

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Moriz Kuffner

Claim Numbers: 224285/MC; 224431/MC; 224432/MC; 224433/MC; 224435/MC¹

Award Amount: 2,586,608.75 Swiss Francs

This Certified Award is based upon the claims of [REDACTED], born [REDACTED], (the “Claimant”) to the accounts of Hans Lindenthal, Hedwig Lindenthal, Camilla Kuffner, Eva Mandl, and Marianne Kuffner. This Award is to the published accounts of Moriz Kuffner (the “Account Owner”) at the [REDACTED] (the “Bank”).

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 owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted five Claim Forms, identifying his paternal grandmother as [REDACTED], née [REDACTED], who was the daughter of [REDACTED] and [REDACTED], both of whom were Jewish. In correspondence with the CRT, the Claimant’s wife submitted additional documentation and information, identifying the Account Owner as the Claimant’s paternal great-great-grandfather’s cousin’s son, Moriz Kuffner, also known as Moriz von Kuffner.

The documents submitted by the Claimant’s wife consist primarily of correspondence between the Claimant and historical researchers in Austria, with whom the Claimant corresponded regarding the Kuffner family’s history. The historical researchers provided the Claimant with a great deal of information gleaned from a variety of historical sources regarding the Kuffner family of Vienna, Austria.

¹ In a separate decision, the [REDACTED] (“the Claimant”) was awarded the accounts of Marianne Kuffner, Hedwig Lindenthal, and Eva Mandl. See *In re Accounts of Marianne Kuffner, Hedwig Lindenthal, and Eva Mandl* (approved on 26 November 2002). That decision was subsequently amended in a Certified Amendment approved concomitantly with this decision.

The documents submitted by the Claimant's wife indicate that Moriz Kuffner, who was Jewish and was born on 31 January 1854, was the son of [REDACTED], who once served as the mayor of Ottakring, today a district of Vienna.² According to this information, [REDACTED] and his cousin [REDACTED] became the owners of the *Ottakringer Brewery (Ottakringer Brauerei)* in Ottakring in 1850. The submitted documents include a detailed family tree indicating that the father of [REDACTED], (who was the father of the Claimant's paternal grandmother, [REDACTED], née [REDACTED],) was [REDACTED], who first purchased the brewery together with [REDACTED] in 1850. The Claimant stated that his father, [REDACTED] (later [REDACTED]), served as a manager of the brewery prior to the incorporation of Austria into the Reich in March 1938 (the "*Anschluss*").

According to information provided by the Claimant's wife, Moriz von Kuffner was married to [REDACTED], had three sons, [REDACTED], [REDACTED] and [REDACTED] (the latter two were twins), and resided in Vienna. According to this information, Moriz and [REDACTED] were enthusiastic and accomplished alpinists who often spent time mountain-climbing in Switzerland. They were members of the Austrian Alpine Association until the organization's membership was aryanized, and the couple was forced to resign. The documents also show that Moriz Kuffner founded the Kuffner Observatory (*Kuffner Sternwarte*) in Ottakring, Vienna in 1886.

The information shows that [REDACTED] died in Vienna in 1938, and that following the *Anschluss*, Moriz Kuffner fled in 1938 to Zurich, where he passed away in March 1939. The information also indicates that Moriz Kuffner, together with other members of the Kuffner family, held a large amount of real estate in Vienna and the surrounding area that was seized by the Nazi regime following the *Anschluss*.

Finally, one of the documents submitted by the Claimant's wife consists of detailed results of research by one of the historians of historical property-ownership records that reveal the Kuffner family's ownership of property in Vienna and the surrounding area. The document consists largely of dates of changes made to property ownership, based upon entries in the Vienna property registry. According to these records, upon Moriz von Kuffner's death, his property passed to the following heirs: [REDACTED], [REDACTED] and [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED](the Claimant's father), and [REDACTED] (later [REDACTED]).

In support of his claim, the Claimant, and later his wife, submitted copies of numerous documents in addition to the correspondence with the historians outlined above. These documents include:

- (1) a name change certificate, indicating that [REDACTED], who was born in Vienna, officially changed his name to [REDACTED] as of 3 February 1939;
- (2) a series of letters written by [REDACTED] and her sister [REDACTED] between the years 1939 and 1942 to an acquaintance in Switzerland, describing their flight from Austria to France, and inquiring about the possibility of emigration to Switzerland, indicating that at least some of their securities had been seized by the Reich's

² Ottakring became the 16th district of Vienna in 1892, but still maintained its individuality.

representatives in France, and that [REDACTED] was deported to a concentration camp in 1942;

- (3) a certificate of death issued for [REDACTED], née [REDACTED], who was born on 23 March 1880 in Vienna, indicating that she had fled Austria in 1938 or 1939, and that she was declared deceased on 12 January 1948, as she had not survived the date 8 May 1945;
- (4) the Claimant's own birth certificate, indicating that [REDACTED] was the son of [REDACTED] of Vienna, that he was born on 8 September 1929, and was baptized in the Protestant faith on 21 September 1929, and that a witness to the baptism was [REDACTED] of Vienna;
- (5) a detailed family tree, handwritten by the Claimant's father [REDACTED] (later [REDACTED]), indicating that the Claimant's paternal grandmother [REDACTED] was the daughter of [REDACTED] and [REDACTED]; that [REDACTED] was the son of [REDACTED], who was one of the original Kuffner owners of the *Ottakringer Brewery*, and that [REDACTED] was the first cousin of [REDACTED], whose son was Moriz Kuffner. The family tree also indicates that Moriz Kuffner had three sons, including unmarried twins ([REDACTED] and [REDACTED]) and a son named [REDACTED], who in turn had a daughter named [REDACTED]. The family tree also includes a notation indicating that [REDACTED] and [REDACTED] were industrialists who owned factories in Ottakring and Doebling, which were founded in 1848, and which were aryanized after the *Anschluss*.

The Claimant indicated that he was born on 8 September 1929 in Vienna, Austria.

Additional Information regarding the Kuffner Family

According to research conducted by the CRT, the Kuffner family was one of the wealthiest and culturally most important families in Austria.³ [REDACTED] came to Vienna in 1848 together with his brother [REDACTED] and cousin [REDACTED]. There [REDACTED] and [REDACTED] bought the much indebted Ottakringer brewery in 1850 and expanded it into a large enterprise. [REDACTED] became mayor of Ottakring and was knighted in 1878. His son Moriz, after studying astronomy in Vienna, ran the enterprise after his father's death in 1882. But astronomy remained his first love, and he built a private Observatory (today the Kuffner Observatory) in 1884-86. Apart from conducting his business affairs, Moriz Kuffner had many

³ See, e.g., Ulrike Felber, Peter Melichar, Markus Priller, Berthold Unfried, and Fritz Weber, *Oekonomie der Arisierung. Teil 2: Wirtschaftssektoren, Branchen, Falldarstellungen*, Historikerkommission: Vienna, 2004, pp. 804 ff, (hereinafter, "Unfried"). The book is a study on changes in ownership in Austrian industry from 1938 to 1945, prepared under the auspices of the Austrian Historical Commission, which includes a chapter on aryanization and restitution in the foodstuff industry contributed by Berthold Unfried. The Historians Commission was established jointly by the Austrian Federal Chancellor, the Vice-Chancellor, the Speaker of the National Assembly and the Speaker of the Federal Council Parliament in 1998 to investigate and report on the whole complex of expropriations in Austria during the Nazi era and on restitution and/or compensation (including other financial or social benefits) after 1945 by the Republic of Austria. There are many other publicly-available sources of information regarding the Kuffner family of Vienna. See, for example, the official website of the *Ottakringer Brewery*, which includes a history of the brewery and of the Kuffner family's ownership of the brewery prior to 1938, at <http://www.ottakringer.at/brauerei.htm>. See also http://www.burgenkunde.at/wien/w_palais_kuffner/w_palais_kuffner.htm; http://www.kuffner.ch/img/Artikel_MEKS_301199.pdf; and http://kuffner-sterne.warte.at/sterne/warte/vks_ks_w_mv.html.

interests. Among others, he was a well known philanthropist, a member of the Board of the Jewish Community, an accomplished musicologist and an enthusiastic Alpine climber. The Ottakringer brewery was incorporated in 1905 with a capital of 10 million Kronen. Moriz' sons also entered the business, with [REDACTED] running the Vienna firm. Shortly after the *Anschluss*, on 8 April 1938, the Ottakringer Brewery was sold in an early aryanization for 14 million Schilling ("S"), an amount the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle*) ("VVSt.") later considered too low, demanding an extra S 3.5 million as aryanization tax. Moriz and [REDACTED] were arrested by the Gestapo and released only after they "requested," in exchange for immediate release and permission to leave Austria, that the Gestapo confiscate 35% of their assets. Accordingly, Moriz Kuffner and his family on 23 May 1938 joined the so-called *Gildemeester Aktion*, which arranged emigration of Jews from Austria in exchange for their ceding the management of their assets to the Reich. The trustee for the *Gildemeester Aktion* was the *Bank Krentschker* in Vienna. The Austrian archive file on Moriz Kuffner contains an accounting by *Bank Krentschker* of the changes in Moriz Kuffner's assets between the date of his 1938 Census declaration and 12 November 1938, dated 11 January 1939, by which time Moriz Kuffner resided in Switzerland. According to that accounting, Moriz Kuffner's share of the payment to the Gestapo was 2,720,999.85 Reichsmark ("RM") on total reported assets of RM 7,774,285.28. Moriz Kuffner's son [REDACTED] ([REDACTED]'s twin brother) had accompanied his father (the other brother, [REDACTED], died shortly before the *Anschluss*) to Switzerland, where Moriz died in March 1939. Most of the rest of the family fled to the United States; an exception were the widow and daughters of [REDACTED], [REDACTED]'s cousin. This is the family branch of which the Claimant is a descendant. [REDACTED] died in 1923. His widow [REDACTED] fled with her daughters, [REDACTED] and [REDACTED], to France. There they were caught by the occupation and [REDACTED] and [REDACTED] were arrested, interned in Drancy and from there deported, on 17 December 1943 and 7 September 1942, respectively, to Auschwitz, where they perished. Both Moriz and [REDACTED] had important art collections. Both collections were confiscated, though for a part of the Moriz Kuffner collection, which was acquired by the Albertina museum, graphics worth a fraction of what was acquired were bartered and released to their owner for export upon emigration. After the War, this "swap" was used to prevent any restitution of the important pieces the Albertina had "acquired" in return.

Information Available in the Bank's Records

The Bank's records consist of a customer card, and a report of 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"). According to these records, the Account Owner was Moriz Kuffner, who resided in Vienna, Austria. The Bank's records indicate that the Account Owner held one custody account, numbered 27980, and three demand deposit accounts, which were denominated in Swiss Francs ("SF"), British Pound Sterling ("£"), and United States Dollars ("US \$"), respectively.

The customer card does not indicate the value of any of the accounts. According to that record, the custody account was closed on 17 May 1938, the Swiss Franc-denominated demand deposit account was closed on 20 January 1939, the Pound Sterling-denominated demand deposit account was closed on 30 June 1939, and the US Dollar-denominated demand deposit account was closed on 20 January 1939.

Pursuant to Article 6 of the Rules Governing the Claims Resolution Process, as amended, the CRT requested the voluntary assistance of the Bank to obtain additional information about these accounts (“Voluntary Assistance”). The Bank provided the CRT with additional documents. These documents consist of a custody account identification card (“*Leitkarte*”) and custody account portfolio holding cards (“*Depotvalorenkarten*”) for each security held within the Account Owner’s custody account.

These documents indicate that at the time the Account Owner was deemed to have lost control over custody account 27980, it contained the following securities:

- *4.5% Oesterreichische Garantierte Konversions-Anleihe 1934/59 Englische Tranche bonds*, with a total face value of 2,200.00 Pound Sterling (“£”);
- *6.5% Municipality of Bogota/ Republic of Colombia/ Power & Light Cons. Loan per 1947 ext. sec. sinking fund gold bonds*, with a total face value of US \$10,000.00;
- *150 Buenos Aires Central Railroad and Terminal Co., 7% cum. preferred shares Series ‘A’ à G. Pesos 100.00*;
- *50 New York Central Railroad Company Common shares*;
- *250 Aktiengesellschaft für Elektrische- & Verkehrsunternehmen, Budapest shares, each with a face value of 100.00 Pengö*;
- *320 Central States Electric Corporation 6% cum. preferred stock series shares, each with a face value of US \$100.00*;
- *845 Courtaulds Ltd. ordinary shares*;
- *2,403 United Molasses Co., Ltd. à 6/8 ordinary stock units*
- *100 Westinghouse Electric & Manufacturing Co. common shares, each with a face value of US \$50.00*; and
- *200 5.5% cum. preferred Series ‘A’ Alleghany Corporation stock, each with a face value of US \$100.00, with warrants of US \$30.00 per common share.*

The Bank’s record indicates that all the securities listed above were transferred to custody account numbered 2269 at the Bank on 12 May 1938. There is no evidence in the Bank’s records that the Account Owner or his heirs closed the 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, 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 are documents concerning the assets of Moriz Kuffner, numbered 14501.

These records include Moriz Kuffner's declaration of assets, which is dated 14 July 1938 in Vienna and stamped by Dr. Heinrich Gallop, a Viennese lawyer who presumably prepared the declaration on Moriz Kuffner's behalf. The records indicate that Moriz Kuffner was born on 31 January 1854, that he was not employed as of July 1938, and that he resided at Ottakringer Strasse 118 in Vienna's sixteenth district. The records further indicate that he had been married to [REDACTED], née [REDACTED], who was also Jewish, and who had died on 10 January 1938.

In his asset declaration, Moriz Kuffner reported cash holdings as of 27 April 1938 at a number of foreign banks, including at the Bank. The holdings at the Bank contained US \$60.50, which was equivalent to SF 264.39,⁴ and SF 82.00, for a total of SF 346.39. The records do not indicate in what types of accounts these cash holdings were held, or their disposition. However, the guidance for supplying information on the form would indicate that these accounts were demand deposit accounts. His asset declaration also lists all but one of the securities held in his custody account 27980 at the Bank, as well as market values as of 27 April 1938, but without indicating where they were deposited.⁵

The records indicate that Moriz Kuffner held a considerable amount of real estate in Vienna and surrounding areas in conjunction with other Kuffner family members. The records also contain an official appraisal of Moriz Kuffner's art collection, located in his home in Vienna. The records do not indicate that Moriz Kuffner held an ownership stake in the *Ottakringer Brewery* as of the date of the asset declaration, but do show that he held an ownership stake in the bank *Reitler & Co.* The asset declaration also lists debts owed to Moriz Kuffner and includes a debt owed to him by the estate of [REDACTED].

The file also contains a form letter dated 5 August 1938 from the VVSt. and addressed to Moriz Kuffner, indicating that he was requested to offer all his foreign securities to the *Reichsbank* in Vienna. These records also contain a letter from *Bankhaus Krentschker & Co.* in Vienna, dated 11 January 1939, indicating that that bank had been appointed the trustee of the assets of Moriz Kuffner, who had fled Vienna for Zurich, Switzerland, where he was residing at Stockerstrasse 31. This letter indicates that Moriz Kuffner had joined the *Gildemeester* program ("*Gildemeester-Auswanderungshilfsaktion für Juden*"), a program initiated in spring 1938 to "encourage" the emigration of Jews from the Reich and requiring participants to turn over control of their assets to a Nazi-appointed trustee and subsequently pay a percentage of their assets to the Nazi regime. As noted above, Moriz and [REDACTED] had been arrested by the Gestapo and released only after they "requested," in exchange for immediate release and permission to leave Austria, that the Gestapo confiscate 35% of their assets as part of this program. According to Moritz Kuffner's 1938 Census file, his share of the payment to the Gestapo was RM 2,720,999.85 on total reported assets if RM 7,774,285.28.

The file also contains a flight tax ("*Reichsfluchtsteuer*") assessment for Moriz Kuffner and his wife, dated 14 February 1940, in the amount of RM 2,300,000.00, based on total assets as of 1 January 1938 of RM 9,200,000.00. The flight tax had become due on 16 August 1938, indicating

⁴ The CRT uses official exchange rates when converting currencies.

⁵ The valuations of these securities are listed in the section "Amount of the Award."

that this was the date Moriz Kuffner was deemed to have left Austria. There also is an accounting of the changes in Moriz Kuffner's assets from the date of his Census declaration to 12 November 1938 provided by *Bank Krentschker*, the trustee for the *Gildemeester* program, which shows the flight tax assessment to be RM 2,500,000.00, with all but RM 563,161.00 paid.

The CRT's Analysis

Joinder of Claims

According to Article 37(1) of 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 five claims of the Claimant in one proceeding.

Identification of the Account Owner

The Claimant's relative's name and country of residence match the published name and country of residence of the Account Owner. The Claimant also identified the Account Owner's city of residence, which matches unpublished information about the Account Owner contained in the Bank's records.

In support of his claims, the Claimant and his wife submitted documents, including a detailed family tree, and correspondence from a number of Austrian historians, providing independent verification that the person who is claimed to be the Account Owner had the same name and resided in the same city recorded in the Bank's records as the name and city of residence of the Account Owner. The CRT notes that the name Moriz Kuffner appears only once 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"). Taking all of these factors into account, the CRT concludes that the Claimant has plausibly identified the Account Owner.

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, and that he fled Austria for Switzerland after the *Anschluss*. The Claimant also submitted documents from Austrian historians indicating that the Account Owner's family company, the *Ottakringer Brewery*, was aryanized; that the Account Owner was banned from the Austrian Alpine Association because of his religion; and that a large amount of real estate held by the Account Owner and his family was seized by the Nazi Regime following the *Anschluss*.

The CRT notes that the Account Owner registered his assets pursuant to the 1938 Census, and that, according to these records, he was required to pay flight tax and turn over 35% of his total assets for permission to emigrate.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting specific information and documents, demonstrating that the Account Owner was the Claimant's great-great-grandfather's cousin's son, and that the Claimant is the son of one of the Account Owner's named heirs. These documents include a detailed family tree, indicating exactly this relationship, as well as correspondence from a number of Austrian historians also indicating that relationship; the Claimant's own birth certificate; and the Claimant's father's change of name certificate.

The CRT further notes that the Claimant identified unpublished information about the Account Owner as contained in the Bank's records. The CRT also notes that the Claimant submitted copies of family letters dated from 1941 and 1942, which provide independent verification that the Claimant's relatives bore the same family name as the Account Owner. Finally, the CRT notes that the foregoing information is of the type that family members would possess and indicates that the Account Owner was well known to the Claimant as a family member, and all of this information supports the plausibility that the Claimant is related to the Account Owner, as he has asserted in his Claim Form.

The CRT notes that the Claimant indicated that he may have other surviving relatives, but that because they are not represented in the Claimant's claims, the CRT will not treat their potential entitlement to the Account Owner's accounts in this decision.

The CRT also notes that with regard to an appeal to a different Certified Award, an appellant identified herself as an heir of [REDACTED], née [REDACTED], whom the appellant identified as a daughter of [REDACTED] and the sister of [REDACTED]. The CRT did not receive a claim from this appellant for either the accounts of [REDACTED] or for the accounts at issue here. Further, the CRT notes that, based upon the information submitted by the Claimant in this case regarding the heirs of Moriz Kuffner, this appellant would not be entitled to the assets of the Account Owner, even if she had submitted a claim.

In addition, the CRT notes that in February 2007, it received a letter from the law firm *von Trott zu Solz Lammek*, indicating that the firm represented "the heirs of [REDACTED], née [REDACTED]," and including a power of attorney form signed by [REDACTED], whom the firm identified as "one of [REDACTED]'s daughter-in-law [*sic*]." ⁶ The law firm did not identify the name of [REDACTED]'s spouse, nor did it identify any other names of its clients, if any. Since February 2007, the CRT has not received a claim from the party or parties represented by this law firm, nor any further details regarding the firm's clients and their exact relationships to the Account Owner. Accordingly, the CRT will not treat their potential entitlement to the Account Owner's accounts in this decision.

⁶ In a letter dated 3 August 2009, Special Master Michael Bradfield replied to the letter from *von Trott zu Solz*, stating that the firm's client's late claim was not eligible for consideration in the appeals process.

The Issue of Who Received the Proceeds

The Bank's records indicate that the Account Owner held one custody account that was closed on 17 May 1938, one Swiss Franc-denominated demand deposit account that was closed on 20 January 1939, one Pound Sterling-denominated demand deposit account that was closed on 30 June 1939, and one US Dollar-denominated demand deposit account that was closed on 20 January 1939. The CRT notes that the Account Owner's asset declaration from his 1938 Census show that he held two sums of money at the Bank, one sum denominated in US Dollars, and one sum denominated in Swiss Francs. The CRT concludes that these two sums listed in the Account Owner's asset declaration refer to the US-Dollar denominated demand deposit account and to the Swiss Franc-denominated demand deposit account, respectively, that are identified in the Bank's records.

With regard to the Account Owner's Swiss Franc and US-Dollar demand deposit accounts, the facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich. The CRT's precedent indicates that it is plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime.

With regard to all three demand deposit accounts, the Bank's records indicate that the three accounts were closed after 11 January 1939, at which time, according to information provided in the 1938 Census records, the Account Owner was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the accounts were closed; that the Account Owner fled his country of origin due to Nazi persecution; that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety; that the Account Owner reported assets at the Bank in the 1938 Census records, including assets included in two of these three accounts; that the 1938 Census records indicate that the Account Owner's assets were seized or taxed by the Reich; that the Account Owner's heirs would not have been able to obtain information about his accounts after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, 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 (d), (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended (the "rules") (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his 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.

With regard to the Account Owner's custody account, the Bank's records indicate that all of the securities in that account were transferred to a custody account at the Bank numbered 2269 on 15 May 1938. The CRT notes that records of other custody accounts held at the Bank by other account owners unrelated to the Account Owner in this case show that securities from a number of different custody accounts were also transferred to custody account numbered 2269 at the

Bank after the *Anschluss*.⁷ Given that the 1938 Census records indicate that the Account Owner entered into an overall settlement agreement with the Gestapo in which he would be forced to pay 35 percent of his assets to the Reich prior to or subsequent to his departure from Austria; that those records also indicate that many of the Account Owner's assets were seized by the Reich; that those records further indicate that he had joined the *Gildemeester* program and that, accordingly, his assets were administered by that trustee, and that the trustee provided reports on the Account Owner's assets to the Reich; that the securities in the custody account were all transferred to a custody account at the Bank to which securities belonging to a number of other account owners were also transferred after the *Anschluss*; that the Account Owner's heirs would not have been able to obtain information about his 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, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner or his heirs.

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 Owner was his great-great-grandfather's cousin's son, and that relationship justifies an Award. Furthermore, the Claimant also provided documents prepared by an Austrian historian and based upon historical records, indicating that the heirs of Moriz Kuffner included [REDACTED](formerly [REDACTED]), who the Claimant has indicated was his father. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed accounts.

As indicated above, the CRT also notes that an appellant in an unrelated case who identified herself as an heir of [REDACTED], née [REDACTED], would not be entitled to the assets of the Account Owner, even if she had submitted a claim to the CRT.

Amount of the Award

In the 1938 Census declaration submitted by the Account Owner, the value of at least some of the Account Owner's demand deposit accounts as of 27 April 1938 is specified as SF 82.00, plus US \$60.50, the latter of which was equivalent to SF 264.39. The CRT determines that it is unable to rely on the account balance amounts declared in the 1938 Census, as it has no evidence regarding the circumstances of the Account Owner's declaration. The CRT notes that, as evidenced in a number of cases, the Account Owner may not have declared all his assets, or understated their value, in the belief that this might help him safeguard some of them. Pursuant to Article 29 of the Rules, if the amount in a demand deposit account is less than SF 2,140.00, and in the absence of plausible evidence to the contrary, the amount in the demand deposit account shall be determined to be SF 2,140.00. In this case, the CRT does not find that the value of the accounts indicated in the Account Owner's 1938 Census declaration constitutes plausible evidence to the contrary sufficient to rebut the presumption of Article 29 of the Rules, and

⁷ See, e.g., Certified Amendment *In re Accounts of Walter Rosenbaum* (approved on 11 August 2008).

concludes that the value of each of the Account Owner's demand deposit accounts shall be determined to be SF 2,140.00, for a combined total value for the three demand deposit accounts of SF 6,420.00. The current value of this amount is determined by multiplying the balance as determined by Article 29 by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 80,250.00 for the three demand deposit accounts.

With regard to the Account Owner's custody account, according to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the face value of bonds not in default shall be awarded if the market value was below the face 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. The market value of bonds shall be awarded if that value was above the face value on the date the account owner is deemed to have lost control over the account, or if the bonds were in default. Stocks are valued at market value.

According to the additional information from the Bank, the Account Owner held a custody account containing a number of securities. The Bank's records and the 1938 Census records indicate that the securities held by the Account Owner at the Bank were:

- *4.5% Oesterreichische Garantierte Konversions-Anleihe 1934/59 Englische Tranche bonds*, with a total face value of £2,200.00. These securities were trading at 56% on 12 May 1938,⁸ and were in default as of 27 April 1938. Accordingly, these bonds are valued at their market value of £1,232.00, which was equivalent to SF 26,327.84;
- *6.5% Municipality of Bogota/ Republic of Colombia/ Power & Light Cons. Loan per 1947 ext. sec. sinking fund gold bonds*, with a total face value of US \$10,000.00. These securities were in default and were trading at 12% on 27 April 1938.⁹ Accordingly, these bonds are valued at their market value of US \$1,200.00, which was equivalent to SF 5,244.00;
- *150 Buenos Aires Central Railroad and Terminal Co., 7% cum. preferred shares Series 'A' à G. Pesos 100.00*. These securities were trading at US \$1.25 on 12 May 1938.¹⁰ Accordingly, these shares are valued at US \$187.50, which was equivalent to SF 819.38;
- *50 New York Central Railroad Company Common shares*. These securities were trading at US \$13.6875 on 12 May 1938.¹¹ Accordingly, these shares are valued at US \$684.38, which was equivalent to SF 2,990.72;
- *250 Aktiengesellschaft für Elektrische- & Verkehrsunternehmen, Budapest shares, each with a face value of 100.00 Pengö*. These shares were worth RM 30.00 per share.¹²

⁸ *The Times*, London, 13 May 1938.

⁹ This valuation is from the quote provided in the 1938 Census declaration submitted by Moriz Kuffner.

¹⁰ *Moody's Railroads 1940*, p. 1895.

¹¹ *New York Times*, 13 May 1938.

¹² This valuation is from the quote provided in the 1938 Census declaration submitted by Moriz Kuffner.

Accordingly, these shares are valued at RM 7,500.00, which was equivalent to SF 13,162.50;

- *320 Central States Electric Corporation 6% cum. pref. stock series shares, each with a face value of US \$100.00.* These securities were trading at US \$6.75 on 12 May 1938.¹³ Accordingly, these shares are valued at US \$2,160.00, which was equivalent to SF 9,439.20;
- *845 Courtaulds Ltd. ordinary shares.* These securities were trading at 38 shillings, 10 ½ pence per share on 12 May 1938.¹⁴ Accordingly, these shares are valued at £ 1,642.47, which was equivalent to SF 35,099.58;
- *2,403 United Molasses Co., Ltd. à 6/8 ordinary stock units.* These securities were trading at 23 shillings, 6 pence per share on 12 May 1938.¹⁵ Accordingly, these shares are valued at £ 2,823.53, which was equivalent to SF 60,338.73;
- *100 Westinghouse Electric & Manufacturing Co. common shares, each with a face value of US \$50.00.* These securities were trading at US \$79.75 per share on 12 May 1938.¹⁶ Accordingly, these shares are valued at US \$7,975.00, which was equivalent to SF 34,850.75; and
- *200 5.5% cum. pref. Series 'A' Alleghany Corporation stock, each with a face value of US \$100.00, with warrants of US \$30.00 per common share.* These shares were trading at US \$14.00 on 27 April 1938.¹⁷ Accordingly, these shares are valued at US \$2,800.00, which was equivalent to SF 12,236.00.

Therefore, the records indicate that the total value of the custody account in May 1938 was SF 200,508.70. The current value of this amount is determined by multiplying this amount by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an Award amount of SF 2,506,358.75 for the custody account.

Accordingly, the total Award amount for all of the Account Owner's accounts is SF 2,586,608.75.

Certification of the Award

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

¹³ *New York Times*, 13 May 1938.

¹⁴ *The Times*, London, 13 May 1938.

¹⁵ *Id.*

¹⁶ *New York Times*, 13 May 1938.

¹⁷ This valuation is from the quote provided in the 1938 Census declaration submitted by Moriz Kuffner.

Claims Resolution Tribunal
21 December 2009