, and naturally our country as well, is confronted with totally new conditions to which it must become accustomed.... [O]ur country will have to consciously seek its place in this new world and endeavor to play an active role in it. In no case should we limit ourselves to passive adaptation alone."⁴

³ See *Switzerland National Socialism and the Second World War, Final Report of the Independent Commission of Experts Switzerland-Second World War* [Bergier Commission], Pendo, Zurich 2002; Edward R. Korman, "Rewriting the Holocaust History of the Swiss Banks," in *Holocaust Restitution: Perspectives on the Litigation and its Legacy*, Michael Bazylar & Roger P. Alford eds., 2006, pp. 115, 119-20.

⁴ Independent Commission of Experts Switzerland-Second World War [Bergier Commission], *Switzerland and Gold Transactions in the Second World War, Interim Report*, 1998, p. 77 n. 64 available at <http://www.uek.ch/>.

This Award is also striking in that no record of the rise and fall of the ÖZAG Syndicate was found in the Bank's records. Rather, the documents upon which this Award is based were submitted by the Claimants and/or obtained by the CRT from archival sources. We can never know how many other examples of betrayal remain buried either in the records of the 2,757,950 accounts, of the total 6,858,116 opened in Swiss Banks between 1933-45, which the Banks concede were destroyed completely, or could have been found in those remaining accounts for which only fragmentary records survive.

This case is also significant because it depicts the strategies used by the Reich to seize control of Jewish-owned property, ranging from outright confiscation to sophisticated "take-over" deals, involving distress sales orchestrated by spurious tax proceedings and faithless banks and disguised by the veneer of "law."

Finally, the Awards illustrate some of the special difficulties faced by Austrian Jews in seeking restitution. It may suffice to note that the official representing the Austrian Government in the restitution proceedings regarding ÖZAG in 1956 was himself a member of the Nazi party and had worked in the office responsible for the confiscation of Jewish assets following the *Anschluss*.

Full Opinion

Information Provided by the Claimant

The Claimant submitted two Claim forms in 2005 indicating that certain major shareholders of ÖZAG, together with the Bank, concluded a Syndicate Agreement on 5 March 1938 designed to protect their shares in the company from falling under the Reich's control. The Claimant stated that members of the Löw family were part of the Syndicate, including her mother, Gertrude Löw (Loew), née Burger, who was born on 31 March 1902 in Vienna, Austria and was married to [REDACTED] on 23 October 1923, also in Vienna.

According to the Claimant, Wilhelm and Gustav Löw, who were brothers, were the original owners of the Löw family business, which was located in Angern, Austria. The Claimant indicated that Wilhelm Löw had two children, Marianne, who was born on 4 November 1901, and [REDACTED] (the Claimant's father). According to the Claimant, Gustav Löw, who was childless, legally adopted [REDACTED] and Marianne Löw to ensure that they would inherit his estate. The Claimant indicated that the Löw family was Jewish and resided in Angern until 1938, when they moved to Vienna, where the extended family resided at Döblinger Hauptstrasse 56. The Claimant explained that, after the *Anschluss*, Nazi authorities assessed heavy taxes and fines against the family and confiscated their holdings in and outside the Reich. The Claimant further indicated that her family fled Vienna in 1938 for Zurich, Switzerland, and subsequently moved via London, the United Kingdom, to Milford, New York, the United States, in 1940. According to the Claimant, [REDACTED] died in 1934; Gustav Löw died in 1940; Wilhelm Löw died in 1945; and Gertrude Löw died on 20 March 1993 in Wilmington, Delaware. The Claimant stated that Marianne Löw married Dr. [REDACTED], with whom she had one child,

[REDACTED 8]. The Claimant has two siblings: [REDACTED], who died in 1984 in Troy, New York, and [REDACTED 2], who was born on 6 August 1930 in Vienna.

In support of her claim, the Claimant submitted numerous documents, including:

- 1) her birth certificate, indicating that [REDACTED 1] was born on 25 August 1924 and that her parents were Dr. [REDACTED] and Gertrude Löw, née Burger;
- 2) the partial decision (*Teilerkenntnis*), dated 3 May 1956, of the Vienna Restitution Commission regarding the restitution of ÖZAG shares (the “Partial Decision”);
- 3) a sworn declaration from Dr. Konrad Bloch, dated 26 April 1958, indicating that he represented the members of the Löw family in the administration of their assets outside Austria and that he was a member of the board of a Swiss Löw family foundation;⁵
- 4) the will of Gertrude Löw, which names her children as the beneficiaries of her residual estate;⁶
- 5) the will of Marianne Hamburger-Löw, which names her son [REDACTED 8] as the beneficiary of her residual estate; and
- 6) the will of [REDACTED], which indicates that he placed his residual estate in trust for the benefit of his wife during her lifetime and then for his children.⁷

In reviewing this claim, the CRT also relied on the following documents, which were submitted to the CRT by the April 2005 Award Claimants:

- 1) a registration form for confiscated assets, dated 15 November 1946, submitted to the Vienna Magistrate District Court (*das Magistratische Bezirksamt für den 3. Bezirk, Wien III*) for the *Brucker Zuckerfabrik Clemens Auer* (the “1946 Registration”);
- 2) a statement, dated 3 March 1956, submitted by Dr. Gustav Rinesch to the Vienna Restitution Commission, regarding the ownership of ÖZAG shares and in consideration of their confiscation (the “1956 Ownership Statement”);
- 3) a letter, dated 28 July 1956, from Dr. Gustav Rinesch to the District Court of Vienna, enclosing a copy of a draft settlement between the Republic of Austria, Karl Rigal, general partner *Brucker Zuckerfabrik Clemens Auer* and former ÖZAG shareholders for the restitution of the ÖZAG shares (the “Draft Settlement”);
- 4) a formerly classified industry report prepared after the Second World War by the Property Control Branch of the United States Allied Commission for Austria (“USACA”) about ÖZAG (the “Industry Report”);
- 5) a report prepared after the Second World War by Albert Perry, Jr., for the Property Control Branch, USACA about ÖZAG (the “Perry Report”);

⁵ The CRT notes that this document also mentions assets held in Switzerland by the Löw family that were transferred to the Main Office of the Reichsbank (*Reichsbankhauptstelle*) in Vienna. The CRT will address these assets in a separate determination.

⁶ The CRT notes that Gertrude Löw’s will allocated funds for the creation of a trust for each of her three children. According to the Claimant, the five children of [REDACTED] received the funds bequeathed to him by his mother.

⁷ The CRT notes that the Claimant did not submit a copy of the trust agreement referenced in the will of [REDACTED], but that it appears that the residuary estate was to be put in a trust to be distributed equally among his five children, who are represented in this claim, upon the death of his wife, [REDACTED], née [REDACTED].

- 6) 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 sugar industry contributed by Berthold Unfried (“Unfried”);
- 7) correspondence between the Claimant’s representative and Unfried;
- 8) the resume (*Lebenslauf*) of the Nazi-appointed auditor of ÖZAG, Guido Walcher, dated 20 April 1938 (the “Resume”); and
- 9) the Interim Report on the Audit of the Books of the ÖZAG (*Zwischenbericht zur Überprüfung der Geschäftsbücher der ÖZAG von Guido Walcher*), dated 29 April 1938 (the “Interim Report”).

The Claimant indicated that she was born on 25 August 1924 in Vienna. The Claimant is representing the following parties: her brother [REDACTED 2], who was born on 8 August 1930 in Vienna; her cousin [REDACTED 8] (the son of Marianne Hamburger-Löw), who was born on 2 June 1927 in Vienna; and her nephew and nieces (the children of [REDACTED]), [REDACTED 3], who was born on 29 May 1952 in Cleveland, Ohio; [REDACTED 4], née [REDACTED], who was born on 30 September 1953 in Cleveland; [REDACTED 5], who was born on 19 February 1956 in Cleveland; [REDACTED 6], who was born on 15 March 1958 in Cleveland; and [REDACTED 7], who was born on 10 May 1963 in Bethesda, Maryland.

The Löw Family: Background

According to an article by Austrian historian Tina Walzer, the brothers Wilhelm and Gustav Löw belonged to a new class of entrepreneurs that emerged in the middle of the nineteenth century during the course of the industrialization of eastern Austria.⁸ The Löws established themselves as distillers and refiners of spirits (*Spiritusfabrikation*). According to Walzer, the Löw family, who originated from Velehrad, a small town in Moravia near Hradisch, Hungary, left there in the search for better living conditions as soon as the legal situation permitted to try their luck in and around Vienna, as so many other Moravian Jewish families did. The Löws bought land and founded the *Gustav & Wilhelm Löw Spiritusfabrikations-Gesellschaft* in Angern. As they became successful, they moved into a house at Hauptstrasse 56 in Vienna-Döbling.

The Löws became acquainted and developed a working relationship with the Kinskys, a noble family from the area. After the First World War, the Kinskys began selling their property in Matzen, in part to the local farmers’ lodge, and in part to the Löws, including the so-called “Kinsky-Villa” and their castle. By 1938, the Löws held not only the property in Matzen, but

⁸ Walzer, Tina. “*Schlossherren auf Zeit: Die Familie Löw in Matzen, Niederösterreich*” (“Lords of the Castle for a Limited Time: The Löw Family in Matzen, Lower Austria”). David Jüdische Kulturzeitschrift Heft Nr. 61, June 2004. Available at www.david.juden.at/kulturzeitschrift/61-65/61-TinaWalzer.htm. Walzer is a historian and author who specializes in 19th and 20th century Austrian Jewish history and lectures at the University of Vienna. For the past ten years she has been tracing back six generations of Austrian Jewish families and building up a database on the Viennese Jewish population in the 19th century. In 2001, she published with Stephan Templ, the journalist and architectural historian, the book *Unser Wien: ‘Arisierung auf Österreichisch.’* Berlin: Aufbau Verlag 2001 (*Our Vienna: Aryanization Austrian style*) based on her extensive research on the expropriation of Austrian Jews, with special focus on Nazi looted art. In 2002, Walzer completed the first extensive report on the 62 Jewish cemeteries of Austria and their cultural, artistic and historical characteristics, and she now acts as a consultant for their restoration.

also significant property in the communities of Schönkirchen, Reyersdorf, Gänserndorf, Klein- und Gross-Prottes, Spannberg, Angern, Tallesbrunn, Matzen, Ollersdorf, Mannersdorf, Stripfing, Zwerndorf and Aspacherfeld. In addition to the villas and various houses, they owned agricultural and industrial land needed for the production of alcohol.

A statement prepared by Dr. Hunna, the Löw family attorney, which was attached as Exhibit 24 to the Perry Report, lists as partners in the firm *Gustav and Wilhelm Löw* in 1938: Gustav Löw, Wilhelm Löw, his daughter, Dr. Marianne Hamburger-Löw and Mrs. Gertrude Löw, the widow of Dr. [REDACTED] (the son of Wilhelm Löw, who died in 1934), together with her children [REDACTED 1], [REDACTED] and [REDACTED 2], who were minors at the time. Each partner held a one-quarter share in the firm, with [REDACTED]'s widow, Gertrude Löw, and her children counting as one partner.⁹ According to Dr. Hunna's statement, the firm *Gustav and Wilhelm Löw* had bought over a period years 21,300 [sic] shares of the *Österreichische Zucker Industrie A.G.* for its partners at a par value of 125 Austrian schillings ("S") per share. The shares were deposited in part in a vault at the firm at Angern and in part in Vienna.

According to Dr. Hunna's statement, Wilhelm Löw and Marianne Hamburger-Löw resided at Döblinger Hauptstrasse 56 in Vienna XIX, and Gustav Löw and Gertrude Löw and her children resided in Angern in Lower Austria.

Shortly after the *Anschluss*, the firm *Gustav and Wilhelm Löw*, including the *Spiritusfabrikations-Gesellschaft und Raffinerie Aktiengesellschaft*, was taken over by the *Vermögensverkehrsstelle* (hereinafter the "VVSt"), the agency within the Department of Economics in charge of dealing with Jewish-owned property, and preparations were made for the aryanization of the industrial and agricultural holdings of the Löw family. The partners were forbidden to enter the premises and precluded from participating in the affairs of the firm, Gustav Löw was confined to his apartment, and Wilhelm Löw and his family were not permitted to leave Angern.¹⁰ Both were under constant supervision by the authorities and required to report to the police on a regular basis. Criminal tax proceedings were instituted against the Löw family by the Nazi regime, accusing Gustav and Wilhelm Löw of purposely hiding assets owned by their firm and undervaluing their assets.¹¹ In an effort to avoid these tax proceedings and the inevitable penalties, on 18 March 1938 the partners Gustav and Wilhelm Löw filed a "self-declaration of tax evasion," just as Ferdinand Bloch-Bauer had done with regard to ÖZAG.¹² Nonetheless, criminal tax proceedings were instituted against the partners and, on 30 June 1938, a sum of 13.3 million Reichsmark ("RM") in tax and penalties was assessed against them. To ensure that the members of the Löw family did not flee the country, the Nazi authorities confiscated their passports.

In due course, the entire property of the partners was seized on basis of the tax proceedings, and the family was forced to relinquish assets held outside the Reich as well in exchange for permission to leave Austria. This permission was granted only after the partners withdrew their

⁹ Perry Report, Exhibit 24, p. 1.

¹⁰ *Id.*

¹¹ *Id.*, p. 2.

¹² Perry Report, p. 8.

appeal against the illegal tax proceedings and ceded irrevocable plenary powers to Dr. Friedrich Werner, an attorney whose task it was to sell the Löws' property in favor of the Reich's Finance Administration.¹³ This included their holding of 21,665 shares of ÖZAG, which the authorities eventually sold to Auer at RM 90.00 a share.¹⁴ Dr. Hunna's statement notes that Gustav and Wilhelm Löw had died by 16 July 1947, the date he signed his statement, and that their heirs were Marianne Hamburger-Löw, Gertrude Löw and her three children, all of whom resided in New York.¹⁵

ÖZAG Prior to the *Anschluss*

As detailed in the April 2005 Award, ÖZAG, incorporated on 6 August 1909, had its factory in Bruck an der Leitha (Lower Austria), its main offices in Vienna, and was authorized to refine sugar beets and produce sugar beet products. According to the Industry Report, before the Second World War, ÖZAG was Austria's most important sugar refinery, accounting for approximately one-fifth of Austrian sugar production.¹⁶ This share is confirmed in the Perry Report, which notes that the processing of raw sugar and sugar products at the Bruck factory totaled 18 percent of Austrian production.¹⁷

According to the Industry Report, in 1938, 75,630 shares, or 94.5 percent of ÖZAG's total 80,000 shares, were closely held by the following groups:

- 21,665 shares by the Löw group (Austrian; Jewish)
- 16,480 shares by the Graetz group (Austrian; part Jewish; held through a family foundation located in Switzerland)
- 13,687 shares by Otto Pick (Czech; Jewish)
- 6,500 shares by the Davies-Lloyd group (British; agents who acted on behalf of Otto Pick)
- 12,850 shares by the Bloch-Bauer group (Czech and Austrian; Jewish)
- 4,448 shares by the Patzenhofer group (Austrian; non-Jewish)
- of the remaining 4,370 shares, less than one third (1,093), were widely dispersed.

The Industry Report further states that the shares were traded only occasionally on the Vienna stock exchange and "before the *Anschluss*" were quoted at about S 300.00 to 350.00 or RM 200.00 to RM 230.00 per share. According to the 1946 Registration of confiscated assets, which was submitted to the Vienna Magistrate District Court by the public administrator appointed by the British Military Government for Vienna, ÖZAG's share capital consisted on 13 March 1938 of 80,000 shares with a nominal value of S 125.00 per share, totaling S 10,000,000.00. The 1946 Registration indicates that, based on information provided by the Vienna Stock Exchange, the

¹³ *Id.*

¹⁴ Perry Report, Exhibit 24, p. 2.

¹⁵ *Id.*, p. 4.

¹⁶ Industry Report, p. 2.

¹⁷ *Id.*, p. 1.

shares were worth S 300.00 each on 13 March 1938, which would indicate that the company's value as of that date was S 24,000,000.00.¹⁸

As noted above, barely a week before the *Anschluss*, the Jewish shareholders of ÖZAG formed a Syndicate in which the Bank played a central role as a partner in the Syndicate and as a fiduciary. The purpose of the Syndicate was to protect their shares, and thereby the company, from being seized or otherwise brought under the control of the Reich. The Syndicate Agreement thus specified that none of the 71,246 shares held under the Agreement could be sold or transferred without the consent of the Bank, nor could the Bank give its consent to any sales or transfers without the unanimous agreement of the beneficial owners. Furthermore, the Agreement specified that the duration of the Syndicate was until 31 March 1943, with the possibility of prolongation, and that “an earlier dissolution of the Syndicate is permitted only with unanimity.” In order to further strengthen the protective power of the Agreement, a number of Syndicate members transferred just over 50 percent of the shareholdings into the name and custody of the Bank. According to the Syndicate Agreement, the 71,246 shares participating in the Syndicate Agreement thus were held as follows:¹⁹

The Bank held 40,195 shares on behalf of:

| | |
|---|---------------|
| • The <i>Graetzsche Familienstiftung</i> (Graetz Family Foundation) St. Gallen, Switzerland (Dr. Bruno Graetz) | 16,480 |
| • <i>Sapafin AG</i> Chur, Switzerland (Otto Pick) | 16,500 |
| • Ferdinand Bloch-Bauer and several family members | 7,215 |
| Subtotal | 40,195 |

¹⁸ “Das Aktienkapital, 80.000 Aktien à Nom. S 125.- betrug am 13. März 1938 S 10.000.000.-. Laut Auskunft der Börsenkammer war die Aktie an diesem Stichtag mit S 300.- zu bewerten, woraus sich ein Wert des Unternehmens am 13. März 1938 mit S 24.000.000.- ergibt.” Registration form for confiscated assets, dated 15 November 1946, submitted to the Vienna Magistrate District Court (*das Magistratische Bezirksamt für den 3. Bezirk, Wien III*) for the *Brucker Zuckerfabrik Clemens Auer* (the “1946 Registration”), p. 1. The CRT notes that, according to the information supplied by the Vienna Stock Exchange for this report, ÖZAG shares were not quoted on the Exchange because shares were traded only sporadically, the bulk being held firmly.

¹⁹ Perry Report, Exhibit 2, Translated copy of Syndicate Agreement. The CRT notes that the shares attributed to the Löw family in the Syndicate Agreement total 21,729, while other official documents indicate that the family in fact owned 21,665 Syndicate shares. See discussion, *infra*, regarding assets declared by Wilhelm Löw and Marianne Hamburger-Löw in their 1938 Census declarations, as well as the Perry Report, Exhibit 24, p. 2, and Industry Report, p. 2. In this decision, the CRT concludes that the Löw holdings in ÖZAG totaled 21,665 shares.

| | |
|---|---------------|
| <i>Credit Industriel</i> , Glarus (acting for the Löw family) ²⁰ | 5,100 |
| Dr. Ferdinand Bloch-Bauer | 3,300 |
| Dr. Gustav Bloch-Bauer | 2,335 |
| Dr. Marianne Hamburger-Löw | 8,329 |
| | |
| Mrs. Gertrude Löw | 8,300 |
| Dr. Otto Pick | 3,687 |
| | |
| Total | 71,246 |

The achievement of the objective of the Syndicate Agreement thus was based upon the expectation of Syndicate members, embodied in the Agreement to which the Bank was party, that the Bank not cooperate with, or give in to, the Nazi regime's demands or wishes.

The Path to the Aryanization of ÖZAG

As set out in the April 2005 Award, within days after the *Anschluss*, the Gestapo seized the company's ledgers. Criminal tax proceedings were initiated against ÖZAG and its two subsidiaries on 27 April 1938, and a member of the Nazi Party (*Nationalsozialistische Deutsche Arbeiterpartei* or NSDAP) was appointed to audit the firm. The tax proceedings were to play a central role in the VVSt's plan to facilitate the aryanization of the company's shares.

According to the Perry Report, the criminal tax investigation allegedly revealed, among other things, taxable sums that had not been declared in the company's annual tax returns, subjecting it to a tax penalty that could range anywhere from three to nine times the amount of tax due on the unreported sums. The Perry Report states that, at the time of the investigation, rumors spread that the maximum penalty would be assessed, which would have consumed the company's free reserves and impaired the firm's capital with obvious effect on the share price.

In a letter dated 3 December 1938, the VVSt, having concluded that the tax proceedings were putting sufficient pressure on ÖZAG's shareholders to accept an offer at a fraction of the shares' true value, instructed the *Länderbank Wien* to purchase all available shares of the company and nominated Clemens Auer, a German industrialist from Cologne, and *Martin Brinkmann A.G.* of Hamburg as acceptable purchasers. *Martin Brinkmann A.G.* withdrew, however, being unwilling to risk the tax penalty overhang and Auer, correctly interpreting the purpose of the tax proceedings, became the designated aryanizer. In a letter dated 20 December 1938, he then instructed the *Länderbank* to acquire the shares for his account. He authorized the *Länderbank* to offer RM 70.00 per share or, in the event that more than 20,000 shares (25 percent of the total) could be obtained, RM 75.00 per share.

²⁰ The *Credit Industriel* was a financial institution, owned by *Schweizerische Bankverein*, specifically set up to cloak financial holdings of its clients. It participated in the Syndicate with 5,100 ÖZAG shares on behalf of the Löw group.

The Breach of the Syndicate Agreement

The Bank notified the Syndicate members of Auer's offer on 17 December 1938.²¹ The offer failed to obtain the required unanimous agreement of the members of the Syndicate, and thus, under the terms of the Syndicate, was rejected. This rejection was followed by a letter, dated 22 December 1938, from the Bank to the Syndicate members that confirmed that the *Länderbank* had made a firm offer for the shares of 70.00 blocked Reichsmark per share or, if at least 20,000 shares were offered, of 75.00 blocked Reichsmark, and that the offer was valid up to 30 December 1938. The letter also stated that Director Pilgrin of the *Länderbank* had informed the Syndicate that there was considerable discussion favoring the nationalization of the factory and that, in that event, it was doubtful whether a similar offer would be forthcoming.²² In its 22 December 1938 letter, the Bank further wrote that "we were unable to achieve the [required] unanimous agreement of the syndicate during the conferences on the sale, while some members of the syndicate, did not find the Vienna offer worthy of discussion, other members appeared not averse [sic] to a sale in the event of an improvement of the offer."²³ The letter continued: "Not only in case of these difficulties is the continuation of the syndicate hard, but also because the addresses of several members of the syndicate are no longer known. Because of these difficulties and also because the situation has changed since the foundation of the syndicate we should like to propose the syndicate be dissolved according to the decision made at the beginning of March 1938 [the date the Syndicate Agreement was concluded]. If we have not received information to the contrary by 15 January 1939 we shall assume your approval."²⁴

While the records do not indicate whether the Bank received any responses to this letter, other documents indicate that the Bank did not even wait until 15 January 1939 before executing the sale of Syndicate shares to Auer. According to the 1956 Ownership Statement, on 30 December 1938, the *Länderbank* informed Auer that it had been able to purchase on his behalf 26,480 shares of ÖZAG that had been deposited at the Bank, at a purchase price of RM 75.00 per share, as well as an additional 10,567 shares that were deposited at, or put at the disposal of, the *Länderbank*, for a total of 37,047 shares.²⁵ The 1956 Ownership Statement notes that Auer himself, in handwritten notes on the *Länderbank*'s letter, indicated that of the 26,480 shares that

²¹ Perry Report, p. 5; Exhibit 16, "Letter dated 22 December 1938 from [the Bank] to syndicate members re offer of Clemens Auer." In its 22 December 1938 letter, the Bank asked that the Syndicate members notify the Bank in Zurich at the latest by 4:00 pm on 29 December 1938. Perry Report, Exhibit 16.

²² Perry Report, Exhibit 16.

²³ *Id.*

²⁴ *Id.*

²⁵ The additional 10,567 shares included 6,500 shares held by Lloyd and Davies on Pick's behalf, which according to the Perry Report, were held at the Bank, but had earlier been put at the disposal of to the *Länderbank*. The Syndicate Agreement also indicates that 40,195 shares were held in the Bank's name and deposited at the Bank, which would include the 6,500 shares held by Lloyd and Davies on Pick's behalf. Thus, the original holding at the Bank were indeed 40,195 shares. However, according to the documentation, Otto Pick reluctantly "induced" his friends Lloyd and Davies to put their 6,500 shares at the disposal of the *Mercurbank* (later *Länderbank*) as part of the negotiated release of his son-in-law, Leopold Bloch-Bauer, from a Nazi prison and permission for his leaving Austria for Switzerland. These shares apparently remained physically at the Bank, and it is not clear when exactly they were transferred to the *Länderbank*. Though a reference made to their transfer says "about middle of 1939, the exact date had to be investigated," the shares were actually sold to Auer through the *Länderbank* on 30 December 1938. Perry Report, Exhibits 14, 17, and 21.

he purchased from the Bank, 16,480 shares had been held by the Graetz family trust and 10,000 had been held by Otto Pick. These notes also are in line with a listing of ÖZAG shares acquired by Auer provided by the *Länderbank* in a letter dated 13 February 1940 to Auer, for purposes of showing “proof of aryan ownership” (*Ariernachweis*) for a large part of the shares.²⁶ This letter confirms that Auer purchased 26,480 shares of ÖZAG from the Bank in Zurich on 30 December 1938 for RM 75.00 each. According to the Perry Report, these shares consisted of the 10,000 shares held by the Bank directly on behalf of *Sapafin A.G.*, which in turn was wholly owned by Otto Pick, and the 16,480 shares held by the Bank on behalf of the Graetz family.²⁷

With regard to the shares purchased by Auer in December 1938 that were within the control of the Bank, there are no records to indicate that the Bank obtained the necessary unanimous consent of the shareholders before executing the sale. The remaining Syndicate shares were sold to Auer after 15 January 1939, the deadline the Bank had set for receiving replies to their dissolution proposal. With regard to the 21,665 shares held by the Löw family, these shares were seized by the tax authorities (*Finanzverwaltung*) in the context of illegal tax proceedings against the family sometime before 17 July 1938²⁸ and sold to Clemens Auer via the VVSt on 28 August 1939 at RM 90.00 per share.²⁹

In summary, according to the Industry and the Perry Reports, Clemens Auer acquired, from December 1938 to October 1939, 78,968 shares of ÖZAG (98.7 percent of the total) for RM 6.5 million, or at an average price per share of about RM 82.00.³⁰ After his purchase, Auer

²⁶ Perry Report, Exhibit 17, “Letter dated 13 February 1940 from Landerbank [sic], Wien to Clemens Auer, re shares purchased for Auer.” According to Unfried, in 1939, Auer attempted to circumvent Nazi authorities in order to avoid paying aryanization tax on the ÖZAG shares he acquired. Auer maintained that, because he obtained the shares from a Swiss bank, they were not subject to the aryanization tax. The authorities maintained that the shares were “Jewish” shares, even if sold by a Swiss bank. Unfried, p. 653.

²⁷ Perry Report, p. 6.

²⁸ 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 her 1938 Census declaration, number 28862, signed 15 July 1938, Marianne Löw-Hamburger reported owning 25 percent of 21,665 shares of ÖZAG and noted that these had been confiscated. Wilhelm Löw’s asset declaration, number 28859, signed also on 15 July 1938, has the identical entry.

²⁹ Partial decision, p. 8; Industry Report, p. 6; and Perry Report, Exhibit 17.

³⁰ According to page 1 of the *Länderbank*’s letter, Auer purchased 69,641 ÖZAG shares from December 1938 to September 1939. The letter indicates that Auer may have acquired additional shares. Perry Report, Exhibit 17, p. 1. The total cited on page 1 of Exhibit 17 derives from a listing that attempts to divide Auer’s ÖZAG share acquisitions according to whether they were originally “Aryan” or “non-Aryan”-owned. On page 2 of the same Exhibit, Auer is reported to have acquired a total of 78,968 shares at an average price of RM 82.18. This number is consistent with the numbers reported in the Industry Report, which indicates that Auer obtained the shares as follows: A block of 33,695 shares (16,480 from Graetz; 10,000 from Pick; 7,200 from the Bloch-Bauers [sic]) for a consideration of approximately RM 2,500,000.00 in “blocked” marks (average price per share RM 75.00); 3,687 shares owned by Pick for RM 276,525.00 (average price per share RM 75.00); 6,500 shares held by Lloyd and Davies as agents for Pick for RM 486,525.00, paid into a blocked account (average price per share RM 75.00); an additional 2,100 shares of the Bloch-Bauer block from the Reich Ministry of Finance, which had confiscated the shares in connection with the tax proceedings, for RM 193,200.00 (average price per share RM 92.00) and the Patzenhofer block of 4,448 shares for RM 400,320.00 (average price per share RM 92.00). The Löw block of 21,665 shares and the remaining 3,350 shares of the Bloch-Bauer block were confiscated by the German tax authorities in connection with criminal tax evasion proceedings against the owners and their respective business interests, and then sold to Auer for RM 2,246,850.00 (average price per share RM 90.00). Industry Report, pp. 4 – 7; Perry Report, Exhibit 17. The CRT

transformed the corporation into a sole proprietorship and renamed it *Brucker Zuckerfabrik Clemens Auer* (“*Brucker Zucker*”).

The Restitution of ÖZAG

Shortly after the war, the original owners, or their heirs, began their efforts to reclaim their ownership of ÖZAG. These efforts were complicated by the exceptionally hostile circumstances the claimants faced, as well as by the fact that though ÖZAG’s headquarters were in Vienna, the physical plant was in the Soviet occupied zone of Austria.³¹

On 15 November 1946, the public administrator (*öffentlicher Verwalter*) appointed by the British Military Government for Vienna filed the required form of registration of confiscated assets (*Anmeldung entzogenen Vermögens*) on behalf of *Brucker Zucker*. The 1946 Registration identifies *Brucker Zucker* as the successor in interest of ÖZAG. It also identifies the owners of the shares as of 13 March 1938, details the acquisition of the firm by Auer, and lists the citizenship and domicile of potential restitution claimants as of the date of registration.

According to the documentation, the restitution proceedings were originally conducted pursuant to Austria’s Third Law of Restitution (*Drittes Rückstellungsgesetz*). Dr. Rinesch acted as lawyer for the heirs of the major shareholders (the “Restitution Claimants”), with the exception of the Löw group, which was represented by their long-time lawyer Dr. Hunna.³² After lengthy proceedings, all shares of the former ÖZAG were returned to their former owners or heirs in an interim settlement reached on 16 October 1956.

In February 1957, shortly before the final settlement was concluded, the Bloch-Bauer, Löw, Pick, and Graetz groups sold their 71,182 shares in the company to a sugar consortium (*Leipnik-Lundenburger, Ennser, Hohenauer/Strakosch and Siegendorfer Zuckerfabrik*) for S 118.6 million.³³ This amount may be taken as the 1957 value for the 71,182 shares held by the Löw, Pick, Graetz, and Block-Bauer groups.³⁴ Of these 71,182 shares, 21,665, or 30.44 percent, were held by the Löw family. Accordingly, S 36,101,840.00 (30.44 percent of S 118.6 million) may

notes that the numbers of shares per shareholder provided in the Industry Report vary slightly from the number of shares attributed to the various Syndicate members in the Perry Report and the Draft Settlement. In the latter, however, the number of shares held by each owner was reduced in agreement with the owners as more shares were being claimed than had been issued.

³¹ See the April 2005 Award for details regarding the restitution proceedings.

³² 1956 Ownership Statement, p. 1; Draft Settlement, pp. 1 – 2.

³³ Unfried, p. 658, citing the findings of an audit of the newly established ÖZAG by Professor Dr. Bouffier, dated 30 September 1957, in the Vienna Commercial Register (*Handelsregister*), HRA B 9070, Bd. 1. Unfried notes that Auer maintained that the restituted parties received approximately S 120 to 140 million, and explains that the difference in the sums is due to the fact that the S 118.6 million refers only to the approximately 71,000 shares owned by the Bloch-Bauer, Löw, Pick, and Graetz groups.

³⁴ The CRT notes that the shares held by the Bloch-Bauer group (12,850), the Löw family (21,665), the Pick group (20,187), and the Graetz family (16,480) total 71,182, which is slightly below the 71,246 shown in the Syndicate Agreement attached to the Perry Report as Exhibit 2. See also footnote 30.

be considered as the value of the 21,665 shares held by the Löw family and included in the 1957 restitution. This amount was equal to SF 6,072,329.49.³⁵

Information Available in the Bank's Records

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 the Syndicate of ÖZAG shareholders during their investigation of the Bank.

The documents that evidence the existence of a Syndicate and of an account belonging to the Syndicate of ÖZAG shareholders were submitted by the April 2005 Claimants and/or obtained by the CRT and include records from U.S. National Archives and Records Administration ("NARA") and the Austrian State Archive. These records demonstrate that 71,246 of the total 80,000 shares of ÖZAG were included in a Syndicate, which was constituted in Zurich on 5 March 1938. These records demonstrate that the Bank was a member of the Syndicate and party to the Syndicate Agreement itself. The records show that slightly over half (40,195) of ÖZAG's shares was held in the name of the Bank on behalf of several Syndicate members, and that initially almost all these 40,195 shares were deposited at the Bank.

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 the following persons:

Wilhelm Löw

The documents concerning the assets of Wilhelm Löw are numbered 28859 and consist of his asset declaration, signed by him in Vienna on 15 July 1938, property descriptions and appraisals, correspondence, including internal memoranda of Nazi officials and confiscation orders, and a flight tax assessment (*Reichsfluchtsteuer*) notice. According to these documents, Wilhelm Löw was born on 28 March 1860, was married to Franziska Löw, née Bauer, was Jewish, and resided at Döblinger Hauptstrasse 56 in Vienna XIX. Wilhelm Löw listed his profession as property owner (*Grundbesitzer*). According to an appraisal prepared by Engineer (*Ing.*) Eduard Hartmann and dated 13 July 1938, which Wilhelm Löw cited as the basis for the value of his real property, Wilhelm and Franziska Löw owned 635 hectares and 7,684 square meters of land, including fields, gardens, and construction areas, in several communities, including Matzen, Tallesbrunn, Angern, Aspacherfeld, Mannersdorf, Ollersdorf, Marchegg, Zwerndorf, Stripfing, Schafflerhor, and Niederdonau. The appraiser estimated the total value of this property, including the

³⁵ When converting amounts into Swiss Francs, the CRT uses official exchange rates prevailing at the time. In 1957, S 1.00 was worth SF 0.1682.

buildings located on it, at RM 603,955.00, of which half, or RM 301,977.50, belonged to Wilhelm Löw. Wilhelm Löw further owned 25 hectares and 4,643 square meters of land with an appraised value of RM 25,349.00, for a total of RM 327,326.50 worth of real property.

According to his asset declaration, Wilhelm Löw owned one-fourth of a portfolio of securities worth RM 3,718,149.16, including 21,665 shares in ÖZAG with a declared value of RM 1,805,416.66.³⁶ Wilhelm Löw indicated that all these shares, including the ÖZAG shares, had been confiscated (*beschlagnahmt*). Wilhelm Löw further owned 911 shares in *Gustav & Wilhelm Löw A.G.* worth RM 607,333.33 and 2,575 shares in *Milchind. A.G.* worth RM 171,666.66. The total value of the securities he declared was RM 1,708,537.28. In addition, Wilhelm Löw was entitled to one-fourth of the profit (*Reingewinn*) of *Gustav & Wilhelm Löw A.G.*, which was valued at RM 323,373.73. Wilhelm Löw further declared jewelry worth an estimated RM 272.66 and noted that he could not provide a value estimate for his wedding ring and gold watch, because these had already been confiscated. Finally, Wilhelm Löw reported a tax liability of an unknown amount owing to an ongoing tax investigation. Total gross assets reported by Wilhelm Löw amounted to RM 2,751,326.00.

On 6 December 1938, Wilhelm Löw was assessed flight tax of RM 1,250,000.00 on total assets of RM 5,000,000.00. According to a memorandum in the file from the Gestapo to the Commissioner for the Private Economy (*Staatskommissar in der Privatwirtschaft*), no confiscation order for the assets of *Gustav & Wilhelm Löw A.G.* had been issued, but the assets were being seized by the Revenue Department (*Finanzprokurator*) in Vienna in order to secure outstanding tax liabilities. On 23 July 1941 the Gestapo issued a confiscation order for all assets belonging to Wilhelm and Franziska Löw, and Dr. Friedrich Zabransky of Mariahilferstrasse 67 in Vienna VI was named administrator of the assets. The VVSt confirmed on 2 September 1941 that given the confiscation of Wilhelm and Fanny [sic] Löw's assets for the benefit of the Reich, the Revenue Office (*Finanzamt*) Berlin now was the responsible agency. These records make no mention of assets held in a Swiss bank account.

Franziska Löw

The documents concerning the assets of Franziska Löw are numbered 28860 and consist of her asset declaration, signed by her on 15 July 1938, property descriptions and appraisals, and an internal reference to the Gestapo confiscation order contained in her husband's file. According to these documents, Franziska Löw was born on 14 January 1866, was married to Wilhelm Löw, was Jewish, and resided at Döblinger Hauptstrasse 56 in Vienna XIX. Franziska Löw's file contains the same real property appraisal prepared by Eduard Hartmann as contained in her husband's file. Franziska Löw declared half the total amount of RM 603,955.00, or RM 301,977.50, as the value of her share of the real property and ten shares of the firm *Gustav & Wilhelm Löw A.G.* at S 1,000.00 per share, for a total of RM 6,666.67. According to these records, Franziska Löw further owned household items, including 31 Persian rugs, various portraits and paintings, Chinese vases and bowls, various porcelain figures, and approximately 46.50 kilograms table silver, worth an estimated RM 19,026.00 as well as jewelry with a total estimated value of RM 11,900.00. Franziska Löw noted that the value of a single pearl, which

³⁶The CRT notes that, at this value, each individual ÖZAG share was valued at RM 83.33.

was approximately the size of a pea, could not be estimated because it had already been confiscated. The asset declaration also indicates that Franziska Löw held a demand deposit account at the *Merkurbank* with a balance of RM 12,651.27. These records make no mention of assets held in a Swiss bank account.

Gustav Löw

The documents concerning the assets of Gustav Löw are numbered 28861. The cover sheet for this file indicates that the contents had been transferred to the lower Danube region on 9 December 1939 (“*Abgetreten Nieder Donau*” “*abgetr. 5.12.39*”). The cover sheet indicates that Gustav Löw was born on 11 September 1870 and that he resided in Angern.

Dr. Marianne Hamburger-Löw

The documents concerning the assets of Marianne Hamburger-Löw are numbered 28862 and consist of her asset declaration, signed by her in Vienna on 15 July 1938, property descriptions and appraisals, correspondence, including internal memoranda of Nazi officials and confiscation orders, and a flight tax assessment notice.

According to her asset declaration Marianne Hamburger-Löw, who was Jewish, was born on 4 November 1901 in Vienna, last resided at 56 Döblinger Hauptstrasse in Vienna XIX, and was separated from Friedrich Hamburger, who also was Jewish. The declaration further shows that she owned gross assets worth RM 2,843,988.47. These assets included real property worth RM 457,831.00; her one-quarter share in *Gustav & Wilhelm Löw A.G.* worth RM 31,198.55; liquid assets amounting to RM 147,433.16; gold, silver and jewelry valued at RM 334,295.47; and household goods valued at RM 11,280.00. She further reported owning a portfolio of securities worth RM 1,605,761.38, including one-quarter of 21,665 ÖZAG shares. She reported that the majority of these securities, including the ÖZAG shares, had been confiscated. Finally, Marianne Hamburger-Löw reported a tax liability for an unknown amount in an ongoing tax investigation.

The file further contains a flight tax assessment notice for an illegible amount, a confiscation order issued by the Gestapo on 21 May 1941 and an internal police confirmation that Marianne Hamburger-Löw had departed for Zurich on 1 October 1938.

Marianne Hamburger-Löw’s asset declaration further evidences holdings in Switzerland of the following securities: one-half of 100 shares in Nestle, worth RM 33,033.00; 25 shares of *Ges. F. chem. Industrie, Basel*, worth RM 41,827.50 and one-half of £13,900 3½% War Loan, worth RM 87,411.61. Furthermore she reported owning one-half of nine bars of gold and various gold coins deposited in Switzerland, worth RM 281,322.47 as well as one-half of SF 55,500.00 in bank notes, worth RM 15,873.00 and also deposited in Switzerland. All these assets are noted as having been reported to the authorities, and the gold and the Swiss franc banknotes are noted as having been sold by the Main Office of the Reichsbank (*Reichsbankhauptstelle*).³⁷

³⁷ These assets will be treated in a separate decision. See also note 5.

Gertrude, [REDACTED], and [REDACTED 1]

The documents concerning the assets of Gertrude, [REDACTED], and [REDACTED 1] are numbered 28863, 28864, and 28871, respectively. The cover sheets for these files indicate that the contents of the files had been transferred to the lower Danube region on 5 December 1939 (“*Abgetreten Nieder Donau*” “*abgetr. 5.12.39*”). The cover sheets indicate that Gertrude Löw was born on 31 March 1902; that [REDACTED] was born on 10 June 1926; that [REDACTED 1] was born on 25 August 1924; and that they resided in Angern.

The CRT’s Analysis

Identification of the Syndicate Members

The Claimant has plausibly identified certain members of the Syndicate. The names of the Claimant, her mother, her paternal grandfather, great-uncle, and aunt match the names of the individuals identified in the 1946 Registration and in the Draft Settlement as members of the Syndicate who owned ÖZAG shares.

In support of her claim, the Claimant submitted documents, including her birth certificate, her mother’s will and documents regarding the history of ÖZAG, providing independent verification that she and her family members had the same names as those recorded in the 1946 Registration as members of the Syndicate. The CRT notes that there are no other claims to these Syndicate shares.

Status of the Syndicate Members as Victims of Nazi Persecution

The Claimant has made a plausible showing that the members of the Syndicate were Victims of Nazi Persecution. The Claimant stated that all members of the Syndicate, including Gertrude Löw and Marianne Hamburger-Löw, were Jewish and that they fled Austria to avoid Nazi persecution. Specifically, the Claimant indicated that the Löw family fled from Austria to Switzerland, that they subsequently fled via the United Kingdom to the United States, and that the Nazi regime confiscated their real, financial and personal property in Austria and elsewhere. The CRT notes that all members of the Löw family, like other Jewish members of the Syndicate, were required to register their assets in the 1938 Census and that the forms available to the CRT show that their ÖZAG shares, together with other securities, are noted as having been confiscated.

The Claimant’s Relationship to the Syndicate Members

The Claimant has plausibly demonstrated that she is related to certain members of the Syndicate by submitting specific information and documents, demonstrating that she and members of her family were among the members of the Syndicate. These documents include her birth certificate, which identifies the Claimant as the daughter of Gertrud Löw; the wills of Syndicate Members Marianne Hamburger-Löw and [REDACTED], and documents pertaining to the Syndicate that specify the relation between the Claimant and other members of the Syndicate.

The Bank's Breach of the Syndicate Agreement

According to the documents submitted by the Claimant, the Syndicate shares were sold to Auer between December 1938 and October 1939. With regard to the 26,480 shares the Bank sold in December 1938, the CRT notes that the sale took place shortly after the Bank's 22 December 1938 letter, which referred to its having communicated the *Länderbank's* offer to Syndicate members, confirmed Auer's offer, and relayed the *Länderbank's* warning that nationalization of ÖZAG was under active discussion. As noted above, the Bank informed the Syndicate members that the offer was valid up to 30 December 1938 in Vienna and requested their decision by 29 December in Zurich. The Bank's letter states that it was "unable to achieve the unanimous agreement of the syndicate during the conferences on the sale." In fact, and according to the Bank's letter, some members of the Syndicate "did not find the Vienna offer worthy of discussion," while others "appeared not averse to a sale in the event of an improvement in the offer." Clearly, *no Syndicate member was willing to sell the shares* at the price offered. Nevertheless, the Bank disingenuously characterized the discussions as lacking consensus and cited this alleged lack of consensus as a basis for proposing the dissolution of the Syndicate. The Bank went so far as to move toward dissolution unilaterally by stating that in the absence of a response by 15 January 1939, agreement would be assumed, despite their citing as one of the reasons for dissolution the difficulty they had in maintaining current addresses for the membership. The facts, however, were very different from those portrayed by the Bank: there had been consensus among Syndicate members about the offer: they had rejected it. More fundamentally, even if there had been no consensus, the Syndicate Agreement was designed specifically to govern those circumstances in which unanimous consent regarding the sale of shares was lacking and therefore could not be the basis for its proposed dissolution.

Although the Syndicate members previously rejected Auer's offer, according to the 1956 Ownership Statement and other records, on 30 December 1938 the Bank sold 16,480 shares held by the Graetz family and 10,000 shares held by *Sapafin A. G.* on behalf of Otto Pick for 75.00 blocked Reichsmark per share, all of which were held at the Bank, as well as 6,500 shares held by *Sapafin A. G.* on behalf of Lloyd and Davies, who, in turn, acted as agents of Pick.³⁸ There is no evidence that the Bank obtained the unanimous consent of the other Syndicate members, as called for under Article II of the Syndicate Agreement, before selling these shares.

Through its unauthorized and illegal sale of shares held in its own name, the Bank rendered the Syndicate Agreement moot and thereby facilitated the sale of the remaining ÖZAG shares. On 31 December 1938, 3,687 shares held by Otto Pick at the *Länderbank* in Vienna together with the 6,500 shares held by Pick's agents Davies and Lloyd were sold to Auer for RM 75.00 per share.³⁹ The remaining Syndicate shares, including the shares held by the Löw family, were sold

³⁸ As noted above, according to the 1956 Ownership Statement, on 30 December 1938 the *Länderbank* informed Auer that it had been able to purchase for him 26,480 shares of ÖZAG that had been held at the Bank, as well as an additional 10,567 shares, including 6,500 held by Lloyd and Davies on Pick's behalf, that, while being physically held at the Bank had been put, at Otto Pick's behest, at the disposal of the *Länderbank* in May/June 1938. See *supra*, note 25. Regardless of the physical location of these latter shares, the sale by the bank of at least 26,480 shares together with another 10,567 shares plus the "firm offer" the *Länderbank* had for another 3,300 shares sufficed to give Auer on 30 December 1938 certainty of a majority holding of 40,347 shares.

³⁹ Pursuant to Articles II and III of the Syndicate Agreement, Pick was obligated to block the transfer of his shares by informing the place of deposit of the need for the Bank's consent, and the Bank was obligated to withhold its

to Auer after the 15 January 1939 deadline set by the Bank for the Syndicate's dissolution, as set forth in its 22 December 1938 letter. The CRT notes that, according to Article VIII of the Syndicate Agreement, any important decisions must be reached by unanimous consent of the Syndicate members. Article VIII specifically identified the sale of shares by the Syndicate, the amendment of the Syndicate Agreement, and the anticipated dissolution of the Syndicate Agreement as types of decisions that required unanimous consent of the Syndicate members. Article X of the agreement specified that the duration of the Syndicate was until 31 March 1943, with the possibility of prolongation, and that "an earlier dissolution of the Syndicate is permitted only with unanimity." As noted above, there is no evidence that the Bank received the required unanimous consent of the Syndicate members to dissolve the Syndicate Agreement.⁴⁰ The Bank's unilateral attempt to dissolve the Syndicate Agreement in the context of its sale of 26,480 shares without the unanimous consent of the other members of the Syndicate clearly violated the fiduciary duties it owed to other members of the Syndicate. Moreover, by violating its contractual commitments as contained in the Syndicate Agreement, the Bank also violated the legal obligations it had not only as a party to the Agreement, but also as a member of the Syndicate itself.

The CRT notes that the VVSt clearly was aware of the existence of the Syndicate arrangement: Auer's initial offer to purchase ÖZAG shares was transmitted to the Syndicate members through the Bank. The CRT further notes that the documents, including the 1938 Census declarations filed by Wilhelm Löw and Marianne Hamburger-Löw, indicate that the Nazi authorities confiscated the ÖZAG shares held by the Löw family sometime before 15 July 1938 and forced the return and surrender of any assets held abroad, including presumably the ÖZAG shares held in Switzerland through *Credit Industriel*, before 1 October 1938, when the family was allowed to leave Austria. The CRT notes further that the authorities did not move to sell the ÖZAG shares they had confiscated until March 1939 at the earliest, which was after Auer, through the Bank's cooperation, had acquired a majority holding in ÖZAG. This suggests that until 30 December 1938, the Syndicate Agreement had offered a measure of protection in as much as the consent of the Bank was required for any sale of shares. The Reich, typically anxious to conform to the form, if not the substance, of law in their efforts to obtain the property they desired, apparently did not want to confiscate the Austrian company outright and waited to complete the aryanization by the sale of the confiscated shares until they were assured that control of ÖZAG had been wrested from its owners and a majority share holding had been obtained. The Bank, unilaterally and in violation of its legal and fiduciary obligations, allowed these plans to succeed: with the sale of the shares held by the Bank, what protection the Syndicate Agreement afforded its members had been withdrawn and members thus became

consent without the unanimous consent of the Syndicate members. The available documents do not indicate whether the shares were actually blocked at their place of deposit, or whether the Bank consented to the sale of these shares.

⁴⁰ Article VII of the Syndicate Agreement requires the management of the Syndicate to inform members of decisions to be made with the request to reply within eight days after their receipt of the management letter, and that the absence of a reply is to be considered as a positive response to the proposed decision. However, the Syndicate had placed the management function in the hands of Ferdinand Bloch-Bauer and not the Bank. Therefore, the Bank was in violation of the Agreement by usurping the powers of the management of the Syndicate. Thus, when the Bank made the sale of the ÖZAG shares, it had neither the authority to terminate the Syndicate nor the authority to sell the shares it held in ÖZAG and, thus, was in clear violation of the Syndicate Agreement that was still in effect in accordance with its terms.

exposed to exactly the pressures they had sought to forestall – pressures that in the end forced them to sell their shares at duress prices.

The CRT notes that there is no evidence that the shareholders or their heirs received the full proceeds of the sales of ÖZAG shares, which, according to the Perry Report and other documentation,⁴¹ were paid into blocked accounts. As noted above, the documentation indicates that the Löw family owned a total of 21,665 shares and that the VVSt sold these shares to Clemens Auer for RM 90.00 per share. However, in the case of the Löws' shares, as they were confiscated by the Nazi authorities prior to being sold, there is no reason to believe that the shareholders or their heirs received any of the proceeds of the sale of the shares.

In determining that an Award is appropriate, the CRT has considered the circumstances set out above, as well as the fact that, immediately following the *Anschluss*, the Nazi regime began a major effort to seize the assets of Austria's Jewish population. In addition, the CRT has found that, shortly after the *Anschluss*, the Nazi authorities instigated criminal tax proceedings against the company with the express purpose of depressing its share price. The CRT has noted that on 5 March 1938, one week before the *Anschluss*, ÖZAG's major Jewish shareholders, anticipating the Reich's likely attempt to seize their assets, had entered into a Syndicate Agreement, to which the Bank itself was a party, and which was specifically designed to prevent the shares from falling under the Reich's control. The CRT has found that the Bank nevertheless permitted the sale of Syndicate shares at a fraction of their true value in late December 1938 in violation of its obligations under the Syndicate Agreement, and that this action facilitated the Nazi regime's ability to obtain the remaining shares at duress prices as well. The CRT has noted that the shareholders received only a small portion, if any, of the sale price in 1938, that subsequently assets remaining in Austria were confiscated, and that representatives of the Austrian government during the restitution proceedings in 1957 made no claim that remuneration had been received such as to warrant reduction of the restitution obligations. Given these findings and considerations, the CRT concludes that (a) the Bank actively cooperated with the Nazi authorities in this aryianization process, or knowingly facilitated it, in violation of its legal and fiduciary obligations to the members of the Syndicate; (b) neither the Syndicate, its members, nor the heirs of its members received the full proceeds from the sale of the shares, except for the inadequate restitution received by the Restitution Claimants in 1957 and the token amounts that some had received for transfer abroad from the aryianization sale, all of which is taken into consideration below; and (c) the Bank is accordingly responsible for the loss suffered by the Syndicate members as a result of its conduct.

In the specific case of the ÖZAG share holdings of the Löw family, which had been seized before the Bank breached the Syndicate Agreement, the CRT has found that the Bank still is in breach of its obligations. In this case, the VVSt would not have been able to complete the sale to Auer under the desired guise of lawfulness if the Syndication Agreement had remained operative. First, Auer would not have been able to gain a controlling interest in ÖZAG. Second, the sale of the confiscated shares could have been blocked by the Bank, acting under the Syndicate Agreement, even if the shares were not under the Bank's physical control. The CRT therefore concludes that, in this case, an Award is appropriate.

⁴¹ See Letter, dated 3 January 1939 from the Bank to Dr. Bruno Graetz, submitted, pursuant to the January 2005 publication of Account Owner names, in claims from unrelated Claimants to the assets of other Syndicate members.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner that the Syndicate members included her mother, her paternal grandfather, great-uncle, and her aunt, and the Claimant herself, and those relationships justify an Award. Third, the CRT has determined that neither the Syndicate members nor their heirs received the equivalent value of the claimed shares.

The CRT notes that [REDACTED]'s wife, [REDACTED], née [REDACTED], would also be entitled to a portion of his award, but that she did not submit a claim and is not represented in these proceedings.⁴²

Amount of the Award

As set forth in the April 2005 Award, the CRT has considered two measures of liability, both of which come to the same result. One measure of liability would view the Bank as an aider and abettor in the aryanization of ÖZAG through the acquisition of its shares at distress prices. Under such a measure of liability, the Bank, as an aider and abettor, is jointly and severally liable to the sellers for the unjust enrichment obtained by the aryanizer and the Reich in a sale under duress at prices well below the true value of the company. The measure of damages under this view is the difference between the true value of the shares and the compensation actually received by the sellers.

A second measure of liability is based on the view that the Bank's actions in making unauthorized sales of shares and in otherwise unlawfully undermining the Syndicate Agreement constituted a breach of contract and fiduciary duty owed to the members of the Syndicate. Under this view, the Bank is liable to the sellers for damages caused by the breach of contract, measured by the difference between the price actually received and the true price that should have been received if the Syndicate Agreement had not been breached by the Bank (the true market value, calculated without regard to the discriminatory tax proceedings).

As noted above, both measures of liability reach the same result – liability measured by the true value of the ÖZAG shares, as represented by the most recent pre-*Anschluss* sale price of ÖZAG shares as certified by the Vienna stock exchange, that is before the post-*Anschluss* manipulation by the Nazi authorities to depress the share value, less any amounts received by the sellers in connection with the post-war Austrian restitution proceedings as well as amounts documented to have been received from the aryanization proceeds.

The CRT has compared the value of the restitution received with the true value of the shares prior to the *Anschluss*, consistent with the measures of valuation set forth above, with a deduction for any amount released to the shareowners at the time of aryanization. As noted above, the best evidence of the shares' true value is the average of the shares' selling price

⁴² According to the will of [REDACTED], his wife [REDACTED] is entitled to a life estate including any residual property. However, since his wife has not submitted a claim and is not a represented party, the CRT cannot treat her potential entitlement to the shares held by [REDACTED] and other Syndicate members.

immediately prior to the Nazis authorities' effort to manipulate their value. Accordingly, for the purposes of valuation, the CRT considers the value of the shares prior to their devaluation by the tax proceedings. The April 2005 Award sets forth in detail the method by which the CRT determined the value of the ÖZAG shares to have been RM 200.00 (S 300.00) each at the time of the *Anschluss*.

As to the 21,665 shares owned by the Löw family, the CRT notes that, at RM 200.00 per share, these shares would have been worth RM 4,333,000.00, or SF 7,603,548.40 in 1938,⁴³ at the time they were confiscated by Nazi authorities. As noted above, because the Nazi authorities confiscated the shares prior to their sale to Auer, the CRT concludes that the family members did not receive any of the proceeds of this sale. As a result, SF 7,603,548.40 is the value of the shares for which the Löw family was not compensated in 1938. These 21,665 shares represent 30.44 percent of the shares that were restituted and then sold in 1957. The portion of the 1957 sale that corresponds to these shares is therefore SF 6,072,329.49 Swiss Francs, or 30.44 percent of the total S 118.6 million received for the 71,182 shares in 1957. The difference between the 1938 uncompensated value and the value received in 1957 is SF 1,531,218.91. 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 19,140,236.38.

Division of the Award

As noted above, a statement prepared by Dr. Hunna, the Löw family attorney, which was attached as Exhibit 24 to the Perry Report, lists as partners in the firm *Gustav and Wilhelm Löw* in 1938: Gustav Löw, Wilhelm Löw, his daughter, Dr. Marianne Hamburger-Löw and Mrs. Gertrude Löw, the widow of Dr. [REDACTED] (the son of Wilhelm Löw, who died in 1934), together with her children [REDACTED 1], [REDACTED] and [REDACTED 2], who were minors at the time. Each partner held a one-quarter share in the firm, with [REDACTED]'s widow, Gertrude Löw, and her children counting as one partner.⁴⁴ Dr. Hunna's statement also indicates that Wilhelm and Gustav Löw's heirs were Marianne Hamburger-Löw, Gertrude Löw, and her three children. The CRT notes that the 1956 Partial Decision of the Vienna Restitution Commission applied this distribution to the 21,665 ÖZAG shares to come up with a share holding for each of the known surviving heirs. Thus, in that document, Dr. Marianne Hamburger-Löw is indicated as owning one-half of the 21,665 shares, or 19,832½ shares; Gertrude Löw [sic] as owing one-fourth, or 5,416¼ shares; and [REDACTED 1], [REDACTED], and [REDACTED 2] [sic] as each owning one-twelfth, or 1,805 5/12 shares each.⁴⁵ No other documents indicate that the shares were formally held in this manner. The Syndicate Agreement itself indicates that Marianne Hamburger-Löw held 8,329 shares and that Gertrude Löw held 8,300, but it does not specify the ownership of the Löw family shares held in *Credit Industriel*. The CRT therefore applies the reasoning set forth in Dr. Hunna's statement and in its application in the Partial Decision to determine that, after the death of Wilhelm and Gustav Löw, their shares passed equally to Marianne Hamburger-Löw and Gertrude Löw, with Gertrude Löw and her children (and descendants) counting as one. Therefore, the CRT considers

⁴³ In 1938, RM 1.00 was worth SF 1.7548.

⁴⁴ Perry Report, Exhibit 24, p. 1.

⁴⁵ Partial Decision, p. 1.

that Marianne Hamburger-Löw and Gertrude Löw each owned 10,832.5 shares, to be distributed *per stirpes*.⁴⁶

With regard to Marianne Hamburger-Löw's half of the shares, the CRT notes that Marianne Hamburger-Löw's will bequeaths her residual estate to her son, [REDACTED 8], whom the Claimant is representing. Accordingly, [REDACTED 8] is entitled to half the Award amount, or SF 9,570,118.18.

With regard to Gertrude Löw's half of the shares, the CRT notes that Gertrude Löw's will bequeaths her residual estate to her children. Accordingly, the Claimant, who is Gertrude Löw's daughter, and her brother Stephan Low, who is Gertrude Löw's son, are each entitled to one-third of that half of the Award amount representing Gertrude Löw's shares, or SF 3,190,039.40 each. The CRT notes that Gertrude Löw's third child, [REDACTED], is deceased, and that his will placed his residual estate in trust for benefit of his wife during her lifetime and then for his five children. As noted above, the CRT has not received a claim from George Low's widow, Mary McNamara. Accordingly, [REDACTED]'s five children, represented parties [REDACTED 3], [REDACTED 4], [REDACTED 5], [REDACTED 6], and [REDACTED 7], are each entitled to one-fifth of this share of the Award amount (one-thirtieth of the total Award amount), or SF 638,007.88 each.

In summary, the Award amount is divided as follows:

| Party | Award Amount |
|------------------------------|-------------------------|
| Claimant | SF 3,190,039.40 |
| [REDACTED 8] | SF 9,570,118.18 |
| [REDACTED 2] | SF 3,190,039.40 |
| [REDACTED 3] | SF 638,007.88 |
| [REDACTED 4], née [REDACTED] | SF 638,007.88 |
| [REDACTED 5] | SF 638,007.88 |
| [REDACTED 6] | SF 638,007.88 |
| [REDACTED 7] | SF 638,007.88 |
| Total | SF 19,140,236.38 |

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 her claim to determine whether there are additional Swiss bank accounts to which she 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).

⁴⁶ The CRT notes that this method results in the same distribution of the Award amount as that derived from an application of the number of share values attributed to each family member in the Partial Decision.

Certification of the Award

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

Claims Resolution Tribunal
29 December 2006