

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Denial**

to Claimant Irene Gross  
also acting on behalf of Anneliese Kirchheimer  
represented by Viraf Udawadia

## **in re Accounts of Kurt Josef Bernstein**

Claim Number: 400853/BW<sup>1</sup>

This Certified Denial is based upon the claim of Irene Gross, née Bernstein (the “Claimant”), to the published accounts of Kurt Josef Bernstein (the “Account Owner”) at the Lausanne branch of the [REDACTED] (“Bank I”) and the Zurich branch of [REDACTED] (“Bank II,” together the “Banks”).

All denials are published, but where a claimant has not requested confidentiality, as in this case, only the name of the banks have been redacted.

## **Information Provided by the Claimant**

The Claimant submitted a Claim Form identifying the Account Owner as her father, Kurt Josef Bernstein, who was born on 9 March 1894 in Chemnitz, Germany, and was married to Margarethe Bernstein, née Becker, on 21 October 1919 in Chemnitz. The Claimant stated that from 1919 to 1938, her father resided at Parkstrasse 18 in Chemnitz. The Claimant further stated that her father, who was Jewish, was the managing director and a principal shareholder of *Marschel Frank Sachs AG* located in Chemnitz, which, according to the Claimant, was the largest textile company and factory in Germany at that time. The Claimant indicated that in 1938 the Nazis forced her father out of the company, and he fled from Germany to Lausanne, Switzerland, where he resided at Langallerie 27 until 1941. The Claimant further indicated that her father moved to Montevideo, Uruguay, in 1941 with his wife and two daughters. According to the Claimant, her father died in Montevideo on 19 December 1962, and her mother died in Montevideo in 1989.

The Claimant submitted documents in support of her claim, including:

- (1) her father’s birth certificate, indicating that Kurt Josef Bernstein was born on 9 March 1894 in Chemnitz;

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<sup>1</sup> In a separate decision, the CRT awarded a share of the account of Karl Becker to Irene Gross (the “Claimant”) and represented party Anneliese Kirchheimer. See *In re Account of Karl Becker* (approved on 31 August 2005).

- (2) a letter, dated 4 August 1938, from *Mafrasa Textilwerke AG* in Chemnitz, and addressed to Kurt Bernstein, Langallerie 27 in Lausanne;<sup>2</sup>
- (3) a certificate of good standing (*Acte de Moeurs*) issued by the city of Lausanne to Kurt Bernstein for the purpose of his family's pending emigration from Switzerland to Uruguay, indicating that Kurt Bernstein arrived in Lausanne on 24 April 1938, and that he had resided at Langallerie 27 with his wife Margarete and children Anneliese and Irene;
- (4) the marriage certificate of Anneliese Kirchheimer, née Bernstein, dated in 1944 in Montevideo, indicating that her father was Kurt Bernstein and that she was born in Chemnitz;
- (5) the Claimant's marriage certificate, dated in 1947 in Montevideo, and indicating that the father of Irene Gross, née Bernstein, was Kurt Bernstein and that she was born in Chemnitz;
- (6) Kurt Josef Bernstein's German passport, issued by the German consulate in Montevideo in 1957 and bearing his signature;
- (7) the death certificate of Kurt Bernstein, indicating that he died in Montevideo on 19 December 1962; and
- (8) an inheritance certificate relating to the estate of Kurt Bernstein, dated in 1967 in Montevideo, indicating that his heirs were his wife and his daughters Anneliese Kirchheimer and Irene Gross.

The Claimant indicated that she was born on 12 October 1925 in Chemnitz. The Claimant is representing her sister, Anneliese Kirchheimer, née Bernstein, who was born on 16 October 1921 in Chemnitz.

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

The CRT notes that the auditors who carried out the investigation of the Banks to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report an account belonging to Kurt Bernstein during the investigation of the Banks. The documents evidencing accounts belonging to Kurt Bernstein were obtained from the Archive of the Regional Tax Office in Berlin (*Oberfinanzdirektion Berlin*) and are described in detail below.<sup>3</sup>

### **Information Available from German Archival Sources**

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, and who held assets above a specified level, to register all of

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<sup>2</sup> According to the German archival records, after the forced sale of *Marschel Frank Sachs AG* to a non-Jewish owner in approximately July 1938, the company was renamed *Mafrasa Textilwerke AG*. See also *JUDEN IN CHEMNITZ*, 79 (Jürgen Nitsche & Ruth Röcher eds.), excerpt available at <http://www.juden-in-chemnitz.de/pic/wirtschaft.pdf>.

<sup>3</sup> These documents have since been moved to the Federal Office for Central Services and Unresolved Property Issues, Restitution Archive: Documents from the Nazi Era (*Bundesamt für zentrale Dienste und offene Vermögensfragen, Rückerstattungsarchiv: Archivalien aus der NS-Zeit*).

their assets as of 27 April 1938 (the “1938 Census”). In the records of the Archive of the Regional Tax Office in Berlin (*Oberfinanzdirektion Berlin*), there are documents concerning the assets of Kurt Bernstein, numbered 902/5374.

The German archival records, described in detail below, contain a number of documents chronicling Kurt Bernstein’s efforts to satisfy the Reich’s financial obligations imposed upon him, as well as his efforts to transfer his remaining German-held *Reichsmark* (“RM”) denominated assets abroad. These records indicate that Kurt Bernstein held two accounts, the types of which are not indicated, one each at Bank I and Bank II.

#### The 1938 Census asset declaration

The German archival records contain Kurt Bernstein’s 1938 asset declaration form, which he signed on 23 July 1938 in Lausanne. According to this declaration, Kurt Bernstein was born on 9 March 1894, was married to Margarethe Bernstein, née Becker, previously resided at Parkstrasse 18 in Chemnitz, and resided at Langallerie 27 in Lausanne as of the date he signed the form.

According to his asset declaration, Kurt Bernstein held a number of accounts denominated in Reichsmark and blocked-Reichsmark (known generally as *Sperrmark*) at four banks in Germany: *Bayer & Heinze, Chemnitz; Bayerische Vereinsbank; Sächsische Bank, Chemnitz; and Deutsche Bank*. This document indicates that Kurt Bernstein had made four outstanding loans, that approximately RM 91,879.95 was owed to him, and that he was involved in an ongoing tax return proceeding from which he expected a possible return of between RM 15,850.00 and RM 31,755.00. This document also indicates that Kurt Bernstein reported owning a share in his former company *Macoma Textilwerke AG, Bodenbach*, valued at RM 58,680.00, real property valued at RM 16,000.00, and an insurance policy valued at RM 23,114.90. In his declaration, Kurt Bernstein also reported an account, the type of which is not indicated, valued at 176,766.70 Swiss Francs (“SF”) at Bank I. According to his declaration, the assets in the account were comprised the proceeds of the sale of his *Sperrmark*-denominated German assets that had been sold before 27 April 1938, and which were currently invested in Switzerland in long term securities (“*Mein Guthaben bei der [Bank I] in Lausanne stellt den Erlös aus meinem vor dem 27.4.1938 verkauften Sperrmarkguthaben dar. Seit 27.4.1938 habe ich mein Guthaben bei [Bank I] in langfristige Anlagen umgewandelt*”).

An addendum to Kurt Bernstein’s 1938 asset declaration indicates that in the period between 27 April 1938 and 23 July 1938, he had received the value of the four outstanding loans owed to him, and their *Sperrmark* value had been exchanged into Swiss Francs at an average of 9% and transferred to Switzerland, where they were on deposit. This addendum also indicates that 52,624.00 in blocked-RM *Effektensperrmark* (blocked-RM proceeds from securities investments) held in an account at the *Deutsche Bank* had been exchanged into Swiss Francs at an average of 9% and were also on deposit in Switzerland.

### Letter from Bank II Letter dated 1 December 1938

The German archival records also contain a letter, dated 1 December 1938, from Bank II in Zurich, to Kurt J. Bernstein of Langallerie 27 in Lausanne. In this letter, Bank II confirmed that it was able to exchange various amounts of *Sperrmark* for him, and had deposited the proceeds into his Swiss Franc-denominated account at Bank II. According to the letter, the following transactions took place:

- 2 May 1938, RM 2,447.13 in *Sperrmark* exchanged for SF 5,999.55;
- 13 May 1938, RM 50,000.00 in *Sperrmark* exchanged for SF 12,250.00;
- 2 June 1938, RM 16,707.40 in *Sperrmark* exchanged for SF 3,487.65; and
- 8 June 1938, RM 50,000.00 in *Sperrmark* exchanged for SF 11,000.00.

Thus, according to this letter, in the period between 2 May 1938 and 8 June 1938, Bank II exchanged a total of RM 119,154.53 in *Sperrmark* for Swiss Francs totaling SF 32,737.20, which were credited to Kurt Bernstein's account at Bank II. This letter further indicates that in the period of time between 20 July 1938 and 11 August 1938, Kurt Bernstein's account at Bank II was further credited with SF 8,302.66 from three transfers from other Reich financial institutions, namely the *Deutschen Golddiskontbank, Berlin* and the *Reichs-Kreditgesellschaft A.G. Berlin*.

### Documents regarding the payment of atonement tax

The German archival records also contain documents regarding atonement tax that had been assessed against Kurt Bernstein. These documents include a letter, dated 19 December 1938, from Kurt Bernstein in Lausanne to various Nazi finance authorities, which indicates that he instructed his bank in Germany to transfer an amount of RM 10,096.00 to Nazi authorities as a first installment of the atonement tax (*Judenvermögensabgabe*) due on behalf of himself and his wife. According to this document, Kurt Bernstein indicated that the amount he was paying was an estimate, as his atonement tax assessment had not yet been finalized. This amount, according to additional documents contained in the records, was paid on 30 December 1938 to the Finance Office, Berlin-Moabit-West (*Finanzamt Berlin-Moabit-West*), from his emigrant blocked currency account (*Auswanderer-Sperrguthaben*) at *Bankhaus Bayer & Heinze* in Chemnitz.

The records further include Kurt Bernstein's final atonement tax assessment, dated 10 February 1939, which indicates he was assessed total atonement tax of RM 34,000.00, which was to be paid to the Reich financial authorities in four equal payments of RM 8,500.00 on 15 December 1938, 15 December 1939, 15 May 1939, and 15 August 1939. A subsequent document dated 7 April 1939, indicates that Kurt Bernstein owed RM 24,042.25 in outstanding atonement tax.

### Documents regarding the *Mafrasa* lawsuit

The German archival records also include a letter from Kurt Bernstein's lawyer, Dr. Friedrich Israel Wienskowitz of Dresden, Germany, to the Berlin-Moabit-West Revenue Office on 11 March 1939, informing that office that Kurt Bernstein would not be able to pay the next installment of the atonement tax because he had been sued by *Mafrasa Textilwerke AG*, the re-

named Chemnitz company of which Kurt Bernstein had previously been a director and major shareholder. According to the records, *Mafrasa* sought damages of RM 155,573.50, and pending the outcome of the lawsuit, all of Kurt Bernstein's assets in Germany had been seized.

The German archival records also contain a letter, dated 27 May 1939, from the judge overseeing the lawsuit to the Finance Office, Berlin-Moabit-West, which states that the parties were close to settlement and inquires as to the amount of outstanding atonement tax owed by Kurt Bernstein. According to the reply from the Finance Office, Berlin-Moabit-West dated 19 June 1939, Kurt Bernstein owed RM 24,212.25 in outstanding atonement tax. In a letter dated 12 September 1939 to the Finance Office, Berlin-Moabit-West, Kurt Bernstein's lawyer inquired as to the remaining balance of atonement tax owed. His lawyer wrote that, as the lawsuit was almost settled, Kurt Bernstein would again have access to his remaining German bank accounts and would be in a position to settle the outstanding amount. According to the reply from the Finance Office, Berlin-Moabit-West dated 19 September 1939, RM 24,382.25 of atonement tax remained outstanding for Kurt Bernstein.

#### Documents regarding the final disposition of assets

The German archival records also contain a letter from the Ministry of the Interior, Office of the *Reichsführer-SS* and Chief of the German Police (*Der Reichsführer-SS und Chef der deutschen Polizei im Reichsministerium des Innern*) dated 19 December 1940, to the Finance Office, Berlin-Moabit-West concerning the withdrawal of German citizenship of Kurt Josef Bernstein. According to this letter, which references the 1938 asset declaration of Kurt Bernstein, the assets listed in his declaration no longer had value as they had all been used to satisfy obligations or had been transferred abroad. This letter indicates:

- that the real property of Kurt Bernstein was sold, and partly used to satisfy the outstanding atonement tax;
- that Kurt Bernstein's life insurance policy with the Induna-Germania insurance company had been liquidated and paid to the benefit of the *Reichskreditgesellschaft, Berlin*;
- that Kurt Bernstein had been authorized by the relevant offices of foreign currency control (*zuständigen Devisenstelle*) to sell his considerable assets, for the purpose of transferring funds abroad, and via transfers through the *Konversionskasse für deutsche Auslandsschulden, Berlin*; and
- that Kurt Bernstein's share of the *Makosa Textil-werke AG, Bodenbach*, had been used to satisfy the judgment of the lawsuit brought by *Mafrasa Textilwerke A.G.*

Finally, these records contain a January 1941 document issued by the Enforcement Department of the Berlin Financial Office (*Finanzamt Vollstreckungsstelle*) which indicates that Kurt Bernstein's debt for the final installment of RM 8,500.00 of the atonement tax was dismissed (*niederschlagen*) because he had no assets remaining in Germany.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's father's name matches the published name of the Account Owner. The Claimant identified the Account Owner's date of birth, Swiss address, city of residence in Germany, and the names of his spouse and former employer, all of which match information about the Account Owner contained in the German archival records.

In support of her claim, the Claimant submitted documents, including her father's birth certificate; a certificate issued by the city of Lausanne to Kurt Bernstein for the purpose of his family's pending emigration from Switzerland to Uruguay; Kurt Josef Bernstein's German passport; the death certificate of Kurt Bernstein; and an inheritance certificate relating to the estate of Kurt Bernstein. These documents provide independent verification that the person who is claimed to be the Account Owner had the same name, date of birth, and city and country of residence recorded in the German archival records as the name, date of birth, and city and country of residence of the Account Owner. The Claimant also submitted a sample of her father's signature, which matches the signatures of the Account Owner contained in the German archival records. The CRT notes that there are no other claims to these accounts.

### 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 the Account Owner was Jewish, was forced from his job, and fled Germany to Switzerland in 1938. The CRT notes that the Account Owner was also required to declare his assets pursuant to the 1938 Census.

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

The Claimant has plausibly demonstrated that she and represented party Anneliese Kirchheimer are related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was their father. These documents include: a certificate issued by the city of Lausanne to Kurt Bernstein, the marriage certificates of Anneliese Kirchheimer and the Claimant, and an inheritance certificate relating to the estate of Kurt Bernstein. There is no information to indicate that the Account Owner has surviving heirs other than the party whom the Claimant is representing.

### The Issue of Who Received the Proceeds

The CRT notes that, according to his 1938 asset declaration, prior to 27 April 1938 the Account Owner exchanged *Sperrmark* for Swiss Francs, which were subsequently invested in long-term investments in Switzerland at Bank I. Additionally, in the addendum to his 1938 asset declaration, the Account Owner acknowledged his ongoing exchange of *Sperrmark* into Swiss Francs with regard to the repayment of the four loans he had received, as well as the liquidation of his *Effektensperrmark* account at the *Deutsche Bank*. Similarly, the records indicate that

between 2 May 1938 and 8 June 1938, the Account Owner exchanged RM 119,154.53 via *Sperrmark* in exchange for Swiss Francs that were then deposited at Bank II. The CRT notes that this latter amount likely includes, among other assets, the *Sperrmark* received from the repayment of the loans and the liquidation of the *Deutsche Bank* account that occurred in the period between 27 April 1938 and 23 July 1938. Further, the records indicate that the Account Owner's account at Bank II received additional transfers from both the *Deutschen Golddiskontbank, Berlin* and the *Reichs-Kreditgesellschaft A.G. Berlin* between 20 July 1938 and 11 August 1938, which were also ostensibly proceeds of *Sperrmark* exchange activities.

The *Sperrmark* transactions outlined above and in the Account Owner's 1938 Census records demonstrate an instance in which a Jewish individual was able to pay the confiscatory and discriminatory taxes levied on him by the Nazi regime and transfer any remaining assets abroad.<sup>4</sup> As the specific documents described above indicate, the Account Owner liquidated RM-denominated assets held in Germany in exchange for *Sperrmark*. These *Sperrmark*, which were essentially worthless abroad, could only be exchanged into fungible foreign currency by selling them at a substantial discount to the official RM exchange rate, in this instance at an average 91% loss to the Account Owner. Although the Account Owner sustained considerable capital loss from these *Sperrmark* exchange transactions, the information contained in the documents indicates that the Account Owner undertook these transactions with the assent of the Nazi financial authorities in order to transfer his assets outside the Reich. The documents show that, once his assets were in Switzerland, the Account Owner retained full dominion over them. Thus, the capital loss sustained by the Account Owner was the result of German foreign currency regulations that governed the transference of assets outside the Reich, not of any action by the Swiss banks.

The CRT notes that there is no information to suggest that the assets held in the Account Owner's accounts in Switzerland were transferred back to the Reich to satisfy any outstanding financial obligations. Rather, the fact that the last installment of his atonement tax was cancelled by the Nazi finance authorities on account that the Account Owner "had no remaining assets in Germany" indicates that the Account Owner had control over his accounts in Switzerland and accessed the proceeds himself.

Given that the Account Owner was allowed to transfer a portion of his remaining financial assets abroad, and sought to satisfy the financial obligations imposed upon him by the Reich; and given that the Account Owner, his wife, and two daughters were living in safety in Switzerland from at

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<sup>4</sup> The CRT notes that *Sperrmark* were the only vehicle through which emigrants could transfer funds abroad. All domestically held assets of emigrants were blocked under the foreign exchange laws. Financial assets were blocked in emigrants' *Auswanderer Sperrmark* accounts. Until 1938 it was possible to sell these *Sperrmark* at large discounts to the official value of the *Reichsmark* ("RM"), first 50% and finally in 1938 at over 90%, to foreigners, who then would credit the emigrant abroad with the equivalent foreign exchange value of the discounted RM amounts. Often, as it appears in this case, these transactions involved a foreign bank. These transactions required authorization from the Foreign Exchange Control Office and the fiscal authorities as well as a declaration, on the part of the acquirer of the *Sperrmark*, that such would be used for an approved purpose, namely granting of credit to a German resident, payment of insurance premiums, or acquisition of real estate. After 1938 such triangular transactions were no longer permitted and emigrants could sell their *Sperrmark* only to the *Deutsche Golddiskontbank*, an affiliate of the Reichsbank. See, e.g., *In re Accounts of Alfred and Hanna Felsenstein* (approved by the Court on 24 September 2008).

least 23 July 1938 onwards,<sup>5</sup> that the Account Owner openly converted his *Sperrmark* assets into Swiss Francs and invested them in long-term investments in Bank I, and that the Reich financial authorities reported on 19 December 1940 that the Account Owner had converted *Sperrmark* for transfer abroad with the permission of the authorities, the CRT concludes that the Account Owner retained control over his assets deposited into his accounts at Bank I and Bank II and received the proceeds himself.

#### Right of Appeal and Request for Reconsideration

Pursuant to Article 30 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), the Claimant may appeal this decision or submit a request for reconsideration within ninety (90) days of the date of the letter accompanying this decision.

An appeal must be based upon a plausible suggestion of error regarding the CRT’s conclusions set out in this decision. Any appeals which are submitted without a plausible suggestion of error shall be summarily denied. A request for reconsideration must be based on new documentary evidence not previously presented to the CRT that, if considered, would have led to a different outcome of the claim. Claimants should briefly explain the relevance of the newly submitted documents in view of the conclusions stated in the certified decision.

The Claimant should send appeals and/or requests for reconsideration in writing to the following address: Oren Wiener, Claims Resolution Tribunal, Attention: Appeals / Request for Reconsideration, P.O. Box 9564, 8036 Zurich, Switzerland. If more than one account has been treated in this decision, the Claimant should identify the account, including, where available, the Account Identification Number, that forms the basis of the appeal and/or request for reconsideration.

#### **Certification of the Denial**

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal  
17 December 2010

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<sup>5</sup> This is the date on which the Account Owner signed his 1938 asset declaration in Lausanne.