

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED 1]  
also acting on behalf of [REDACTED 2]

## **in re Accounts of Ernest Spitzer and Elise Spitzer**

Claim Numbers: 500703/UM; 500704/UM<sup>1</sup>

Award Amount: 356,125.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED], (the “Claimant”) to the published accounts of Ernest Spitzer and Elise Spitzer. This Award is to the

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<sup>1</sup> The Claimant submitted additional claims. These include a claim to the accounts of [REDACTED], née [REDACTED], which is registered under the Claim Number 216036; [REDACTED], which is registered under the Claim Number 216039; [REDACTED] which is registered under the Claim Number 216090; [REDACTED], née [REDACTED], which is registered under the Claim Number 500692; [REDACTED], née [REDACTED], which is registered under the Claim Number 500693; Dr. [REDACTED], which is registered under the Claim Number 500694; [REDACTED], which is registered under the Claim Number 500695; [REDACTED], née [REDACTED], which is registered under the Claim Number 500696; Dr. [REDACTED], which is registered under the Claim Number 500697; [REDACTED], which is registered under the Claim Number 500699; Dr. [REDACTED], which is registered under the Claim Number 500700; [REDACTED], née [REDACTED], which is registered under the Claim Number 500701; Dr. [REDACTED] which is registered under the Claim Number 500702; [REDACTED], née [REDACTED], which is registered under the Claim Number 500705; [REDACTED], which is registered under the Claim Number 500706; Dr. [REDACTED], née [REDACTED], which is registered under the Claim Number 500707; Dr. [REDACTED], which is registered under the Claim Number 500708; [REDACTED], which is registered under the Claim Number 500709; [REDACTED], née [REDACTED], which is registered under the Claim Number 500710; [REDACTED], which is registered under the Claim Number 500711; [REDACTED], which is registered under the Claim Number 500712; [REDACTED], which is registered under the Claim Number 500713; [REDACTED], which is registered under the Claim Number 500714; [REDACTED] which is registered under the Claim Number 500717; [REDACTED], née [REDACTED], which is registered under the Claim Number 500749; [REDACTED], which is registered under the Claim Number 500752; [REDACTED], which is registered under the Claim Number 500753; [REDACTED], which is registered under the Claim Number 500754; [REDACTED], née [REDACTED], which is registered under the Claim Number 500755; Dr. [REDACTED], which is registered under the Claim Number 500963; [REDACTED], née [REDACTED], which is registered under the Claim Number 500982; [REDACTED], née [REDACTED], which is registered under the Claim Number 500698; and Dr. [REDACTED], which is registered under the Claim Number 500751. The CRT did not locate an account belonging to the Claimant s relatives, [REDACTED], [REDACTED], [REDACTED], née [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], née [REDACTED], [REDACTED], [REDACTED], [REDACTED], née [REDACTED], or [REDACTED], in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons ( ICEP or ICEP Investigation ), which identified accounts probably belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the Rules ). Moreover, in decisions dated 25 October 2002, 15 September 2003, and 8 April 2004, the Court approved awards to the accounts held by Olga Langer, Alfred Spitzer and Lily Bader, Regine Stern and Hilda Pollak, respectively (see In Re Accounts of Olga Langer and Fritz Langer, In Re Accounts of Alfred Spitzer, and In Re Accounts of Lily Bader, Regine Stern and Hilda Pollak). The CRT will treat the claims to the remaining accounts in separate decisions.

published accounts of Ernest Spitzer (“Account Owner Ernest Spitzer”) and Elise Spitzer (“Account Owner Elise Spitzer”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (“Bank I”) and to the published accounts of Account Owner Ernest Spitzer, over which Account Owner Elise Spitzer (the “Power of Attorney Holder”) held power of attorney, at the Zurich branch of the [REDACTED] (“Bank II”) (together the “Banks”).<sup>2</sup>

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 owners, and the banks have been redacted.

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

The Claimant submitted two Claim Forms identifying the Account Owners as her great-uncle, Ernest (Ernst) Spitzer, who was born on 15 October 1876 in Vienna, Austria-Hungary, and her great-aunt, Elise (Lisl) Spitzer, née Löwner, who was born on 12 May 1889, also in Vienna. The Claimant indicated that her great-uncle and great-aunt were married in Vienna, and that they had one child: [REDACTED], who was born on 12 December 1919 in Vienna. The Claimant further indicated that her great-uncle was a dermatologist, whose office was located at Morzinplatz 5 in Vienna I. In addition, the Claimant indicated that her great-uncle and great-aunt, who were Jewish, fled Austria in approximately 1939, and that they were able to enter the United States with the help of her great-uncle’s brother, [REDACTED]. Furthermore, the Claimant indicated that her great-uncle died in St. Louis, Missouri, the United States, on 16 February 1964, and that her great-aunt died on 26 April 1980, also in St. Louis.

The Claimant submitted the will of her grandfather, [REDACTED], which identifies [REDACTED] as one of his daughters, and Dr. Ernest Spitzer as his brother; a postcard, addressed to Mr. and Mrs. [REDACTED], which is signed by “Lisl and Ernest”; and a reference written by Dr. Ernest Spitzer for [REDACTED], indicating that she worked as a secretary, on a document containing a letterhead identifying Dr. Ernest Spitzer as a dermatologist, and specifying that his office was located at Morzinplatz 5 in Vienna I. In addition, the CRT notes that the Claimant submitted a copy of her own birth certificate, identifying her parents as Dr. [REDACTED] and [REDACTED], née [REDACTED], with another Claim Form, numbered 216036, in which the Claimant asserts a claim to the accounts of [REDACTED], her mother.

The Claimant indicated that she was born on 15 January 1938 in Vienna. The Claimant is representing her brother, [REDACTED 2], who was born on 26 January 1935, also in Vienna.

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<sup>2</sup> The CRT notes that, on the February 2001 published list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the “ICEP List”), Account Owner Ernest Spitzer is indicated as having two accounts at Bank II. Upon careful review, the CRT has concluded that Bank II’s records evidence the existence of three accounts at Bank II. In addition, the CRT notes that, on the ICEP List, Account Owner Ernest Spitzer is identified as “Ernst Spitzer” in connection with the accounts owned at Bank I. However, the actual records of Bank I identify Account Owner Ernest Spitzer as “Ernest Spitzer.” The CRT also notes that Elise Spitzer is listed on the ICEP List as having two accounts at Bank I. Bank I’s records, however, indicate that Elise Spitzer held one account, jointly with Ernest Spitzer.

## **Information Available in the Banks' Records**

### Bank I

Bank I's records consist of two customer cards. According to these records, the Account Owners were Dr. Ernest Spitzer and *Frau* (Mrs.) Elise Spitzer, who resided at Morzinplatz 5 in Vienna I, Austria. Bank I's records indicate that the Account Owners jointly held one savings account, numbered 44340, and that Account Owner Ernest Spitzer held one custody account, numbered L36063. Bank I's records indicate that the savings account was closed on 19 April 1938, and that the custody account was closed on 25 April 1938. The amounts in the accounts on the dates of their closure are unknown. There is no evidence in Bank I's records that the Account Owners or their heirs closed the accounts and received the proceeds themselves.

### Bank II

Bank II's records consist of a customer card, a form acknowledging receipt of general terms and conditions applicable to custody accounts, receipts for deposits made in custody account, and a power of attorney form. According to these records, Account Owner Ernest Spitzer was Dr. Ernest Spitzer, and the Power of Attorney Holder was his wife, *Frau* (Mrs.) Elise Spitzer. Bank II's records indicate that Account Owner Ernest Spitzer and the Power of Attorney Holder resided at Morzinplatz 5 in Vienna I. Furthermore, Bank II's records indicate that on 23 March 1938 Bank II was instructed to send all correspondence to Account Owner Ernest Spitzer and the Power of Attorney Holder through [REDACTED], at an address in St. Louis, Missouri, the United States. Bank II's records also contain Account Owner Ernest Spitzer's signature.

Bank II's records further indicate that Account Owner Ernest Spitzer held one custody account, numbered 23060, and two savings accounts, one numbered 4187, and the other numbered 13181. In addition, Bank II's records indicate that one of the savings accounts was closed on 26 March 1938, but do not specify to which one of the two savings accounts this closing date applies. The amount in the account on the date of its closure is unknown. According to Bank II's records, custody account was closed on 31 March 1938. The value of the custody account on the date of its closure is not indicated.

Bank II's records do not show when the other savings account was closed nor do these records indicate the value of this account. The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did report the savings account to the CRT. There is no evidence in Bank II's records that Account Owner Ernest Spitzer, the Power of Attorney Holder, or their heirs closed any of the three 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, and/or who were nationals of the Reich, including Austria, and who held assets above a specified

level to register all their assets as of 27 April 1938 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there is a file concerning the assets of Dr. Ernest and Frau Elise Spitzer, numbered 66149, which however do not contain an asset declaration, but only official correspondence. According to this correspondence, Ernest Israel Spitzer lived at at Morzinplatz 5 in Vienna I, was born on 15 October 1876, and was married to Elise Sara Spitzer, née Löwner, born 2 May 1889, with whom he had one son, Heinrich Israel Spitzer, who was born on 27 December 1918. In addition, the records contain a communication from the tax authorities, dated 5 May 1939, stating that in as much as the family’s assets had been valued at RM 60,000, “flight tax” (*Reichsfluchtsteuer*) of RM 15,000.00 was being assessed. Another tax authority document, dated 10 October 1939, states that Dr. Ernest Spitzer had valued his assets at RM 8,000.00 in his Census declaration and that, accordingly, RM 1,600.00 was due in “atonement tax.” Finally, these records indicate that Dr. Ernest Spitzer’s entire assets remaining in Austria were seized by the Nazis on 25 August 1941. These records make no mention of assets held in a Swiss bank account.

## **The CRT’s Analysis**

### Joinder of Claims

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

### Identification of the Account Owners

The Claimant has plausibly identified the Account Owners and the Power of Attorney Holder. The Claimant’s great-uncle’s and great-aunt’s names and city and country of residence match the published names and city and country of residence of the Account Owners and the Power of Attorney Holder. The Claimant identified the Account Owners’ address, which matches unpublished information about the Account Owners and Power of Attorney Holder contained in the Banks’ records. In addition, the Claimant identified Hugo Spitzer as her great-uncle’s brother, and indicated that he resided in St. Louis, Missouri, the United States, which matches unpublished information about the contact person specified in Bank II’s records.

In support of her claim, the Claimant submitted documents, including the will of her grandfather, which identifies Dr. Ernest Spitzer as his brother; and a reference written by Dr. Ernest Spitzer on a document containing a letterhead identifying Dr. Ernest Spitzer as a dermatologist, and indicating that his office was located at Morzinplatz 5 in Vienna I, providing independent verification that the person who is claimed to be Account Owner Ernest Spitzer had the same name and professional title as the name and professional title recorded in the Banks’ records as the name and professional title of Account Owner Ernest Spitzer, and that he resided in the same city, and worked at the same address as the city and address recorded in the Banks’ records as the city of residence and address of Account Owner Ernest Spitzer. The Claimant also submitted a sample of her great-uncle’s signature, which matches the signature of Account Owner Ernest

Spitzer contained in Bank II's records. The CRT notes that the other claims to these accounts were disconfirmed because those claimants provided a different country of residence or profession than the country of residence or profession of Account Owner Ernest Spitzer.

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

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and that they fled from Austria to the United States in approximately 1939, after the country was annexed by Nazi Germany (the "*Anschluss*"). In addition, the CRT notes that the 1938 Census records for Dr. Ernest Spitzer indicate that his entire assets remaining in Austria were seized by the Nazis in August 1941.

#### The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners by submitting specific information and documents, demonstrating that the Account Owners were the Claimant's great-uncle and great-aunt. These documents include her own birth certificate, identifying her parents as Fritz Langer and [REDACTED], née [REDACTED]; the will of her grandfather, [REDACTED], which identifies [REDACTED] as one of his daughters, and Dr. Ernest Spitzer as his brother; and a postcard, addressed to Mr. and Mrs. [REDACTED], which is signed by "Lisl and Ernest". There is no information to indicate that the Account Owners have other surviving heirs other than the party whom the Claimant is representing.

#### The Issue of Who Received the Proceeds

Regarding the custody account, numbered L 36063, and savings account, numbered 44340, both at Bank I, the custody account, numbered 23060, at Bank II, and one of the savings accounts at Bank II, all of which were closed between late March and mid-April 1938, after the *Anschluss*, given that the Account Owners/Power of Attorney Holder resided in Austria at that time, and that they subsequently fled to the United States; that there is no record of the payment of the Account Owners'/Power of Attorney Holder's accounts to them; that the Account Owners/Power of Attorney Holder and their heirs would not have been able to obtain information about their accounts after the Second World War from the Bank 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 the Account Owners/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.

Regarding the second savings account at Bank II, for which no information is available with respect to its disposition, the CRT notes that the accounts may have been closed at a time when, according to information provided by the Claimant, Account Owner Ernest Spitzer and the Power of Attorney Holder were outside Nazi-dominated territory. However, given that Bank II's

records do not indicate to whom the accounts were closed, that Account Owner Ernest Spitzer and the Power of Attorney Holder fled their country of origin due to Nazi persecution, that Account Owner Ernest Spitzer and the Power of Attorney Holder may have had relatives remaining in their country of origin and that they may therefore have yielded to Nazi pressure to turn over their accounts to ensure their safety, that Account Owner Ernest Spitzer and the Power of Attorney Holder, and their heirs, would not have been able to obtain information about their accounts after the Second World War from the Bank, 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 Ernest Spitzer and the Power of Attorney Holder, or to 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 the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were her great-uncle and great-aunt, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holder nor their heirs received the proceeds of the claimed accounts.

#### Amount of the Award

In this case, the Account Owner held two custody accounts and three savings 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 ("SF"), and the average value of a savings account was SF 830.00. Thus, the total 1945 average value of the accounts at issue is SF 28,490.00. 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 356,125.00.

#### Division of the Award

According to Article 23(1)(d) of the Rules, if neither the Account Owners' spouses nor any descendants of the Account Owners have submitted a claim, the award shall be in favor of any descendants of the Account Owners' parents who have submitted a claim, in equal shares by representation. Here, neither the Account Owners' spouses nor their descendants have submitted a claim, and the Claimant is a descendant of Account Owner Ernest Spitzer's parents. In addition, the Claimant is representing [REDACTED 2], her brother. Accordingly, the Claimant and her brother are each entitled to one-half of the total award amount.

**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  
18 November 2004