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To the Regional Court

Restitution Chamber

Fürth

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The Joel Company up to the confiscation.

The now 62-year-old applicant, born in Bavaria and of full Jewish descent, founded —based on his decades of business experience in the textile sector— several years before the beginning of National Socialist rule a mail-order textile business under the company name “Wäsche-Manufaktur Karl Joel” in Nuremberg on the premises at Muggenhofstraße 26.

Thanks to the applicant’s technical expertise and commercial skill, the enterprise developed—after several years of building up and expanding—into an extraordinarily large operation.

Mail-order textile sales on a cash-on-delivery basis were, and still are, carried out only by a few large companies, because their organizational and commercial principles are compatible only with a large and geographically wide-ranging customer base. In Bavaria, the well-known firm Witt in Weiden stood—and still stands today—at the top of this sector. Alongside it, until the confiscation, the applicant’s company as well as the firm “Weberei-Fabrikate Ignaz Mayer” belonged to the leading businesses. There existed close, friendly business relations with the Mayer firm. Its Aryanization, which took place around the same time, was the subject of a restitution procedure before the same chamber and was settled by a settlement involving an additional payment of 500,000 DM.

Today, the successor business of the applicant—operated by the respondent in Frankfurt under the firm “Neckermann-Versand K.G.”, explicitly designated and advertised as such—is likewise one of the largest enterprises in this line of business.

To understand the actual course of events, as well as to assess the business value correctly, it is necessary to consider the particular features of the mail-order textile business.

Mail-order textile businesses have a characteristic pattern of development.

A brick-and-mortar shop with local clientele can count on a certain customer base from the moment it opens. Customers see the shop with its presentation and its displayed goods before their eyes. The mail-order business, on the other hand, advertises in writing through its price lists with promotional text, supported by illustrations of the goods on offer. Compared to a shop, the sale of goods—once underway—can be organized far more economically. There is no idle time in the form of shop personnel waiting for customers, especially during quieter business hours. Orders come in writing and can be fulfilled with an even workload and with the most efficient use of working hours.

The core of the business and its profitability depend above all, on the sales side, on first building up a certain customer base.

Since this must be achieved without the persuasive power of the immediate visual impression of the goods, it is initially not easy to reach customers in competition with the direct offer of the local store. The illustrations in the price lists do not replace the impact of seeing the goods in natura as customers see them in shop windows and displays.

Also, the fact that the goods can be priced cheaper due to lower selling expenses, compared to those in the local shop, only convinces customers once they have

confirmed through one or several initial purchases that the goods—despite being ordered and delivered from afar—are good, affordable, and meet their expectations.

Under these circumstances, it must take quite some time—at least several years—until a certain customer base is secured. During these first years, large expenditures must be made for customer acquisition. The business becomes profitable only at a very considerable expansion of the customer circle, which must go far beyond that of a normal local retail business. This is also necessary to enable favorable purchasing conditions.

The mail-order business belongs to the types of business with rapid turnover. The business capital repeatedly passes through the phases of purchasing and selling in quick succession; thus, turnover is in a favorable ratio to capital. Consequently, the business value must be calculated at a high multiple of profit, since profit can be generated by rapid and frequent turnover from relatively little capital. It is a branch of business in which energy, and at the same time efficient and economical organization, are particularly essential.

The applicant's enterprise first had to pass through the described years of building up the customer list and developing favorable supplier relationships. Then came the point at which the company prospered.

The applicant now succeeded in creating, through particularly favorable purchases, the conditions for further advantageous business development. These purchases were made partly in cooperation with the friendly firm Mayer. Indeed, the value of such a business rests upon the management's ability to arrange such purchases and on the good organization of the business that enables favorable purchasing.

The applicant possessed exceptionally favorable sources of supply. Apart from the supplying spinning mills and weaving mills, the applicant had a number of

contractors who produced finished goods exclusively for him.

He mainly purchased raw materials, had them finished, bleached, and printed, then largely had them made up, and delivered the finished goods to customers. He produced a significant part of his goods in his own factory in Nuremberg.

Cf. the relevant information in the annex “Financial Status of the Joel Company at the Time of Confiscation.”

From this overview of its financial status emerges the scale which the business had reached by the time of Aryanization.

Even without factoring in the goodwill—which in this line of business plays an especially important role—the business value consisting solely of goods, machines, other inventory, and cash capital (including receivables) amounted to more than 3½ million marks. The goodwill, understandably difficult to quantify numerically, must be estimated on its own at several million marks. This follows, among other things, from the multiple valuations—including official ones—made in the mentioned restitution proceedings *Mayer vs. Schickedanz*, which reach as high as 9.1 million RM. The value of the two friendly companies, Joel and Mayer, was to be assumed in roughly the same order of magnitude with respect to inventory, equipment, and customer base.

The issue of goodwill valuation will be returned to later.

Goodwill rests essentially on two factors: a sufficiently large customer list on the one hand, and favorable supplier relationships on the other—confirmed, for example, by the fact that suppliers grant turnover bonuses to encourage a mail-order business to concentrate its purchasing with one supplier. “Goodwill” may be taken literally as the good will of suppliers to supply favorably—or in times of scarcity to supply at all—and the good will of customers to buy.

Every acquired customer becomes in effect an asset. The company strives to retain the customer through accommodating service and to keep him connected to the firm with constant advertising material. He in turn recommends the company within his circle of acquaintances. The hundreds of thousands of customers form the “customer list”—the most valuable asset and the essential core value of a mail-order business.

The applicant established both prerequisites of goodwill with outstanding success in the first years of his enterprise. Favorable purchasing conditions at suppliers and occasional especially advantageous purchases gave the business a foundation that withstood the difficulties that arose after 1933.

However, the refusal by many foreign suppliers to do business with Germany, as well as the increasing claim of foreign currency for armament, along with the shift in domestic production for these purposes, made the procurement of raw materials and semi-finished products increasingly difficult.

The introduction of quotas became necessary and complicated the business.

****II.**

Persecution and confiscation**

The applicant soon recognized that continuing such a large Jewish enterprise in the city of Streicher and the Party Rallies was not advisable. In 1934, he moved his main business to Berlin, into the premises of the Bergmann-Electrical Works (the property owner was the company “Osram”). The manufacturing operation associated with the company remained in Nuremberg as a branch of the Berlin enterprise. Joel lived in Berlin-Charlottenburg in a villa he had purchased at Tannenberg-Allee 2–4; its restitution is among the items registered in Berlin.

In 1935, the applicant was temporarily arrested along with other Jewish businessmen acquaintances. Early on, attempts at boycotting also began. Thus, parcels of goods sent to customers were marked with the word “Jew” during postal transport.

In the general process of Aryanization, the applicant too had to look for a buyer for his business who was acceptable to the NSDAP.

This purchaser was arranged by the bank Hardy & Co. in Berlin. It informed the applicant that it had a buyer recommended by the Reichskreditgesellschaft, namely Richard Brückner, the father-in-law of the respondent Neckermann.

In May 1938, a meeting took place at Hardy Bank between Brückner, the applicant, his syndicate lawyer Dr. Loeb, and a bank director.

All essential matters, especially the value and profitability of the business, were discussed. A new appointment was set for mid-June 1938. At this meeting, besides the persons previously mentioned, there was also an attorney for the bank who drafted the contract. Only now did it become apparent that not Brückner but Neckermann was the buyer. The applicant still did not know him personally. The applicant was instructed to prepare a balance sheet for determining the purchase price to be deposited. He did so with the balance sheet dated June 23, 1938. The purchase agreement was written down at the mid-June meeting.

Brückner bargained the inventory value down by 100,000 RM and demanded a 5% discount on all goods, which the applicant accepted out of necessity.

Contract and balance sheet are submitted.

According to §4 III/3 of the contract, the buyer was required to promptly examine the prices of the goods. §13 stated that by August 1, 1938, either the self-debtor guarantee of Hardy & Co. bank or confirmation of deposit and blocking of the amount had to be provided.

This agreement was made and written in the presence of the bank representative. Although prompt signing of the contract fixed in mid-June had been agreed upon, three weeks passed before Neckermann appeared—under pressure—to sign. The signing by both parties took place on July 11, 1938. Neckermann, however, made no attempt to examine the balance sheet or the prices or quantities or any other details of the balance sheet. Joel therefore assumed that he agreed with the details and had no objections. The balance sheet had been prepared in the most correct manner by the staff on the basis of the stock books and other business records, without Joel himself influencing it—except that he coordinated the prices with the department heads in accordance with the official fiber-price regulations of June 23, 1938, the balance-sheet date.

Prices at that time were rising, so that some adjustments upwards had to be made, but strictly within the fiber-price regulations, which the applicant as a Jew was always extremely careful to observe exactly.

These were relatively minor corrections, which over the entire inventory of 4½ million RM could hardly have exceeded 100,000 RM—about 2%. In some cases, prices even had to be reduced.

The price control under the fiber-price regulations was the responsibility of an employee entrusted with this task.

As the deadline of August 1, 1938 drew nearer, and Brückner—who lived in Berlin and had conducted all negotiations up to then—had not been heard from, Joel called him and stressed especially the timely deposit or bank guarantee.

Brückner then visited Joel and admitted that he had only part of the money available. How much, he did not say.

In reality, he and Neckermann had only very small amounts at their disposal—completely disproportionate to the business value of several millions. As already stated in an earlier brief, the then only mid-twenties Neckermann had almost no assets.

He was unfamiliar with the industry and had only gained some capital through a smaller Aryanization in the textile sector. Nonetheless, he boldly undertook this Aryanization of a giant enterprise, without giving any thought to raising the purchase price, trusting that the Jew Joel could not escape the forced sale anyway.

Joel was indeed in the inescapable situation of having to make this sale, without having any means to enforce the security of the purchase price stipulated in §13.

He asked Brückner at least to deposit the portion of the amount allegedly already available. The sale had already been submitted to the competent National Socialist authorities and was proceeding without regard to whether the expropriated Jew received his money or not. As Brückner and Neckermann were, of course, fully aware under the circumstances, Brückner gave the applicant, in response to his request for at least partial deposit, the cold answer:

“Why are you making us so many difficulties about the deposit? It would be much better not to insist on the deposit but to look to your own safety.”

Since Neckermann—even with the help of Brückner and other relatives—could raise only about 2.5% of the total value of the enterprise, the execution of the contract was postponed as much as possible and §13 simply ignored. Neckermann relied on being the party-approved buyer and that the company would, in any case, fall into his lap. How favored he was is shown by subsequent developments, in which the still very young Neckermann was entrusted with extensive responsibilities in the war economy.

Reference is made to the report of the Süddeutsche Treuhand-Gesellschaft of July 10, 1950, especially page 9, which discusses the extensive integration of the Aryanized company into the war economy.

Alongside the Aryanized Joel firm, which was in the hands of Neckermann, the other significant partner in establishing the “Central Warehouse Association” (ZLG) for those purposes was the major Hertie concern—then Aryanized as the Clothing Trade Corporation. Yet, not that partner, but the young Neckermann, was the managing director. The report states that, according to a decree of the Reich Commissioner for Clothing and Related Sectors of December 9, 1941, the ZLG “was to be run according to the instructions of Mr. Neckermann as representative of the Reich Agency.”

Such important duties, particularly in supplying labor deployment in the East, would never have been assigned to a man lacking excellent connections to key Party authorities.

Also characteristic is the major diamond transaction conducted later by the ZLG on behalf of the Reich Ministry of Economics: almost 13,000 carats of diamonds at a purchase price of nearly 5 million RM were acquired. (See pp. 22–24 of the report of July 10, 1950.)

Given the obviously strong position of the buyer, Neckermann, with the authorities, the applicant realized that he had little hope of receiving even a small part of the purchase price. He correctly interpreted Brückner’s brutal hint as meaning that he was in immediate personal danger.

He brought himself to safety in Switzerland on August 13, 1938, but from there still tried to obtain at least some compensation. He had, however, to proceed with greatest caution and restraint, because his mother, his mother-in-law, and other relatives of both spouses were still in Germany. They all perished (seven relatives in total), and

the applicant at least need not reproach himself today for having harmed them by forcefully asserting his purchase-price claim.

Although Neckermann and Brückner obviously never had any intention from the start of paying even a small amount for the multi-million-mark business, they nonetheless reduced the already low price—containing not a penny for goodwill—by every possible means.

For example, machines and equipment acquired since 1934 had, according to the tax office report, a purchase value of 440,000 RM. The substantial acquisitions from before 1934 were not even considered. The applicant was content to demand 300,000 RM from the buyer. The latter pushed the amount down to 200,000 RM, and the tax office also assessed it accordingly. The acquisitions of 1934 alone must be estimated at about 200,000 RM, as shown in earlier balance sheets.

A total value truly doing justice to the facts would certainly not have been too high at 600,000 RM.

However, the final valuation of this valuable inventory was made at the absurd sum of **5,300 RM**—thus about 600,000 RM too little—in any case only a tiny fraction of its true value.

The applicant's compliance with the "advice" to consider his safety—which he followed by emigrating—had yet another consequence: in his absence, his attorney Fritz Tillmann had to agree, on August 30, 1938, to an addendum to the purchase contract with Neckermann, which significantly worsened the contract for Joel.

The addendum to §4 of the original contract included the aforementioned valuation of the inventory at only 5,300 RM, and further stipulated that the warehouse goods be credited only at the lowest invoiced prices, and for goods whose prices had

meanwhile fallen, only at current prices, on which a 15% discount was then to be granted; for difficult-to-sell goods, a discount of 30–40% was to be granted.

Under §6—originally providing for payment of the purchase price concurrently with takeover of the business—it was now agreed that 500,000 RM would be withheld because claims from third parties against the successor might be expected.

The remainder of the addendum contained further disadvantages for the applicant, in particular concerning termination payments to employees to be borne by him, the expense allowance for the transitional period, the bank commission, and the commission for attorney Tillmann—who in fact represented Neckermann’s interests.

Thus, absurdly, Joel was charged with the bank commission, although he never received a single penny of the purchase price on which the commission was calculated. For details of §§7–14 as altered by the addendum, reference is made to the compilation “The Unjustified Reductions of the Purchase Price by the Addendum, §§7–14.”

The letters from Joel and his Swiss attorney of November 24, 1938, and December 23, 1938, respectively, merely resulted in Neckermann responding to the first with a letter dated December 14, 1938, which in every line shows his proud awareness of being protected against any legitimate claim from Joel and unassailable by him. Although he himself speaks of Joel’s “flight abroad,” he begins the letter with the mocking advice to “personally appear here in the next few days in this matter.” This letter—already cited in the brief of September 15, 1951—is enclosed.

Characteristic details of how the Aryanization balance sheet came about also emerge from the enclosed excerpts from letters from Wunderlich to Joel dated Oct. 7, 1946; Jan. 3, 8, 14, and Feb. 24, 1948. Wunderlich was a long-standing employee of the

applicant and, after the war, administered the ZLG as trustee for some time until replaced by the current trustee, Attorney Dr. Schönherr.

Today, as far as is known, Wunderlich is employed at Neckermann.

For details of the financial status and business value at the time of Aryanization, reference is made to the accompanying compilation “Financial Status of the Joel Company at the Time of Confiscation,” the Aryanization balance sheet underlying the purchase contract, and the examination report of the Tax Office Wedding based on the audit order of November 16, 1938, on the occasion of the Aryanization. Earlier balance sheets and a 1937 auditor’s report are also available.

Particularly noteworthy concerning the manner of asset valuation are the following points:

The two motor vehicles in Nuremberg were expressly excluded from the sale under §2 II of the contract. Neckermann nevertheless took possession of them.

Under §3, it should be noted that the bank debts of about 200,000 RM were paid by the applicant before his departure. According to the agreement with Hardy, the credit was not due until August 15, 1938. As the purchase contract was not honored by Neckermann, the applicant decided to settle this correctly himself before leaving.

Under §4(3), Joel had been told verbally to clear out all somewhat less marketable items. He did so, selling the few relevant items very cheaply. They were cleared by early August 1938 in the form of so-called remainder parcels (“Restepakete”), as Wunderlich will have to confirm.

Nevertheless—and although under the then-existing scarcity of goods every business was glad to have any goods left in stock—a multiple-deduction procedure was applied to the valuation.

First, the 25% lower 1937 balance-sheet prices were used; then a special discount of 30–40% was deducted; and then again the general 15% deduction. Thus, undervaluations of almost two-thirds below true value resulted.

Further detail on this crucial issue of valuation and technical details of the valuation method is reserved. The entire process amounted to systematic undervaluation using all available means. The true value of goods on August 30, 1938 was **3,905,855 RM**, not **2,240,769 RM**, as “taken over” by Neckermann.

The goodwill, however, was entirely disregarded. And the applicant received not a single penny.

It may also be noted that Neckermann greatly enriched himself with the furnishings of the applicant’s villa, valued at 200,000 RM. A small portion, yielding just under 20,000 RM, was auctioned. The greater part Neckermann “placed in safekeeping” and had, after the auction, in his apartment—that is, in Joel’s former apartment. This is reported by Wunderlich in the aforementioned letters. In a letter of March 1947, Neckermann himself admitted to Joel that he had removed the items to protect them from auction. Incidentally, insofar as the items were valuable (which was almost all of them), they were in a locked room to which Tillmann had the keys. There are several witnesses and written evidence of this.

For developments since the Aryanization, reference is made to the statements in earlier briefs, subject to further summary and supplementation.

Attachments:

Purchase contract of July 11, 1938

with addendum of August 30, 1938

Overview “Financial Status of the Joel Company at the Time of Confiscation”

Overview “The Unjustified Reductions of the Purchase Price Through the Addendum,

§§7-14”

Compilation “Excerpts from Letters of Wunderlich to Joel”

Copy of Neckermann’s letter to Joel of December 14, 1938.