

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Elizabeth Mary Bourke  
also acting on behalf of Thomas Albert Bieler

**in re Accounts of Prof. Dr. Albert Uffenheimer**

Claim Number: 213505/MBC

Award Amount: 325,000.00 Swiss Francs

This Certified Award is based upon the claim of Elizabeth Mary Bourke (the “Claimant”) to the Account of Prof. Dr. Albert Uffenheimer (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

### **Information Provided by the Claimant**

The Claimant submitted a Claim Form identifying the Account Owner as her maternal grandfather, Prof. Albert Uffenheimer, who was born on 24 May 1876 in Fürth, Germany, and was married to Elisabeth Bing in 1906. They had one child named Eva Klara, who was born in 1913. The Claimant stated that her grandfather was a medical doctor and professor of pediatrics in Magdeburg, Germany, where he was the director of the children’s clinic. In 1934, he was dismissed from his post at the children’s clinic because he was Jewish, and he moved to Kattenhorn am Bodensee, Germany. He remained in Kattenhorn until August 1938, when he fled to London, England, before settling in the United States, where he died in 1941. The Claimant stated that she and her brother, Thomas Albert Bieler, whom she represents, are her grandfather’s only two grandchildren. The Claimant indicated that she was born on 3 March 1944 in Dublin, Ireland.

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

The Bank’s records consist of a registration card, correspondence between the Bank and a lawyer representing the Account Owner’s widow, and a note to the files by the Bank. According to the Bank’s records, the Account Owner was Prof. Dr. Albert Uffenheimer, the director of the children’s clinic in Magdeburg, and later resident in Kattenhorn/Untersee. The Bank’s records indicate that the Account Owner held two custody accounts, numbered D1211, and L26396, respectively.

The Bank's records show that, in December 1938, the Account Owner contacted the Bank from London and instructed it to pay out the assets of the accounts in two installments to the Constance, Germany, branch of the *Deutsche Bank*. The Bank's records also show how the regional Minister of Finance in Karlsruhe ordered the Account Owner, according to the Law on Securities of 4 February 1935, and the Law on Conversion of Securities of 1 December 1936, to sell the securities held by him at the Bank, and to transfer the funds to the *Deutsche Bank* in Constance. The Minister of Finance reminded the Account Owner of the punishment he would suffer according to Article 43 of the Law on Securities if he would not comply with this order. The Bank notes that the Account Owner agreed with the order to ensure the release of his wife, Elisabeth, from Germany. The Bank's records indicate that the accounts were closed on 18 December 1938, and 30 December 1938, respectively.

In a letter dated 11 May 1949, Dr. Wolfram Kimmig wrote to the Bank on behalf of the Account Owner's widow. Dr. Kimmig explained that the Account Owner, Professor Dr. Albert Uffenheimer of Kattenhorn/Untersee, held an account with the Bank until 1938 and that he had died in America. Dr. Kimmig wrote that the Account Owner's widow had asked him to register her claims against Germany with the appropriate authorities. Dr. Kimmig wrote that, according to the Account Owner's widow, the Bank delivered three shares of the *Aluminium - A.G.* valued at 3,000.00 Swiss Francs to the Berlin branch of the *Deutsche Bank* on 13 - 30 December 1938 ("am 13./30.12.1938"). Dr. Kimmig's letter contains handwritten notes, dated 14 May 1949, that bear the illegible signature of a bank employee. These notes refer to an order placed by Professor Uffenheimer on 9 and 10 December 1938 to transfer these shares, on behalf of his wife, to the Berlin branch of the *Deutsche Bank*. The notes indicate that the Bank carried out this order on 30 December 1938.

In an internal memorandum<sup>1</sup> to the files from the Bank's legal department,<sup>2</sup> dated 17 May 1949, the Bank summarized the 1938 account activities and addressed how to respond to questions concerning them. The memorandum indicates that on 9 and 10 December 1938, Professor Uffenheimer, who was in London, ordered the Bank to transfer three shares of the *Aluminium Industrie A.G.* to the Berlin branch of the *Deutsche Bank* on behalf of *Frau* (Mrs.) Elisabeth Uffenheimer. The memorandum indicates that in his letter of 9 December 1938, Professor Uffenheimer informed the Bank that he was preparing to immigrate and that he needed to take care of the matter as quickly as possible. The memorandum states that the Bank completed the order. The memorandum then states that on 27 December 1938, the Bank received a further order to transfer the rest of his assets to the Konstance branch of the *Deutsche Bank*. The memorandum quotes in full the first two paragraphs of the 27 December 1938 letter, in which Professor Uffenheimer quoted the Baden Finance Minister in Karlsruhe,<sup>3</sup> who ordered him, pursuant to Nazi foreign exchange legislation, to transfer his assets held at the Bank to the Konstance branch of the *Deutsche Bank*, and who warned him that failure to follow this order would be penalized.<sup>4</sup> In his 27 December 1938 letter, Professor Uffenheimer requested the Bank to confirm the completion of the order.

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<sup>1</sup> "Akttennotiz"

<sup>2</sup> "Rechtsbureau"

<sup>3</sup> "Oberfinanzpräsident Baden in Karlsruhe"

<sup>4</sup> "Ich weise darauf hin, dass die Nichtbefolgung dieser Anordnung gemäss § 43 Abs. 1 Ziff. 6 des Dev. Ges. vom 4.2.35 bestraft wird."

The internal memorandum then concludes that, “from this correspondence it follows that Professor Uffenheimer was forced by the German authorities to hand over his assets deposited with us to the *Deutsche Bank*.”<sup>5</sup> The memorandum concludes that “for these reasons, we are careful about providing information and withhold information. If necessary, we should rely on the fact that, since then, more than ten years have passed, so that we no longer today are obligated to preserve this correspondence.”<sup>6</sup>

In a letter to Dr. Kimmig, dated 16 May 1949, the Bank responded to Dr. Kimmig’s request for information about the 1938 account activities. The letter states: “In response to your query of 11 May 1949, we must unfortunately inform you that, pursuant to Swiss legal requirements regarding banking secrecy, we cannot provide information about activities that pertain to the business dealings of our customers during their lifetime, not even to their heirs. In addition, we draw your attention to the fact that the activities referred to in your letter happened more than ten years ago, while we are only obligated to preserve our correspondence for ten years.”<sup>7</sup>

The Bank’s records do not indicate a value for the custody accounts at the time they were paid; they only indicate that the first installment consisted of shares worth 3,000.00 Swiss Francs, and that the second installment consisted of all remaining assets in the accounts. 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”) determined that the amount in the accounts had been paid to the Nazi authorities. There is no evidence in the Bank’s records that the Account Owner or his heirs received the proceeds themselves.

## **The CRT’s Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her grandfather’s name and country of residence match the published name and country of residence of the Account Owner. In support of her Claim, the Claimant submitted information including the Account Owner’s titles, his wife’s name, his occupation in Magdeburg, his residence in Kattenhorn, and the fact that in 1938 he fled to London, England, and subsequently died in America, which matches unpublished information about the Account Owner contained in the Bank’s records. The CRT notes that there are no other claims to this account. Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

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<sup>5</sup> “Aus diesen Korrespondenzen geht hervor, dass Prof. Uffenheimer von den deutschen Behörden gezwungen wurde, seine bei uns liegenden Titel an die Deutsche Bank abzuliefern.”

<sup>6</sup> “Aus diesem Grunde sind wir bei der Auskunftserteilung vorsichtig und verweigern Auskünfte. Nötigenfalls berufen wir uns darauf, dass seither mehr als 10 Jahre abgelaufen sind, so dass wir heute nicht mehr verpflichtet sind, diese Korrespondenzen aufzubewahren.”

<sup>7</sup> “Auf Ihre Anfrage vom 11. Mai 1949 müssen wir Ihnen leider mitteilen, dass wir infolge der in der Schweiz geltenden gesetzlichen Vorschriften über das Bankgeheimnis über Vorgänge, welche den Geschäftsverkehr unserer Kunden mit uns zu derer Lebzeiten betreffen, keine Auskünfte erteilen können, auch nicht an die Erben. Zudem machen wir Sie darauf aufmerksam, dass die in Ihrem Schreiben erwähnten Vorgänge schon mehr als 10 Jahre zurückliegen, während wir nur verpflichtet sind, unsere Korrespondenzen 10 Jahre aufzubewahren.”

## Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that her grandfather lived in Germany under the Nazi regime, that he was dismissed from his professional posts because he was Jewish, and that he was ultimately forced to flee Germany.

## The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents demonstrating that he is her grandfather. The Claimant submitted copies of her mother's birth certificate (showing that her mother was the daughter of the Account Owner) and her own birth certificate (showing that she is her mother's daughter), as well as numerous other family documents including her mother's will, showing that the Claimant and her brother are each entitled to inherit their late mother's estate in equal shares. There is no information to indicate that the Account Owner has other surviving heirs.

## The Issue of Who Received the Proceeds

The Bank's records indicate the accounts were liquidated, and all of their assets paid to the *Deutsche Bank* in 1938 at the request of the Account Owner, who was seeking to ransom his wife from Nazi persecution. Therefore, it is clear that the Nazi authorities received the proceeds of the accounts. As noted above, the Bank's legal department recognized in 1949 that ". . . Professor Uffenheimer was forced by German authorities to hand over his assets deposited with us to the Deutsche Bank." In this respect, the CRT also notes that this case is similar to the considerable number of cases<sup>8</sup> that have come before it in which the accounts of Nazi victims in Swiss banks

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<sup>8</sup> See In re Account of Elly Spiegel (approved on 6 November 2002), In re Account of Robert Hollub (approved on 28 January 2002), In re Account of Erna Solmsen (approved on 29 March 2002), In re Albert Steiner (approved on 29 March 2002), In re Account of Nelly Steiner (approved on 29 March 2002), In re Account of Nelly Fleischmann (approved on 14 May 2002), In re Account of Dr. Hans Brück (approved on 1 July 2002), In re Account of Dr. Moritz Doller (approved on 1 July 2002), In re account of Auguste and Aaron Levis (approved on 12 August 2002), In re Account of Norbert Brecher (approved on 6 November 2002), In re Account of Felix Wertheimer (approved on 6 November 2002), In re Accounts of Max Hitchman (approved on 14 May 2002), In re Accounts of Bertha, Hedwig & Hermine Kaufmann (approved on 1 July 2002), In re Accounts of R. Fleischner (approved on 12 August 2002), In re Accounts of Else Elisabeth & Siegfried Freund (approved on 28 August 2002), In re Account of Richard Hirsch (approved on 28 August 2002), In re Account of Geza Weisz (approved on 28 August 2002), In re Account of Anna Bogatsch (approved on 24 October 2002), In re Accounts of Robert Blum (approved on 24 October 2002), In re Accounts of Marie and Robert Blumka (approved on 24 October 2002), In re Account of Walter Herzog (approved on 24 October 2002), In re Account of Amalie Horn (approved on 24 October 2002), In re Accounts of Paul Kolisch, Estella Kollisch and Gertrude Eveline Shapiro (approved on 24 October 2002), In re Account of Marcus Manasse (approved on 24 October 2002), In re Account of Rudolf Pordes (approved on 24 October 2002), In re Account of Walter Fraenkel and Lili Fraenkel (approved on 26 November 2002), In re Account of Lina Froehlich (approved on 24 October 2002), In re Accounts of Fanny and Kurt Kadisch (approved on 26 November 2002), In re Accounts of Richard Lustig (approved on 26 November 2002), In re Account of Heinrich Maier (approved on 27 December 2002), In re Account of Ernst Bundheim (approved on 27 December 2002), In re Account of Hedwig Bendix (approved on 31 December 2002), In re Accounts of Walther and Ernst Muller (approved on 31 December 2002), In re Account of Karl Stein (approved on 31 December 2002), In re Account of Georg Wagner (approved on 31 December 2002), In re Accounts of Felix Harry Braun and Irma Braun (approved on 22 January 2003), In re Accounts of Wilhelm Lowbeer and Paul Lowbeer (approved on 10 March 2003), In re Account of Erna Hauser (approved on 6 March 2003), In re Account of Emil Perels (approved on 17 March 2003), In re Account of Dr. Heinrich Fink (approved on 4 April 2003), In re Accounts of Albert Gerngross, Paul Gerngross, Martha Gerngross and A Gerngross (approved on 4 April 2003), In re Account of Helmut Koppel (approved on 24 April 2003), In re Account of Richard Emrich (approved on 15 May

were transferred to Nazi authorities because Swiss banks were prepared to comply with Nazi legislation requiring such transfers even where the bank knew or should have known that the Account Owner was subject to coercion by Nazi authorities. As the record in cases before the CRT, and in the Report of the Bergier Commission, have identified, the banks feared that if they disclosed the information on forced transfers that was in their files, they would be liable to the Account Owners or their heirs for cooperating with the German authorities in the implementation of these forced transfers. It appears that, in this case, it was for this reason that the Bank provided deliberately incomplete and incorrect information to the Counsel of the Account Owner's wife when he asked the Bank to confirm the 1938 transfer of the Account Owner deposited assets to the Deutsche Bank. The Bank's reply to Counsel, following the recommendations of the Bank's Legal Department, used Swiss bank secrecy and the business correspondence retention requirement of ten years to cover-up its unwillingness to confirm the 1938 transfer by the Bank to Deutsche Bank, even though the Bank had in fact maintained the 1938 records of the account as of 1949 (and through to the time of the 1996-1999 ICEP investigation).

This pretext was adopted in 1954 by the large Swiss banks as a concerted mechanism for deflecting account information inquiries from Holocaust victims or their heirs. As stated in the Bergier Commission Report:

In May 1954, the legal representatives of the big banks co-ordinated their response to heirs so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry. They agreed not to provide further information on transactions dating back more than ten years under any circumstances, and to refer to the statutory obligation to keep files for only ten years, even if their records would have allowed them to provide the information. ...Throughout the post-war period the banks relied on a combination of discretely playing down the problem and erecting barriers to investigation: time and again they would bring banking secrecy into play in order to legitimise their reluctance to provide information while at the same time charging high search fees for conducting investigations.<sup>9</sup>

If the Swiss banks had jointly agreed to refuse to cooperate with the Nazis in the case of such coerced transfers, or the Swiss Government had frozen the assets of the victims of Nazi persecution, the Nazis would have had no motivation for torturing victims of Nazi persecution to obtain their consent to the confiscation of their financial resources in Switzerland to use against the Allies. Study number 15 of the Bergier Commission reached the same conclusion:

An effective protection of customers' assets might have only been possible through a general blockage/freeze. Because public opinion would have likely welcomed a freeze of German and Austrian assets in 1933 and 1938, respectively, and because [Swiss] courts hindered the forced transfers when they were called in to decide such cases, it is very hard to understand today why Swiss politicians and banks did not

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(continued...)

2003), In re Accounts of Simon and Irma Benesch (approved on 3 June 2003), In re Account of Martin Cohn (approved on 3 June 2003), In re Accounts of Oskar Kraus (approved on 3 June 2003), In re Accounts of Marietta Rosen (approved on 3 June 2003), and In re Account of Marianne Bardach (approved on 15 July 2003).

<sup>9</sup> Independent Commission of Experts Switzerland—Second World War, Final Report: Switzerland, National Socialism and the Second World War 446 (2002).

vehemently take steps against the implementation of the German laws forcing the repatriation of foreign-held assets—either through a freeze or through some other effective intervention.<sup>10</sup>

In this case, the Bank's responsibility for restitution derives, in particular, from the action by the Bank, as described above, in 1949, to intentionally mislead the Account Owner's widow's representative, who was seeking information about the transfer to the Nazi authorities in order to make a compensation claim against Germany. The Bank deprived the Account Owner's widow of the documentation that it had in its possession concerning the transfer to the German bank. This later misrepresentation by the Bank denied her the opportunity to gain restitution for the account. Therefore, the CRT concludes that the Bank is responsible for the loss by the Account Owner's widow of her husband's deposits at the Bank.

### Basis for the Award

The CRT has determined that an award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules Governing the Claims Resolution Process, as amended (the "Rules"). Second, the Claimant has plausibly demonstrated that the Account Owner was her grandfather, and that relationship that justifies an award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

### Amount of the Award

In this case, the Account Owner held two custody accounts. 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 13,000.00 Swiss Francs. Consequently, the value of the two custody accounts is 26,000.00 Swiss Francs. 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 325,000.00 Swiss Francs.

### 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, the Claimant is representing her brother in these proceedings. Therefore, the Claimant and her brother are each entitled to one-half of the total award amount.

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<sup>10</sup> "Ein wirkungsvoller Schutz der Kundenvermögen wäre vermutlich nur durch deren allgemeine Blockierung möglich gewesen. Da die öffentliche Meinung eine Sperre der deutschen und österreichischen Vermögenswerte 1933 beziehungsweise 1938 vermutlich begrüsst hätte und da die Gerichte die Auslieferungen verhinderten, wenn sie angerufen wurden, ist aus heutiger Sicht nur schwer nachzuvollziehen, warum die schweizerische Politik und die Banken der Ausführung der deutschen Depotzwangsgesetze—sei es durch eine Sperre, sei es durch andere wirksame Interventionen—nicht vehement entgegentraten." Barbara Bonhage, Hanspeter Lussy & Marc Perrenoud, Nachrichtenlose Vermögen bei Schweizer Banken: Depots, Konten und Safes von Opfern des nationalsozialistischen Regimes und Restitutionsprobleme in der Nachkriegszeit 166 (2001).

### **Scope of the Award**

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

### **Certification of the Award**

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

Claims Resolution Tribunal  
19 November 2003