

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]
also acting on behalf of [REDACTED 3]

in re Accounts of Theodor Kremenezky and August Vinciguerra & Co. GmbH

Claim Numbers: 150111/AV; 500964/AV

Award Amount: 98,750.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the published account of Theodor Kremenezky. This Award is to the published account of Theodor Kremenezky (“Account Owner Kremenezky”) at the Zurich branch of the [REDACTED] (“Bank I”) and to the unpublished account of *August Vinciguerra & Co. GmbH* (“Account Owner August Vinciguerra”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (“Bank II”) (together the “Banks”).

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

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying Account Owner Kremenezky as his paternal uncle, Theodor Kremenezky, who was born to [REDACTED] and [REDACTED], née [REDACTED], on 19 May 1901 in Vienna, Austria, and was married to [REDACTED]. According to Claimant [REDACTED 1], his uncle, who was Jewish, was an executive, and resided at Gustav Tschermangasse 26 in Vienna. Claimant [REDACTED 1] stated that his uncle had a second residence at Fontanastrasse 16 in Chur, Switzerland. Claimant [REDACTED 1] indicated that his uncle was arrested by the Gestapo in 1938 in Vienna, and that he was forced to sign away all his property to secure his release and to receive permission to emigrate from Austria to Palestine. Claimant [REDACTED 1] further stated that his uncle returned to Austria after the end of World War II, and that he died there on 4 November 1973. Claimant [REDACTED 1] indicated that his uncle named *Bank Leu* as the executor of his estate.

In addition, Claimant [REDACTED 1] identified his father as [REDACTED], who was born on 24 April 1890 in Vienna, and was married to [REDACTED], née [REDACTED], in 1920. In a telephone conversation with the CRT on 8 April 2005, Claimant [REDACTED 1] stated that his father, who was Jewish, was an executive at *Johann Kremenezky*, a factory in Vienna founded by Claimant [REDACTED 1]'s grandfather. According to Claimant [REDACTED 1], his father resided in Vienna until 1939, when he fled to France. Claimant [REDACTED 1] stated that his father was subsequently detained in an internment camp in Vichy, France, and that he fled to the United States in 1941. Claimant [REDACTED 1] added that his father and uncle had a third brother, [REDACTED]. Claimant [REDACTED 1] indicated that he had one sibling, [REDACTED], née [REDACTED], who died in 2001.

Claimant [REDACTED 1] submitted his uncle's Last Will, dated 22 May 1970, naming *Bank Leu* as the executor of his uncle's estate, identifying [REDACTED] and [REDACTED 1] as Theodor Kremenezky's brother and nephew, respectively, and naming [REDACTED 1] and his sister, [REDACTED], née [REDACTED], as Theodor Kremenezky's sole heirs. Claimant [REDACTED 1] indicated that he was born on 10 November 1922 in Vienna.

Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying Account Owner Kremenezky as his paternal great-uncle, Theodor Kremenezky, who was born to [REDACTED] and [REDACTED] in Austria. Claimant [REDACTED 2] further identified [REDACTED] as Theodor Kremenezky's brother. Claimant [REDACTED 2] stated that his great-uncles, who were Jewish, had two other brothers, [REDACTED] and [REDACTED], Claimant [REDACTED 2]'s grandfather. Claimant [REDACTED 2] further stated that in 1939, Theodor Kremenezky fled from Austria to Haifa, Palestine, where he worked as an electrical engineer.

Claimant [REDACTED 2] submitted a letter from the Zionist Organization in Italy to the Jewish Agency for Israel, dated 17 January 1939, requesting assistance in acquiring immigration certificates for Theodor Kremenezky of Vienna, as well as a response from the Jewish Agency in Jerusalem, dated 13 February 1939, indicating that Theodor Kremenezky had received immigration documents.

Claimant [REDACTED 2] indicated that he was born on 8 July 1953 in Odessa, the Ukraine. Claimant [REDACTED 2] is representing his mother, [REDACTED 3], née [REDACTED], who was born on 10 July 1923 in the Ukraine.

Information Available in the Banks' Records

Bank I

Bank I's records consist of a list of dormant accounts and a document indicating the transfer of those accounts into a suspense account. According to these records, Account Owner Kremenezky was Theodor Kremenezky. Bank I's records indicate that Account Owner Kremenezky held a custody account, numbered 61041 ("Account 61041"). Bank I's records

indicate that the custody account was transferred on or before 15 April 1953 to a suspense account, and that the custody account was transferred on or before March 1962 from the suspense account to *Bank Leu*. The amount in the account on the date of its transfer is unknown.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of Bank I to obtain additional information about this account (“Voluntary Assistance”). Bank I provided the CRT with additional documents. These documents consist of lists of accounts, and indicate that Account Owner Kremenezky resided in Vienna, Austria, and that he had the title of *Ing.* (“Engineer”). Moreover, these documents indicate further account ownership at Bank I. Specifically, these documents indicate that Account Owner Kremenezky owned an account, numbered 11041 (“Account 11041”), the type of which is not indicated, which was opened on 18 January 1933. Bank I’s records do not show when this account was closed, nor do these records indicate the value of this account. There is no evidence in Bank I’s records that Account Owner Kremenezky or his heirs closed either Account 61041 or Account 11041 and received the proceeds themselves.

Bank II

The CRT notes that the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) did not report an account belonging to Account Owner August Vinciguerra during their investigation of Bank II. The documents evidencing this account were obtained from the Austrian State Archive and are described in detail below.

Information Available from the Austrian State Archive

Theodor Kremenezky

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of Theodor Kremenezky, numbered 60112. These records indicate that he was born on 29 May 1901 and that he lived at Wasagasse 13 in Vienna. According to the records, Theodor Kremenezky fled from Vienna to Milan, Italy, on 8 July 1938, and was assessed “flight tax” (*Reichsfluchtsteuer*) of 300,000.00 Reichsmark (“RM”) on 4 January 1939. Moreover, the records indicate that Theodor Kremenezky’s assets were seized by the Gestapo on or before 25 April 1941. These records make no mention of assets held in a Swiss bank account.

[REDACTED]

The records of the Austrian State Archive (Archive of the Republic, Finance) also contain documents from the 1938 Census concerning the assets of [REDACTED], numbered 28317. These records indicate that he was born on 24 April 1890, that he lived at Beethovenplatz 2 in

Vienna, and that he was a businessman. These records further indicate that [REDACTED], [REDACTED], and Theodor Kremenezky were all heirs of [REDACTED].

In addition, these records indicate that [REDACTED] was the director of *August Vinciguerra & Co. GmbH*, a company located in Vienna, and indicate that [REDACTED] owned a 60 percent share of the company. These records further include the company's 1937 balance sheet, indicating that *August Vinciguerra & Co.* held an account at a Swiss bank. More specifically, this balance sheet indicates that the company owned an account, the type of which is not indicated, at Bank II. This document further indicates that this account had a balance of 138.00 Swiss Francs ("SF") as of 31 December 1937. The records contain no further information regarding the subsequent disposition of the account.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimants in one proceeding.

Identification of the Account Owners

Account Owner Kremenezky

The Claimants have plausibly identified Account Owner Kremenezky. Claimant [REDACTED 1]'s uncle's and Claimant [REDACTED 2]'s great-uncle's name matches the published name of Account Owner Kremenezky. The Claimants identified Account Owner Kremenezky's city and country of residence, and Claimant [REDACTED 2] identified Account Owner Kremenezky's profession, which matches unpublished information about Account Owner Kremenezky contained in Bank I's records. In support of his claim, Claimant [REDACTED 1] submitted his uncle's Last Will, indicating that his name was Theodor Kremenezky. Furthermore, in support of his claim, Claimant [REDACTED 2] submitted letters from the Zionist Organization of Italy and the Jewish Agency for Israel, identifying his great-uncle as Theodor Kremenezky and indicating that he resided in Vienna. These documents provide independent verification that the person who is claimed to be Account Owner Kremenezky had the same name and resided in the same city recorded in Bank I's records as the name and city of residence of Account Owner Kremenezky.

Account Owner August Vinciguerra

The CRT notes that neither of the Claimants identified Account Owner August Vinciguerra. The Claimants have, however, plausibly identified [REDACTED], who was one of the owners of Account Owner August Vinciguerra. Claimant [REDACTED 1]'s father's and Claimant [REDACTED 2]'s great-uncle's name and city and country of residence match the name and city

and country of residence of [REDACTED] as indicated in the files regarding the 1938 Census. The Claimants also identified the names of [REDACTED]'s father and brothers, whose names appear in the records pertaining to [REDACTED]'s 1938 Census. Claimant [REDACTED 1] further specified his father's date of birth, which matches information about [REDACTED] indicated in his 1938 Census records.

The CRT notes that there are no other claims to these accounts.

Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that Account Owner Kremenezky and [REDACTED], who was one of the owners of Account Owner August Vinciguerra, were Victims of Nazi Persecution. The Claimants stated that Account Owner Kremenezky and [REDACTED] were Jewish and resided in Vienna. Claimant [REDACTED 1] indicated that Account Owner Kremenezky was arrested and jailed by the Gestapo, and Claimant [REDACTED 2] indicated that Account Owner Kremenezky fled from Vienna to Palestine in 1939. Moreover, Claimant [REDACTED 1] stated that [REDACTED] fled from Vienna to France in 1939, and that he was detained in an internment camp in Vichy, France. The CRT notes that Account Owner Kremenezky and [REDACTED], who was one of the owners of Account Owner August Vinciguerra, were required to submit information regarding their assets in the 1938 Census.

The Claimants' Relationships to the Account Owners

Account Owner Kremenezky

Claimant [REDACTED 1] has plausibly demonstrated that he is related to Account Owner Kremenezky by submitting specific information and documents, demonstrating that Account Owner Kremenezky was his uncle. These documents include Account Owner Kremenezky's Last Will, indicating that Claimant [REDACTED 1] was his nephew.

Furthermore, Claimant [REDACTED 2] has plausibly demonstrated that he is related to Account Owner Kremenezky by submitting specific biographical information, demonstrating that Account Owner Kremenezky was his great-uncle. The CRT notes that Claimant [REDACTED 2] identified unpublished information about the Account Owner as contained in the Bank's records. The CRT further notes that Claimant [REDACTED 2] submitted letters from the Zionist Organization of Italy and the Jewish Agency for Israel concerning Account Owner Kremenezky's emigration to Palestine. The CRT notes that it is plausible that these documents are documents which most likely only a family member would possess. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that Account Owner Kremenezky was well known to Claimant [REDACTED 2] as a family member, and all of this information supports the plausibility that Claimant [REDACTED 2] is related to Account Owner Kremenezky, as he has asserted in his Claim Form.

There is no information to indicate that Account Owner Kremenezky has surviving heirs other than the party whom Claimant [REDACTED 2] is representing.

Account Owner August Vinciguerra

The Claimants have plausibly demonstrated that they are related to [REDACTED], who was an owner of Account Owner August Vinciguerra, by submitting specific information and documents, demonstrating that [REDACTED] was Claimant [REDACTED 1]'s father and Claimant [REDACTED 2]'s great-uncle. Claimant [REDACTED 1] submitted Account Owner Kremenezky's Last Will, which identifies [REDACTED] as Account Owner Kremenezky's brother. The CRT further notes that the 1938 Census records submitted by [REDACTED] indicate that [REDACTED] and Account Owner Kremenezky were both heirs of [REDACTED]. There is no information to indicate that [REDACTED] has surviving heirs other than the party whom Claimant [REDACTED 2] is representing.

The Issue of Who Received the Proceeds

With respect to Account 11041, given that Account Owner Kremenezky fled from Austria to Italy on 8 July 1938, and subsequently fled to Palestine; that there is no record of the payment of Account Owner Kremenezky's account to him nor any record of a date of closure of the account; that Account Owner Kremenezky and his heirs would not have been able to obtain information about his account after the Second World War from Bank I 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 (h) and (j), as provided in Article 28 of the Rules, the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Kremenezky or his heirs.

With respect to Account 61041, given that the account was transferred from a suspense account to *Bank Leu* sometime between 15 April 1953 and March 1962; that Account Owner Kremenezky was alive during this time period; and that Account Owner Kremenezky named *Bank Leu* as the executor of his estate on 22 May 1970; the CRT concludes that Account Owner Kremenezky received the proceeds of the claimed account.

With respect to the account of unknown type held by Account Owner August Vinciguerra at Bank II, which was identified in the 1938 Census records of [REDACTED], who was one of the owners of Account Owner August Vinciguerra, the facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. Given that the CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime; that [REDACTED] reported the account in the 1938 Census; that [REDACTED] lived in Austria until he fled in 1939, and therefore could not have repatriated the accounts without losing ultimate control over its proceeds; and given the application of Presumption (d), as provided in Article 28 of the Rules, the CRT concludes that it is plausible that the account proceeds were not paid to [REDACTED] or his heirs.

Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of Claimant [REDACTED 1]. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that Account Owner Kremenezky was his uncle and that [REDACTED], who was one of the owners of Account Owner August Vinciguerra, was his father, and those relationships justify an Award. Third, the CRT has determined that it is plausible that Account Owner Kremenezky, [REDACTED] or their heirs did not receive the proceeds of the two accounts of unknown type. Further, the CRT notes that Claimant [REDACTED 1], as Account Owner Kremenezky's sole surviving heir and [REDACTED]'s son, has a better entitlement to the accounts than Claimant [REDACTED 2], [REDACTED]'s great-nephew, or [REDACTED 3], [REDACTED]'s niece, whom Claimant [REDACTED 2] is representing.

Amount of the Award

For purposes of this award, Account Owner Kremenezky owned one account of unknown type. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of an account of unknown type was SF 3,950.00. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a amount of SF 49,375.00.

In addition, Account Owner August Vinciguerra, a company owned in part by [REDACTED], held one account of unknown type. In the 1938 Census declaration submitted by [REDACTED], the value of the account is specified as SF 138.00 as of 31 December 1937. The CRT determines that it is unable to rely on the balance amounts declared in the 1938 Census as it has no evidence regarding the circumstances of [REDACTED]'s declaration. The CRT notes that, as evidenced in a number of cases, [REDACTED] may not have declared all of his assets, or understated their value, in the belief that this might help him safeguard some of them. Pursuant to Article 29 of the Rules, if the amount in an account of unknown type is less than SF 3,950.00, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 3,950.00. In this case, the CRT does not find that the value of the account indicated in [REDACTED]'s 1938 Census declaration constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and concludes that the value of Account Owner August Vinciguerra's account of unknown type shall be determined to be SF 3,950.00. The current value of the amount of the award is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an amount of SF 49,375.00.

Consequently, the total award amount in this case is SF 98,750.00.

Division of the Award

With respect to Account Owner Kremenezky's account, according to Article 23(2)(a) of the Rules, if a claimant has submitted the account owner's will, the award will provide for distribution among any beneficiaries named in the will who have submitted a claim. In this case, Claimant [REDACTED 1] has submitted Account Owner Kremenezky's Last Will, identifying Claimant [REDACTED 1] as Account Owner Kremenezky's heir.

With respect to Account Owner August Vinciguerra's account, according to Article 23(3) of the Rules, if the account owner is a legal or other entity, the award will be made in favor of those claimants who establish a right of ownership to the assets of the entity. In this case, the 1938 Census records pertaining to [REDACTED] establish his right of ownership to the assets of Account Owner August Vinciguerra. Moreover, according to Article 23(1)(c) of the Rules, if the account owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the account owner who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1] is the son of [REDACTED].

Accordingly, Claimant [REDACTED 1] is entitled to the entire award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

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

Claims Resolution Tribunal
23 June 2006