

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to the Estate of Claimant [REDACTED 1]<sup>1</sup>

and to Claimant [REDACTED 2]

## **in re Accounts of Emanuel Thieberger and Irma Thieberger**

Claim Numbers: 600251/WT;<sup>2</sup> 210077/WT<sup>3</sup>

Award Amount: 351,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED 1] (“Claimant [REDACTED 1]”) to the account of Regina Thieberger,<sup>4</sup> and upon the claim of [REDACTED 2] (“Claimant [REDACTED 2]”) to the account of Emanuel Thieberger. This award is to the published account of Emanuel Thieberger (“Account Owner Emanuel Thieberger”) and the unpublished accounts of Irma Thieberger (“Account Owner Irma Thieberger”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

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

## **Information Provided by the Claimants**

### Claimant [REDACTED 1]

The CRT notes that Claimant [REDACTED 1] did not identify the Account Owners in his Claim Form, but did provide information about persons related to the Account Owners. Specifically, Claimant [REDACTED 1] submitted a Claim Form identifying [REDACTED], who was born on

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<sup>1</sup> The CRT has been informed that [REDACTED 1] (“Claimant [REDACTED 1]”) passed away on 9 February 2007.

<sup>2</sup> Claimant [REDACTED 1] submitted a claim, numbered B-00278, on 3 November 1997, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 600251.

<sup>3</sup> Claimant [REDACTED 2] (“Claimant [REDACTED 2]”) submitted one additional claim, which is registered under the Claim Number 501481. In a separate decision, the CRT treated Claimant [REDACTED 2]’s claim to the account of Franz Xavier Taborsky.

<sup>4</sup> In a separate decision, the CRT treated Claimant [REDACTED 1]’s claim to the account of Regina Thieberger.

18 January 1864 in Ostrava, Czechoslovakia (today Czech Republic) and who lived in Vienna, Austria, as his paternal grandmother, and identifying [REDACTED], who was born on 19 January 1884 in Ostrava, as his father. In subsequent correspondence, Claimant [REDACTED 1]'s son [REDACTED], identified Account Owner Emanuel Thieberger as his grandfather's cousin, Dr. Emanuel Thieberger, who was born on 20 September 1890 and was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 1]'s son indicated that his cousin, who was Jewish, was the nephew of [REDACTED] and [REDACTED], and that he worked as an attorney in Vienna, where his wife worked for the Vienna Chamber of Commerce (*Wiener Handelskammer*).

Claimant [REDACTED 1] stated that his grandmother, who was Jewish, lived in Vienna with her husband and five children: Paul (Claimant [REDACTED 1]'s father), Richard, Robert, Helen and Ernst. Claimant [REDACTED 1] explained that his grandmother owned and operated a tailoring and alteration shop in Vienna. According to Claimant [REDACTED 1], his father, [REDACTED], died on 12 September 1928, and in 1939, when Claimant [REDACTED 1] was fourteen years old, his mother was able to secure his emigration to England. Claimant [REDACTED 1] stated that in 1941 his grandmother's business was confiscated, and that on 20 August 1942 his grandmother was deported to Theresienstadt, where she perished on 6 September 1942. Claimant [REDACTED 1] explained that his uncle, Ernst Thieberger, was deported on 8 May 1942 to the ghetto in Minsk, where he perished, and that his aunt Helen Thieberger was deported to Auschwitz, where she perished in 1944.

In support of his claim, Claimant [REDACTED 1] submitted copies of: (1) a letter from the Jewish Association of Vienna (*Israelitische Kultusgemeinde Wien*), dated 17 February 1994, informing [REDACTED 1] that [REDACTED], who was born in 1864, was deported on 20 August 1942 to Theresienstadt, where she perished on 6 September 1942, and [REDACTED], who was born in 1903 and who lived in Vienna, was deported on 8 May 1942 to Minsk; and (2) two pages of testimony submitted in 1994 by Claimant [REDACTED 1] to the Yad Vashem Memorial in Israel, indicating that [REDACTED] and [REDACTED] lived in Vienna, Austria, and that they both perished in the Holocaust.

Claimant [REDACTED 1]'s son submitted copies of genealogical documents compiled by his father, including: (1) handwritten genealogical notes, indicating that Dr. Emanuel Thieberger was born on 20 September 1890 and that he was married to [REDACTED], née [REDACTED], who was born in 1892; and (2) a detailed family tree.

Claimant [REDACTED 1] indicated that he was born on 20 June 1925 in Vienna. Claimant [REDACTED 1] previously submitted an Initial Questionnaire to the Court in 1999 and an HCPO claim form in 1997, asserting his entitlement to a Swiss bank account owned by his grandmother, [REDACTED].<sup>5</sup> The Claimant's son, [REDACTED], has informed the CRT that Claimant [REDACTED 1] passed away on 9 February 2007.

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<sup>5</sup> As noted, the CRT treated Claimant [REDACTED 1]'s claim to the account of Regina Thieberger. See *In re Account of Regina Thieberger* (sent 18 January 2006).

## Claimant [REDACTED 2]

Claimant [REDACTED 2] submitted a Claim Form identifying Account Owner Emanuel Thieberger as his maternal aunt's husband's brother, Emanuel Thieberger, who was married to [REDACTED]. Claimant [REDACTED 2] indicated that Emanuel Thieberger, who was Jewish, was the brother of [REDACTED], who was married to [REDACTED], née [REDACTED], who in turn was the sister of [REDACTED], née [REDACTED] (Claimant [REDACTED 2]'s mother). In a letter to the CRT, Claimant [REDACTED 2] stated that Emanuel Thieberger also had two sisters, [REDACTED] and Irma. Claimant [REDACTED 2] stated that Emanuel Thieberger was a judge and that he resided in Vienna. Claimant [REDACTED 2] explained that, after the incorporation of Austria into the Reich in March 1938 (the "Anschluss"), Emanuel Thieberger fled to China and in 1948 emigrated to Australia, where he was joined by his two sisters, who lived with Claimant [REDACTED 2]. Claimant [REDACTED 2] indicated that Emanuel Thieberger died in Sydney, Australia in 1949.

Claimant [REDACTED 2] submitted copies of: (1) his birth certificate, indicating that he was born on 3 July 1924 and that his mother's maiden name was [REDACTED]; and (2) his mother's marriage certificate with respect to her second marriage, indicating that [REDACTED], née [REDACTED], married [REDACTED] on 28 May 1931, that they resided in Vienna, and that [REDACTED] was a witness to the ceremony.

Claimant [REDACTED 2] indicated that he was born on 3 July 1924 in Baden bei Wien, Austria.

### **Information Available in the Bank's Records**

The Bank's records provided by 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"), consist of a closing register of numbered accounts. According to these records, Account Owner Emanuel Thieberger was Dr. Emanuel Thieberger, who resided in Vienna, Austria. The Bank's records indicate that Account Owner Emanuel Thieberger held a custody account, numbered GE 2700. The Bank's records indicate that the account was closed and the proceeds transferred to the Vienna branch of the *Reichsbank* on 16 February 1939.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT requested the voluntary assistance of the Bank to obtain additional information about this account ("Voluntary Assistance"). The Bank provided the CRT with additional documents. These documents consist of power of attorney forms, a customer card, and a contract for the opening of a custody account. These documents indicate that Account Owner Emanuel Thieberger resided at Seitzergasse 1, Vienna, as of 21 June 1928. These records also indicate that *Fraülein* (Miss) Irma Thieberger, a professor who as of 21 June 1928 resided at Maticegasse 2, Ostrava, Czechoslovakia (today Czech Republic), held power of attorney over Account Owner Emanuel Thieberger's custody account.

These records also show that Account Owner Irma Thieberger owned a custody account, numbered 32667, and a demand deposit account, over both of which Account Owner Emanuel Thieberger held power of attorney. The Bank's records do not show the opening dates of these two accounts. The records further indicate that custody account 32667 was closed on 30 April 1938, and that the demand deposit account was closed at some time before 30 April 1938.

With respect to all of the accounts described above, the amounts in the accounts on the date of their closure are unknown. There is no evidence in the Bank's records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

### **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 Dr. Emanuel Thieberger, numbered 33354, [REDACTED], numbered 41908, and [REDACTED 1] (the Claimant), numbered 10351..

With regard to Dr. Emanuel Thieberger, the records contain Emanuel Thieberger's declaration of assets, signed in Vienna on 6 July 1938. According to his asset declaration, Emanuel Thieberger was born on 20 September 1880, was a retired judge and pensioner, and resided with his wife, [REDACTED], née [REDACTED], at Währinger Gürtel 135 in Vienna XVIII. The records regarding [REDACTED] indicate that he was born on 8 December 1895, was married to [REDACTED], née [REDACTED], and that they resided at Stiftgasse 15, Vienna VII. The records regarding [REDACTED 1] indicate that he was born on 20 June 1925, was a student, and that on 13 July 1938, his legal guardian declared the value of a trust established for him which consisted of shares of *Thieberger & Co.*, Dresdenerstrasse 88, Vienna.

None of these records mention of assets held in a Swiss bank account.

### **The CRT's Analysis**

#### Joinder of Claims

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

## Identification of the Account Owners

### *Claimant [REDACTED 1]*

Claimant [REDACTED 1]'s father's cousin's name, city and country of residence match the published name, city and country of residence of Account Owner Emanuel Thieberger. Claimant [REDACTED 1]'s son identified Account Owner Emanuel Thieberger's profession and professional title, which matches information contained in the records from the Austrian State Archive. The CRT notes that Claimant [REDACTED 1] submitted two Pages of Testimony to the Yad Vashem Memorial in 1994, indicating that relatives of Emanuel Thieberger resided in Vienna, which matches the published city of residence of Account Owner Emanuel Thieberger. Additionally, the CRT notes that Claimant [REDACTED 1] indicated that both his grandmother and father were born in the town of Ostrava, which matches the unpublished city of residence of Account Owner Irma Thieberger.

The CRT notes that Claimant [REDACTED 1]'s handwritten genealogical notes indicate that Emanuel Thieberger was born on 20 September 1890, whereas that the records from the Austrian State Archive indicate that Account Owner Emanuel Thieberger was born on 20 September 1880. However, the CRT determines that this variation in the year of Account Owner Emanuel Thieberger's birth does not adversely affect Claimant [REDACTED 1]'s identification of Account Owner Emanuel Thieberger.

The CRT further notes that Claimant [REDACTED 1] did not identify Account Owner Irma Thieberger. However, as noted above, Claimant [REDACTED 1] definitively identified Account Owner Emanuel Thieberger, Account Owner Irma Thieberger's brother. Further, the CRT notes that Claimant [REDACTED 1] passed away in 2007 and therefore could not be questioned about additional family members that he did not name in his original claim form.

### *Claimant [REDACTED 2]*

Claimant [REDACTED 2] has plausibly identified the Account Owners. The name, city and country of residence of Claimant [REDACTED 2]'s aunt's husband's brother match the published name, city and country of residence of Account Owner Emanuel Thieberger. Claimant [REDACTED 2] also identified Account Owner Irma Thieberger, which matches the unpublished name of Account Owner Irma Thieberger contained in the Bank's records.

## Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. Claimant [REDACTED 1] stated that Account Owner Emanuel Thieberger was Jewish and that he lived in Austria after the *Anschluss*. Additionally, Claimant [REDACTED 2] stated that the Account Owners were Jewish, and that Account Owner Emanuel Thieberger fled to China after 1938 to escape Nazi persecution. The CRT further notes that Account Owner Emanuel Thieberger was required to register his assets pursuant to the 1938 Census.

The CRT notes that neither of the Claimants presented precise information about Account Owner Irma Thieberger's fate other than the fact that she joined her brother, Account Owner Emanuel Thieberger, in Australia in 1948.

### The Claimants' Relationship to the Account Owners

#### *Claimant [REDACTED 1]*

Claimant [REDACTED 1] has plausibly demonstrated that he is related to Account Owner Emanuel Thieberger by submitting handwritten genealogical notes and a detailed family tree, indicating that Account Owner Emanuel Thieberger was his father's cousin. The information provided by Claimant [REDACTED 2] indicates that the Account Owners were siblings. Therefore, the CRT concludes that Claimant [REDACTED 1] has also plausibly demonstrated that he is related to Account Owner Irma Thieberger.

#### *Claimant [REDACTED 2]*

Claimant [REDACTED 2] has plausibly demonstrated that he is related to the Account Owners by submitting specific biographical information demonstrating that Account Owner Emanuel Thieberger was the brother of Claimant [REDACTED 2]'s maternal aunt's husband and that Account Owner Irma Thieberger was Account Owner Emanuel Thieberger's sister.

The CRT further notes that Claimant [REDACTED 2] submitted a copy of his mother's marriage certificate, which was witnessed by her brother-in-law, [REDACTED], providing independent verification that Claimant [REDACTED 2]'s relatives bore the same family name as the Account Owners and that they resided in the same city as Account Owner Emanuel Thieberger. The CRT also notes that this document and Claimant [REDACTED 2]'s birth certificate indicate that his mother's maiden name was [REDACTED]. This matches the maiden name of [REDACTED], who is listed as [REDACTED]'s spouse in the 1938 Census records and is consistent with Claimant [REDACTED 2]'s statement that he is related to the Account Owners through the marriage of his mother's sister, [REDACTED], née [REDACTED], to [REDACTED], who was the Account Owners' brother.

There is no information to indicate that the Account Owners have other surviving heirs.

### The Issue of Who Received the Proceeds

With regard to the custody account held by Account Owner Emanuel Thieberger, the CRT notes that the Bank's records indicate that the account was closed and the proceeds were transferred to the *Reichsbank* on 16 February 1939.

With regard to custody account 32667 and the demand deposit account held by Account Owner Irma Thieberger, the CRT notes that the Bank's records indicate that custody account 32667 was closed on 30 April 1938 and that the demand deposit account was closed on some date before 30 April 1938, at which time, according to information provided by Claimant [REDACTED 2], Account Owner Irma Thieberger may have been outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the accounts were closed; that Account Owner Emanuel Thieberger held power of attorney over these accounts and that, according to information contained in the Austrian State Archive, he resided in Austria after the *Anschluss*; that Account Owner Emanuel Thieberger fled his country of origin due to Nazi persecution; that Account Owner Irma Thieberger had relatives remaining in her country of origin and that she may therefore have yielded to Nazi pressure to turn over her accounts to ensure their safety; that Account Owner Irma Thieberger and her heirs would not have been able to obtain information about her accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Irma Thieberger, the Power of Attorney Holder, or their heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

#### 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 Emanuel Thieberger was his father's cousin, and that Account Owner Irma Thieberger was Account Owner Emanuel Thieberger's sister, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners nor their heirs received the proceeds of the claimed accounts.

Further, the CRT notes that Claimant [REDACTED 1], as the Account Owners' cousin, has a better entitlement to the accounts than Claimant [REDACTED 2], who is the son of Account Owner Emanuel Thieberger's brother's sister-in-law and who is therefore related to the Account Owners by marriage only.

#### Amount of the Award

In this case, Account Owner Emanuel Thieberger held one custody account, and Account Owner Irma Thieberger held one custody account and one demand deposit account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00, and the average value of a demand deposit account was SF 2,140.00. Thus, the combined 1945 average value for the three accounts at issue is SF 28,140.00. The

current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 351,750.00.

#### Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. In this case, Claimant [REDACTED 1] is the cousin of the Account Owners. Accordingly, Claimant [REDACTED 1] is entitled to the total award amount. As noted above, Claimant [REDACTED 2] is not entitled to share in the award.

#### **Certification of the Award**

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

Claims Resolution Tribunal  
21 December 2009