

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] and [REDACTED 3]
represented by Von Trott Zu Solz Lammek Rechtsanwälte

and to Claimant [REDACTED 4]

in re Accounts of *H. Aufhäuser Bankgeschäft* and Martin Aufhäuser

Claim Numbers: 400346/AV; 501392/AV; 501483/AV¹

Award Amount: 1,436,538.13 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) to the published account of H. Aufhäuser (“Account Owner H. Aufhäuser”) at the Zurich branch of the [REDACTED] (“Bank I”), to the unpublished accounts of Account Owner H. Aufhäuser at the [REDACTED] (“Bank II”), to the published account of Martin Aufhäuser (“Account Owner Martin Aufhäuser”) (together the “Account Owners”) at Bank II, and to the unpublished account of Account Owner H. Aufhäuser at [REDACTED] (“Bank III”) (together the “Banks”).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 owner, and the banks have been redacted.

Information Provided by the Claimants

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted two Claim Forms identifying Account Owner Martin Aufhäuser as his father, *Geheimrat* (privy counselor) Martin Aufhäuser, who was born on 26 June 1875 in Munich, Germany, and was married to [REDACTED], née [REDACTED], in Munich. Claimant [REDACTED 1] stated that his parents had two other children, who are deceased: [REDACTED], née [REDACTED], who was born on 16 March 1902 in Munich, and

¹ [REDACTED 4] (“Claimant [REDACTED 4]”) submitted additional claims to the accounts of Friedrich Regenstein, Louis Ortlieb, Ellen Rose Illich, Piero Illich, and Alice Weiss, which are registered under the Claim Numbers 501364, 501373, 501382, 501398, and 501407, respectively. The CRT will treat the claims to these accounts in separate decisions.

[REDACTED], who was born on 29 October 1905 in Munich. Claimant [REDACTED 1] further stated that his father, who was Jewish, resided at Maria-Theresia-Strasse 28 in Munich.

In addition, Claimant [REDACTED 1] identified Account Owner H. Aufhäuser as *H. Aufhäuser*, a bank co-owned by his father. Claimant [REDACTED 1] stated that the bank was founded by his paternal grandfather, Heinrich Aufhäuser, and was located at Löwengrube 18-20 in Munich. According to Claimant [REDACTED 1], his father's bank was a leading private bank in Germany and had investments abroad. Claimant [REDACTED 1] explained that after the Nazis came to power, his father became a central figure in the attacks on Jewish businesses. Claimant [REDACTED 1] indicated that his father was arrested in 1938 and held in the Dachau concentration camp. Claimant [REDACTED 1] stated that his father was forced to sign over his bank and most of his private assets to secure his release. Claimant [REDACTED 1] further stated that his father fled from Germany to the United States in 1940. Claimant [REDACTED 1] indicated that his father died on 21 January 1944 in Los Angeles, California, the United States.

In support of his claim, Claimant [REDACTED 1] submitted the contract by which ownership of the bank *H. Aufhäuser* was transferred from Martin Aufhäuser and [REDACTED] to a new group of owners, including Friedrich Seiler, on 14 November 1938. The contract further indicates that the bank's name was changed to *Seiler & Co.* The contract indicates that Martin Aufhäuser's credit balance at the bank upon his withdrawal (*Ausscheidungsguthaben*) amounted to 1,786,972.80 Reichsmark ("RM"), of which RM 1 million was being extended as a loan to *Seiler & Co.*, the balance being deposited in a special account ("*Sonderkonto*") with *Seiler & Co.* The contract further specifies that Martin Aufhäuser had assumed personal liability for the value of the securities portfolio, the real estate holdings and for a designated list of debtors meeting their capital and interest liabilities to the bank in the amount of RM 588,594.80 and also for another set of debtors meeting their interest liabilities amounting to RM 198,278.00.

Claimant [REDACTED 1] further submitted a financial report on *Seiler & Co.*, dated 11 January 1939, indicating that *H. Aufhäuser* became *Seiler & Co.* through the aryanization process, identifying Martin Aufhäuser as a previous owner of the bank, and indicating that he resided at Theresienstrasse 28 in Munich. This report further indicates that as of 14 November 1938, Martin Aufhäuser's assets totaled RM 3.4 million, including his loan to *Seiler & Co.*, real estate valued at RM 240,550.00, securities valued at RM 582,004.90, a share in the company *Eiswerke München* valued at RM 13,663.00, and other bank accounts valued at RM 9,237.61.

In addition, Claimant [REDACTED 1] submitted a claim filed with the Bavarian Restitution Authority ("*Bayerisches Landesentschädigungsamt*") in 1967 on behalf of Martin Aufhäuser's heirs. This claim indicates that Martin Aufhäuser owned a 47.5 percent share of *H. Aufhäuser* prior to its aryanization. Furthermore, this claim refers to a previous restitution proceeding involving Martin Aufhäuser's heirs and the bank, which took place in 1957 and in which a 40 percent share of the bank as it existed in 1957 was restituted to Martin Aufhäuser's heirs.

Finally, Claimant [REDACTED 1] submitted an inheritance document pertaining to property of his father located in Germany, indicating that Martin Aufhäuser resided in Munich, that he was a banker, and that his children were [REDACTED 1], [REDACTED], and [REDACTED], née [REDACTED].

Claimant [REDACTED 1] indicated that he was born on 24 August 1912 in Munich. Claimant [REDACTED 1] is representing his sister-in-law, [REDACTED 2], née [REDACTED], who is the widow of Claimant [REDACTED 1]’s brother, [REDACTED]; and his nephew, [REDACTED 3], who is the son of Claimant [REDACTED 1]’s sister, [REDACTED].

Claimant [REDACTED 4]

Claimant [REDACTED 4] submitted a Claim Form, identifying Account Owner H. Aufhäuser as *H. Aufhäuser*, a bank owned by her father’s maternal great-uncle, Martin Aufhäuser, who was married to [REDACTED], née [REDACTED]. Claimant [REDACTED 4] further identified Account Owner Seiler as *Seiler & Co.*, the name taken by *H. Aufhäuser* after the bank was aryanized. Claimant [REDACTED 4] indicated that she was born on 27 May 1957 in New York, New York, the United States.

Research Conducted by the CRT

According to a survey of aryanized Jewish businesses in Munich, Germany by Wolfram Selig (“Selig”), *Bankhaus H. Aufhäuser* was located at Löwengrube 18-20 in Munich, Germany, and was one of the most distinguished private banks in Munich.² According to Selig, the bank was founded in 1870 by Heinrich Aufhäuser, and Martin Aufhäuser later joined as a general partner in 1918. Other partners of the bank included [REDACTED] and Emil Krämer. Until the Nazis came to power in 1933, the owners of *Bankhaus H. Aufhäuser* sat on the boards of several major German corporations and were patrons of civic institutions such as the local university and the *Deutsche Museum*. As a result of the economic crisis in Germany and the effects of the rise of the Nazi regime, the bank’s assets were reduced from a high of RM 107 million in 1927 to RM 25 million in 1938.

Selig notes that, in August 1938, the city of Munich issued an order for the bank to be aryanized. After initial efforts to resist the aryanization process, Martin Aufhäuser and [REDACTED] began negotiations on an aryanization plan that would have preserved some role for them in the management of the bank. Two days before the “Night of Broken Glass” pogrom (*Kristallnacht*), a deal was struck by which the general partnership would transfer from Martin Aufhäuser, [REDACTED], and Emil Krämer to Friedrich Wilhelm Sailer [sic], a private banker from Hamburg, and Josef Bayer, a long-time employee of the bank.³ This plan also called for Martin Aufhäuser to remain as a limited partner and for the name to remain *Bankhaus H. Aufhäuser*. On *Kristallnacht*, 9 November 1938, this plan came undone as a Nazi mob destroyed the bank building in Munich. On 10 November 1938, Emil Krämer and his wife committed suicide, and Martin Aufhäuser was incarcerated at the concentration camp at Dachau.⁴ The Gestapo seized Martin Aufhäuser’s jewellery and art, which was valued at RM 150,000.00. On 12 November

² Selig, Wolfram, “Arisierung” in *München: Die Vernichtung jüdischer Existenz 1937-1939*, 657 (2004) (hereinafter “Selig”).

³ The CRT notes that Selig spells the name “Sailer,” while the records submitted by the Claimant, the official records available from the State Archive in Munich, and the Banks’ documents all show the name as “Seiler.”

⁴ Selig, at 659. See also *Unabhängige Expertenkommission Schweiz - Zweiter Weltkrieg: Schweizerische Wertpapiergeschäfte mit den “Dritten Reich” - Handel, Raub und Restitution*, UEK Bank 14, at 344.

1938, the full aryanaization process of the bank was begun consequent upon the promulgation of the ordinance excluding Jews from German economic life (“*Verordnung zur Ausschaltung der Juden aus dem deutschen Wirtschaftsleben*”). On 9 January 1939, Martin Aufhäuser was forced to cancel his business registration, and the bank was then transferred to a new group of partners, including Friedrich Sailer [sic].⁵

Selig notes that Martin Aufhäuser fled to the Netherlands in March 1939, and the bank’s name was changed to *Bankhaus Sailer & Co.* in December 1939. Many of the accounts held at the bank by Jewish customers were frozen, put into trust at *Bankhaus Sailer & Co.*, and eventually transferred to the Nazi government.⁶

Finally, in 1954, the bank reverted to the name of “Aufhäuser,” and Martin Aufhäuser’s descendants returned as limited partners to the bank.⁷ One year later, the family sold their 40 percent interest in the bank.⁸

Information Available in the Banks’ Records

Bank I

Bank I’s records submitted by the auditors who carried out the investigation of Bank I 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 receipt of deposit of securities in a custody account, an instruction regarding custody account statements, three custody account statements, and printouts from Bank I’s database. According to these records, Account Owner H. Aufhäuser was *H. Aufhäuser Bankgeschäft* (also referred to as *Bankhaus H. Aufhäuser*), which was located in Munich, Germany. These records indicate that Account Owner H. Aufhäuser owned a custody account, numbered 21343. These records also list securities held in the account in 1925, 1926 and 1927. These records further indicate that Account Owner H. Aufhäuser held another custody account, and in which 30 shares in *Compagnie Salitrera Tocopilla* were deposited on 20 September 1932.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of Bank I to obtain additional information about these accounts (“Voluntary Assistance”). Bank I provided the CRT with additional documents. These documents consist of two customer cards and excerpts from Bank I’s loan ledgers. These records indicate that maintenance fees were charged to custody account 21343 for the last time on 21 January 1931, and that the account was closed some time between January 1931 and 1932. These records further indicate that Account Owner H. Aufhäuser opened another custody account, numbered 35579, no later than September 1932 and that the 30 shares in *Compagnie Salitrera Tocopilla* were held in this account. According to Bank I’s records, custody account 35579 was closed on 16 February 1937. Bank I’s records also

⁵ See Selig, at 657 – 660.

⁶ Selig, at 660.

⁷ *Id.*

⁸ Kort, Katarina, “*Das lange und vergebliche Hoffen eines Bankiers,*” *Handelsblatt*, 25 January 2005.

indicate that Account Owner H. Aufhäuser held one demand deposit account in Chilean Pesos. According to Bank I's records, this account was closed on or before 16 February 1937. Bank I's records do not indicate the values of the accounts on the date of their closure.

Except for custody account 21343, which was closed between January 1931 and 1932, there is no evidence in Bank I's records that the legitimate owners of Account Owner H. Aufhäuser or their heirs closed the accounts and received the proceeds themselves.

Bank I's records also indicate that Bank I granted a loan of 200,000.00 Swiss Francs ("SF") to Account Owner H. Aufhäuser in 1925. Bank I's records do not contain any other information regarding the loan.

Bank II

The CRT notes that the auditors who carried out the ICEP Investigation did not report an account of Account Owner H. Aufhäuser at Bank II. Records pertaining to Account Owner H. Aufhäuser's assets at Bank II were obtained from Bank I (which had taken over Bank II in the meantime) in the course of the Voluntary Assistance. These records consist of lists of custody accounts, lists of transactions, lists of archived files relating to custody accounts, documents relating to loans granted by Bank II, and printouts from Bank II's database.

According to these records, Account Owner H. Aufhäuser held a custody account, numbered 6076, that was opened on 17 August 1926 and was closed on 29 November 1938. Bank II's records also indicate that Account Owner H. Aufhäuser held a custody account, numbered 8905, that was opened on 19 October 1929 and was closed on 11 February 1935. These records also indicate that Account Owner H. Aufhäuser held a custody account, numbered 4139, but Bank II's records do not indicate when this account was closed. Bank II's records do not indicate the value of these accounts. There is no evidence in Bank II's records that the legitimate owners of Account Owner H. Aufhäuser or their heirs closed the accounts and received the proceeds themselves.

Bank II's records also indicate that Bank II granted various loans to Account Owner H. Aufhäuser, but do not contain details about these loans.

The auditors who carried out the ICEP Investigation did not report an account belonging to Martin Aufhäuser during their investigation of Bank II. The documents evidencing an account belonging to Martin Aufhäuser were obtained from archival sources in Germany and from the Swiss Federal Archive, and are further described below.

Bank III

Bank III's records consist of excerpts from Bank III's ledgers. According to these records,

Account Owner H. Aufhäuser was H. Aufhäuser of Munich.⁹ These records indicate that Account Owner held a demand deposit account with a balance of 1,503.00 Swiss Francs (“SF”). The ICEP auditors reported that the balance year was 1921. Bank III’s records also indicate that the account had a negative balance of SF 28.00, but the date of this balance is not recorded. Bank III’s records do not indicate when the account was closed. The ICEP auditors did not find this account in Bank III’s system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in Bank III’s records that the legitimate owners of Account Owner H. Aufhäuser or their heirs closed the account and received the proceeds themselves.

Information Available from the State Archive at Munich

In the records of the State Archive at Munich (*Staatsarchiv München*), there are documents concerning the assets of Martin Aufhäuser. These documents include an account statement prepared by *Seiler & Co.*, a letter from *Seiler & Co.* to Martin Aufhäuser, dated 22 November 1938, a letter from the Regional Tax Office Munich (*Oberfinanzpräsident München*) to *Seiler & Co.*, dated 3 May 1939, a letter from *Seiler & Co.* to the North Munich Tax Office (*Finanzamt München-Nord*), dated 20 January 1940, a draft letter from the Tax Investigation Department (*Steuerfahndungsstelle*) to the Munich Tax Office, dated 30 April 1940, and an emigration questionnaire.

According to these records, Martin Aufhäuser was born on 26 June 1875 in Munich and resided originally at Maria Theresiastrasse 28 in Munich. These records indicate that as of 3 May 1939 Martin Aufhäuser resided in England. These documents further indicate that Martin Aufhäuser was married to [REDACTED], née [REDACTED], who was born on 1 March 1879 in Munich, and that they had three children: [REDACTED], née [REDACTED], who was born on 1 March 1902 in Munich; [REDACTED], who was born on 29 October 1905 in Munich; and [REDACTED], who was born on 24 August 1912 in Munich.

These records include documents demonstrating that Martin Aufhäuser owned an account at Bank II. Specifically, these documents indicate on 22 November 1938 *Seiler & Co.* informed Martin Aufhäuser that, in conformity with his letter of the previous day, the following securities had been transferred to their account at Bank II:

- 1 lot (*Los*) of *Amsterdamer Industrie-Palast Losanleihe v. 69* with a negligible market value (*geringwertig*);
- 100 lots (*Lose*) of *Kanton Freiburg von 1902* with a market value of 6.00 Dutch guilder (“hfl”) per lot for a total value of RM 814.05;
- 5% *Aeussere Mexican. Goldanleihe v. 99* bonds with a total nominal value of 7,500.00 Pound Sterling (“£”) and a market quotation of 0.75 percent, for a total value of RM 1,147.50;

⁹ The CRT notes that Bank III’s records do not clearly indicate whether the owner of the account at this bank was an individual or a company. For the purposes of this Award, the CRT determines that the owner of the account at Bank III was Account Owner H. Aufhäuser.

- further of the same bonds with a total nominal value of £ 4,800 and a market quotation of 0.75 percent, for a total value of RM 734.40;
- 4% *Aeussere Mexican. Goldanleihe v. 1904* bonds with a total nominal value of 1,000.00 United States Dollars (“US \$”) and a market quotation of 0.625 percent, for a total value of RM 26.25;
- *Mexican Scrips A und B* with a total nominal value of US \$28,157.07 with a negligible value (*geringwertig*);¹⁰
- 285 shares in *Compania Salitrera de Tarapaca y Antofagasta* with an estimated market value of RM 0.10 per share, for a total value of RM 28.50;
- 4½% *Tehuantepec Anleihe v. 1909* bonds with a total nominal value of £ 3,500.0.0 and a market quotation of 0.50 percent, for a total value of RM 357.00; and
- 5% *Tehuantepec Anleihe v. 1904* bonds with a total nominal value of £ 5,240.0.0 and a market quotation of 0.50 percent, for a total value of RM 534.50.

The total value of these securities is listed as amounting to RM 3,642.20. Though these records do not contain any other information about the disposition of the accounts at Bank II, the documents found in the Swiss Federal Archive, discussed below, provide some additional indication.

A draft report from the Tax Investigation Department to the North Munich Tax Office, dated 30 April 1940, and noted as having been sent on 3 May 1940, refers to an instruction of 18 April 1940 regarding the intended seizure of Martin Aufhäuser’s remaining assets to cover tax liabilities, including RM 100,595.28 for outstanding tranches of atonement tax (*Judenvermögensabgabe*) for 1939, plus late payment charges. The document further details Martin Aufhäuser’s and his wife’s remaining assets and liabilities. In an apparent attachment, the assets held by the couple in late 1938 are detailed as well, and include the securities listed above. Finally, this document indicates that a copy was being sent to the *Gestapo*.

Information Available from the Swiss Federal Archive

In the Swiss Federal Archive, there is further documentation pertaining to Martin Aufhäuser’s custody account at Bank II. These documents relate to an inquiry of [REDACTED], Martin Aufhäuser’s son and the executor of his estate, to the Swiss Clearing Office, regarding securities held by Martin Aufhäuser at Bank II. The original letter of inquiry from [REDACTED] to the Swiss Clearing Office is dated 28 October 1946, and includes the following attachments: a transcript of a letter from Martin Aufhäuser to Bank II, dated 21 November 1938; a letter from *Seiler & Co.* to Martin Aufhäuser, dated 21 February 1940; an affidavit signed on 11 October 1946 by [REDACTED], who was Martin Aufhäuser’s spouse and [REDACTED]’s mother; and a certification from the Swiss Consulate in Los Angeles, dated 25 October 1946. The documents in the Swiss Federal Archive further include a letter from the Swiss Clearing Office to Bank II, dated 20 November 1946; a response letter from Bank II to the Swiss Clearing Office, dated 26

¹⁰ In a listing prepared ten days earlier, on 12 November 1938, *Seiler & Co.* gave the nominal values of these Scrips separately as \$26,219.07 and £ 1,937.10, respectively, with the market value of each as negligible (*geringwertig*).

November 1946; an internal memorandum of the Swiss Clearing Office, dated 3 December 1946; and a response letter from the Swiss Clearing Office to [REDACTED], dated 6 December 1946.

The information submitted by [REDACTED] to the Swiss Clearing Office indicates that Martin Aufhäuser was a partner in *Bankhaus H. Aufhäuser* in Munich, that he was incarcerated at the concentration camp in Dachau on 10 November 1938, and that he was brought back from Dachau to the bank by the Gestapo to conclude the aryanization process of the bank and to initiate the forced transfer of his personal assets. Furthermore, the attached letter from Martin Aufhäuser to Bank II, dated 21 November 1938, indicates that Martin Aufhäuser requested Bank II to transfer all securities in his personal custody account at Bank II to a custody account held by *Seiler & Co.* According to the letter submitted by [REDACTED], Martin Aufhäuser fled from Germany to the Netherlands in March 1939, was stripped of his German citizenship in the fall of 1939, and resided in Los Angeles, California, the United States, as of May 1941.

The letter from the Swiss Clearing Office to Bank II, dated 20 November 1946, requests a report on the ultimate disposition of the securities held by Martin Aufhäuser at Bank II. The response letter from Bank II to the Swiss Clearing Office, dated 26 November 1946, details the liquidation of Martin Aufhäuser's custody account at Bank II as follows:

- On 13 March 1939, 100 lots (*Lose*) *Kanton Freiburg 1902* were liquidated at SF 1,448.50, and that amount was transferred to the account of *Seiler & Co.* at Bank II;
- On 17 March 1939, 285 shares in *Comp. Salitrera de Tarapaca y Antofagasta*, were placed at the disposal of the *Deutsche Bank* in Berlin;
- On 15 September 1939, the following securities were transferred to *Seiler & Co.*:
 - 1 lot (*Los*) *Amsterdamer Industriepalast von 1869* with no value indicated;
 - 5% *äussere Mexikanische Anl. 1899* bonds with a total nominal value of £ 4,800.0.0;
 - 4% *äussere Mexikanische Anl. 1904 A* bonds with a total nominal value of US \$1,000.00;
 - *Mexikanische Zinsen Receipts Ser. A* with a total nominal value of US\$ 10,185.00;
 - *Mexikanische Zinsen Receipts Ser. B* with a total nominal value of US\$ 120.00;
 - *Mexikanische Zinsen Receipts Ser. A* with a total nominal value of £ 581.5.0;
 - *Mexikanische Zinsen Receipts Ser. B* with a total nominal value of £ 1,356.5.0;
 - 4% *Ser.B Comp.del Ferrocarril Nacional de Tehuantepec von 1909* bonds with a total nominal value of £ 3,500.0.0;
 - 5% *Bonds Ser. B-C Comp. del Ferrocarril Nacional de Tehuantepec von 1904*, with a total nominal value of £ 5,240.0.0.
- On 5 March 1942, the following securities were transferred to a custody account, numbered 24689, held by the Main Accounting Office of the German Reich (*Reichshauptkasse*) at Bank II:
 - 5% *äussere Mexikanische Anl. 1899* bonds with a total nominal value of £ 7,500.00;
 - *Mexikanische Zinsen Receipts Ser. A* with a total nominal value of US \$15,914.07.Bank II indicated that these securities were blocked and reported in the 1945 freeze of assets held in Switzerland by citizens of Germany and the territories incorporated in the

Third Reich (the “1945 Freeze”), and that their value as of 17 February 1945 was SF 17,100.00.

In a letter dated 21 February 1940 and addressed to Martin Aufhäuser in Amsterdam, *Seiler & Co.* notified him that, on the instruction of the North Munich Tax Office and with the approval of the Business Group Private Banking, Berlin (*Wirtschaftsgruppe Privates Bankgewerbe*), they had sold a number of securities from his custody account at the bank. This sale included Mexican government bonds of the same type as listed above, though their origin was not indicated. The proceeds of the sale were transferred to the North Munich Tax Office as part payment of the fifth tranche of the atonement tax.

The internal memorandum of the Swiss Clearing Office, dated 3 December 1946, notes that [REDACTED]’s inquiry fell outside the territorial and temporal scope of the Swiss Clearing Office’s statutory mandate and thus would not allow for an exemption from the duty of confidentiality. The document further indicates that the Swiss Clearing Office considered making an exception to its duty of confidentiality in this case, which would consist in informing the Swiss Federal Department of Police of the case. The response letter from the Swiss Clearing Office to [REDACTED], dated 6 December 1946, indicates that the Swiss Clearing Office determined that it was unable to reveal any information about the securities held by Martin Aufhäuser at Bank II, because it only had the statutory authority to treat claims to accounts whose owners resided within territories occupied by Germany, and who either renounced the ownership of their assets under duress or whose assets were looted between 1 September 1939 and 8 May 1945.

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 three claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. Claimant [REDACTED 1]’s father’s and Claimant [REDACTED 4]’s great-great-uncle’s name matches the published name of Account Owner Martin Aufhäuser. Claimant [REDACTED 1] identified Account Owner Martin Aufhäuser’s date and place of birth, city and country of residence, the name of his spouse, and the names and dates of birth of his children, which matches unpublished information about Account Owner Martin Aufhäuser contained in the records from the State Archive in Munich. In support of his claim, Claimant [REDACTED 1] submitted an inheritance document and a financial report on *Seiler & Co.*, identifying his father as Martin Aufhäuser and indicating that he resided in Munich, providing independent verification that the person who is claimed to

be Account Owner Martin Aufhäuser had the same name and resided in the same city recorded in Bank II's records as the name and city of residence of Account Owner Martin Aufhäuser.

Moreover, the name of the bank owned by the Claimants' relative matches the published name of Account Owner H. Aufhäuser. The Claimants identified Account Owner H. Aufhäuser's status as a company, despite the fact that it was incorrectly published as an individual on the February 2001 published list of accounts determined by ICEP to be probably those of Victims of Nazi Persecution (the "ICEP List"). Claimant [REDACTED 1] further identified the city and country in which Account Owner H. Aufhäuser was located, which matches published information about Account Owner H. Aufhäuser. Claimant [REDACTED 1] also identified his father's years of birth and death, and indicated that his father was arrested in 1938, that he was detained at Dachau, and that he fled from Germany and settled in the United States, which matches information contained in the documents from the Swiss Federal Archive.

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

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that Account Owner Martin Aufhäuser, the owner of Account Owner H. Aufhäuser, was a Victim of Nazi Persecution. The Claimants stated that Account Owner Martin Aufhäuser was Jewish, and that he was arrested and detained at Dachau. The Claimants also stated that the Nazi government forced Account Owner Martin Aufhäuser to transfer ownership of Account Owner H. Aufhäuser, and that Account Owner Seiler took control of Account Owner H. Aufhäuser through the aryanization process.

The Claimant's Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to Account Owner Martin Aufhäuser, who was one of the owners of Account Owner H. Aufhäuser, by submitting specific information and documents, demonstrating that Account Owner Martin Aufhäuser was Claimant [REDACTED 1]'s father and Claimant [REDACTED 4]'s great-uncle. These documents include Account Owner Martin Aufhäuser's inheritance certificate, indicating that Claimant [REDACTED 1] was Martin Aufhäuser's son.

The Issue of Who Received the Proceeds

In this case, Account Owner H. Aufhäuser held two custody accounts and one demand deposit account at Bank I, three custody accounts at Bank II, and a demand deposit account at Bank III, and Account Owner Martin Aufhäuser held a custody account at Bank II.

With respect to the custody account held by Account Owner Martin Aufhäuser at Bank II, the information available from the Swiss Federal Archive indicates that the securities contained in this custody account were transferred to *Seiler & Co.*, to the *Deutsche Bank*, and to the *Reichshauptkasse*.

With respect to custody account 21343 held by Account Owner H. Aufhäuser at Bank I, Bank I's records indicate that the account was closed some time between January 1931 and 1932. Thus, the account was closed before the Relevant Period, meaning the period from 1 January 1933 to 31 December 1945, and does not fall within the scope of jurisdiction of the CRT under the Rules, as defined by Article 14.

As regards custody account 35579 held at Bank I, the demand deposit account held at Bank I, custody accounts 6076, 8905, and 4139 held at Bank II, and the demand deposit account at Bank III, given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax- and other confiscatory measures, including confiscation of assets held in Swiss banks; that the custody and demand deposit accounts at Bank I were closed on or before 16 February 1937, that custody account 8905 at Bank II was closed on 11 February 1935, that custody account 6076 at Bank II was closed on 29 November 1938, and that custody account 4139 at Bank II and the demand deposit account at Bank III were closed on an unknown date; that Account Owner H. Aufhäuser was a Jewish-owned German bank and would not have been able to repatriate its accounts to Germany without losing ultimate control over their proceeds; that Account Owner H. Aufhäuser suffered significant losses of assets due to the rise of the Nazi regime;¹¹ that Account Owner Martin Aufhäuser was arrested and detained in Dachau, and that he fled from Germany to the Netherlands and then to the United States in 1940; that the Nazis took control of Account Owner H. Aufhäuser through the aryanization process; that there is no record of the payment of Account Owner H. Aufhäuser's account to its legitimate owners, nor any date of closure for two of the accounts; that the owners of Account Owner H. Aufhäuser and their heirs would not have been able to obtain information about the account after the Second World War from 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 (a), (h) and (j), as provided in Article 28 of the Rules (see Appendix A) and Appendix C,¹² the CRT concludes that it is plausible that the accounts' proceeds were not paid to the legitimate owners of Account Owner H. Aufhäuser 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] and the parties he represents. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 1] has plausibly demonstrated that Account Owner Martin Aufhäuser, who was an owner of Account Owner H. Aufhäuser, was his father, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither Account Owner Martin Aufhäuser nor his heirs received the proceeds of

¹¹ Selig, at 657.

¹² Appendix C appears on the CRT II website -- www.crt-ii.org.

the claimed accounts. Further, the CRT notes that Claimant [REDACTED 1], and [REDACTED 2] and [REDACTED 3], whom Claimant [REDACTED 1] is representing, as the descendants of Account Owner Martin Aufhäuser, have a better entitlement to the accounts than Claimant [REDACTED 4], the great-great-niece of the owner of Account Owner H. Aufhäuser.

Amount of the Award

In this case, the Award is for four custody accounts and two demand deposit accounts held by Account Owner H. Aufhäuser and for one custody account held by Account Owner Martin Aufhäuser.

As regards the accounts held by Account Owner H. Aufhäuser, Bank I's records indicate that custody account 35579 contained 30 shares in *Compagnie Salitrera Tocopilla*, but these records do not indicate the value of these shares, nor do they indicate the value of the account at the date of its closure. Furthermore, Bank III's records indicate that the balance of the demand deposit account held by Account Owner H. Aufhäuser was SF 1,503.00 as of 1921, but they do not indicate the value of the account in the Relevant Period. Consequently, the CRT shall treat these two accounts as accounts with unknown values. The Banks' records do not indicate the values of other accounts held by Account Owner H. Aufhäuser. 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 to produce an amount of SF 56,280.00 for four custody accounts and two demand deposit accounts. 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 703,500.00 for these accounts.

With respect to the custody account held by Account Owner Martin Aufhäuser at Bank II, according to the CRT's Guidelines for the Valuation of Securities, circulated by Special Master Helen B. Junz, as a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal value on the date the account owner is deemed to have lost control over the account. The CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond to maturity to avoid a capital loss. According to Moody's Manual of Investments,¹³ the valuation of various Mexican debt issues, all of which, after a long period of default and failed debt restructurings, traded at below one percent of their nominal value in the late 1930s, underwent a marked improvement after a new debt agreement was reached on 5 November 1942. In that debt agreement, nominal values of these issues were reduced to less than one quarter of their original value. All the Mexican issues in Martin Aufhäuser's portfolio were affected by this debt agreement. The CRT will value these securities, on the presumption that their owner, if free to manage his portfolio, would have held them through the date of the debt reorganization, and would have benefited from the price improvement, as the remainder of his holdings at Bank II did. Accordingly, the Mexican debt in the portfolio, which still remained in default after the debt agreement of November 1942, shall

¹³ *American and Foreign: Government Securities*, New York: Moody's Investors Service, 1944.

be valued at post-1942 market quotations. These quotations shall be for the year 1945, if available.

Accordingly, based upon the CRT's Guidelines, and as indicated by Bank II's correspondence with the Swiss Clearing Office and by *Seiler & Co.*'s correspondence with Martin Aufhäuser, the CRT values the securities in Martin Aufhäuser's custody account as follows:

- 100 lots (*Lose*) *Kanton Freiburg 1902* were liquidated at SF 1,448.50.
- the market value of 285 shares in *Comp. Salitrera de Tarapaca y Antofagasta* was RM 28.50, which was equal to SF 50.05.¹⁴
- the value of 1 lot (*Los*) *Amsterdamer Industriepalast von 1869* was marked "negligible" and thus is not known.
- 5% *äussere Mexikanische Anl. 1899* bonds had a nominal value of £ 4,800.0.0. According to the *New York Times*, in 1945, the bond was trading at 19.6875 percent. Accordingly, these bonds had a market value of £ 944.976, which was equivalent to SF 16,357.53.¹⁵
- 4% *äussere Mexikanische Anl. 1904 A* bonds had a nominal value of US\$ 1,000.00. According to the *New York Times*, in 1945 rate of 11.9375 percent, the bonds had a market value of US \$119.38, which was equivalent to SF 512.14.
- *Mexikanische Zinsen Receipts Ser. A* had a total value of US \$10,185.00 and which, pursuant to the agreement described above, were redeemed at .20 percent of face value. Accordingly, these scrips had a market value of US \$20.37, which was equivalent to SF 87.387.
- *Mexikanische Zinsen Receipts Ser. B* had a total value of US\$ 120.00 and which, pursuant to the agreement described above, were redeemed at .10 percent of face value. Accordingly, these scrips had a market value of US \$0.12, which was equivalent to SF 0.515.
- *Mexikanische Zinsen Receipts Ser. A* had a total value of £ 581.5.0 and which, pursuant to the agreement described above, were redeemed at .20 percent of face value. Accordingly, these scrips had a market value of £ 1.1625, which was equivalent to SF 20.123.
- *Mexikanische Zinsen Receipts Ser. B* had a total value of £ 1,356.5.0 and which, pursuant to the agreement described above, were redeemed at .10 percent of face value. Accordingly, these scrips had a market value of £ 1.3563, which was equivalent to SF 20.123.
- 4½% *Ser.B Comp.del Ferrocarril Nacional de Tehuantepec von 1909* bonds had a nominal value of £ 3,500.0.0. Consistent with the agreement described above, this bond was traded at 9.55 percent in 1945. Accordingly, the bonds had a market value of £ 334.25 in 1945, which was equivalent to SF 5,785.868.
- 5% *Bonds Ser. B-C Comp.del Ferrocarril Nacional de Tehuantepec von 1904* had a nominal value of £ 5,240.0.0. Consistent with the agreement described above, this bond was traded at 9.55 percent in 1945. Accordingly, the bonds had a market value of £ 500.42 in 1945, which was equivalent to SF 8,662.27.

¹⁴ The CRT uses official exchange rates when converting the amounts in foreign currencies into Swiss Francs.

¹⁵ The new York Times, 2 January 1946.

- *5% äussere Mexikanische Anl. 1899* bonds with a nominal value of £ 7,500.0.0. As described above, this bond was trading at 19.6875 percent in 1945. Accordingly, these bonds had a market value of £ 1,476.525, which was equivalent to SF 25,558.648.
- *Mexikanische Zinsen Receipts Ser. A* with a nominal value of US\$ 15,914.07 and which, pursuant to the agreement described above, were redeemed at .20 percent of face value. Accordingly, these scrips had a market value of US\$ 31.828, which was equivalent to SF 136.543.

Thus, the total value of the securities in the portfolio is SF 58,643.05. 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 733,038.13 for this account.

Consequently, the total award amount is SF 1,436,538.13.

Division of the Award

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 representing [REDACTED 2], who is his brother's widow, and [REDACTED 3], who is his sister's son. According to Article 23(1)(f), if a child of the account owner is deceased, that child's spouse but none of that child's descendants have submitted a claim, that child's spouse shall be considered a child of the account owner. Accordingly, Claimant [REDACTED 1], [REDACTED 2], and [REDACTED 3] are each entitled to one-third of the total award amount.

As noted above, Claimant [REDACTED 4] is not entitled to share in the 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
21 June 2006