

# Clouds on the Cayman tax heaven

## From Wikileaks

*Is David helvetic and Goliath a bear?*

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This is the story of Rudolf Elmer of Switzerland, former Chief Operating Officer of Bank Julius Baer on the Cayman Islands. The story of a man suspected of leaking to the press information about the activities of a Swiss bank specialized in hiding and laundering the money of the ultra rich through anonymizing offshore trust structures. It also is the story of a man and his family living with the consequences of being suspected of fouling the nest of a traditional Swiss bank engaging in dubious activities. This story might differ from previous one's related to this issue, mainly because while researching the story, Rudolf Elmer has also been asked for his account of things.

Over the last few months Wikileaks has obtained and published various documents related to allegedly illegal activities in the Cayman Islands performed by Bank Julius Baer and started initial research into these. Regarding the same bank Wikileaks had obtained legal documentation on the case of a Rudolf Elmer, former deputy head of BJB cayman, in a Dec 2007 Zurich court case against Bank Julius Baer. The law suit relates to various irregularities of health-care/social-security payments by the bank, as well as the matter of stalking (including at least one acknowledged car chase) Elmer and his family by BJB-hired Private Investigators Zurich-based Ryffel AG,

Initial research easily turned up that 2002/2003 some sensitive documents had slipped out of the Swiss banks office in the Cayman Islands, apparently reaching US tax investigation units and eventually sent to the Swiss financial magazine CASH, which reported on the disclosure, but possibly due to an injunction or Swiss banking law, not the details. This event also triggered an article in the Wall Street Journal an article in Swiss Weltwoche, titled "The leak in paradise", giving background information on what happened back in 2003 on the Caymans.

When the leak of trust structures was discovered in 2003, Bank Julius Baer initiated legal investigations on the Caymans, involving the search of the home of each employee and when not gaining any insights from that, undertaking a polygraph test on the employees. It still remained unclear where the data went.

The group of people having legitimate access to these documents was small, Rudolf Elmer, who was BJB Caymans deputy head and Chief Operating Officer at that point in time also fulfilled the position of Hurricane Officer, whos duties included keeping backups. Elmer, facing a spinal surgery coming up in a few days time, was on sick leave and had some trouble scheduling the test. He thus became a suspect.

## The Polygraph Test

The transcript of the polygraph test conducted by a Lou Criscella and passed on to Wikileaks is very abstract to read with names of clients being substituted with single letters. While not all the context thus is properly understandable, the transcript does not show any wrongdoing.

Reading the transcript one gets the impression that data has slipped out of the Cayman Islands as early as 1997, and timelining the transcript with a couple of later documents will also reveal that Elmer is accused of having leaked data that was produced after the date that he left from the Caymans.

Elmer complained to the American Polygraph Association, the institution his interrogator works for, the

Cayman Prime Minister and other entities about the conduct of the test.

Normally sick people would not be interviewed, but the APA's Ethics Commission, stated in a letter that the ethical rules for polygraphing do not apply to the Cayman Islands, and as the test had not been fully carried out, most of the APA rules would not apply anyway. He was informed there are no regulations on the Caymans for polygraph tests as in the United States.

## **Leaving home, returning to Switzerland**

This is about when things started to get different for Rudolf Elmer.

It became essentially clear that he was a prime suspect and Bank Julius Baer wanted to get rid of him. Personal suggestions by his manager to go out diving, possibly as deep as possible, as well as anonymous phone calls to his family suggesting they should leave the country for their own good, did not make the whole situation much easier for the Elmers. As can be derived from the transcript and personal communication with him, Rudolf Elmer felt very much like being home on the Caymans, much in contrast to Switzerland, and the same can be said for his family.

After the test Bank Julius Baer laid off him as an employee and the family decided to move back to Switzerland. Bank Julius Baer, not being able to substantially prove anything, but still investigating into him, had hired a bunch of different Private Investigators like the Zurich-based Ryffel AG, to track him. According to Elmer's assertions, he was threatened not to go to the police verbally by officials of the bank, most of them composing the boards of directors and similar entities within the various distributed BJB companies, holdings, limiteds etc.

According to Elmer (most of the allegations appear in his Dec 2007 court documents), he was subject to more or less permanent observation, as was his family. His then 6-year old daughter got followed on her way to school/kindergarden, his wife and daughter were even engaged in a chase on a Swiss autobahn by the Ryffel AG, which had to be intercepted by the Police (police confirmed). Cars driving in the dead-end street he lived in at night, annoying his neighbours and putting further pressure on him. The phone calls, that started in the Caymans followed to Switzerland. The situation again became very uncomfortable, with Elmer's 8-year old daughter suffering trauma from the bizarre lifestyle her family was forced into. Elmer also was offered CHF 500,000 by the bank, according to his statement in an effort to buy his silence; he turned down the offer and asked the bank to be charged with bribery, but the police found no law against bribing private persons.

Bank Julius Baer also started claims against Rudolf Elmer in Switzerland. These could not be followed by prosecution as BJB refused to give out information on its activity on the Cayman Islands that would provide a basis for investigation and Elmer's defense. On that basis no prosecution in Switzerland could be initiated. As BJB still had the PIs in the field at that point in time, putting Elmer under pressure, maybe the tradeoff between releasing the material to the prosecutor and facing eventual consequences, and silencing the suspected root of all the trouble did not appear good enough at that point in time.

Elmer wrote a a letter to the newly appointed CEO of Bank Julius Baer in Switzerland, Johannes de Gier, where he explained his position, trying to set some facts straight. This document is the only document this author is aware of linking Elmer to being (one of) the whistleblower(s), and it holds more information on his actual responsibilities and awareness of activities on the Caymans. While it has an uncompromising tone, it also sounds like a man talking about his strong defenses in order to put an end to the harassment he is under. Rudolf Elmer says this is about the time when he started to arrange protection for himself and his family with what he knew. He sent a few hints out that indicated he was in possession, lawfully, of this information, to make sure nothing would happen to him or his family. The document was submitted to Wikileaks in a bundle with the legal denial notice issued by the prosecutor in Zurich.

The legal applications filed with the prosecutor in Zurich-Sihl, Switzerland against Bank Julius Baer partly seem to be based on the letter sent to Johannes de Gier to describe Elmer's situation. The denial notice from the prosecutor's office indicate that Elmer also not been successful here. The prosecutor's office of Zurich-Sihl ruled that stalking can not be substance of a criminal prosecution in Switzerland, a land where no free person is restricted to move the same way as another in public space. Acknowledging the car pursuit, the prosecutor only mentions they were able to verify that a PI agency had been engaged, but does not comment any further on this incident at all. The prosecutor's office states that while there could be moral claims towards someone ordering such an observation, the actions did not break criminal law. Regarding the bribery claims that Elmer had made towards the bank, the Prosecutor further ruled that bribery is not applicable to a private person but only to a state entity, and stated non-understanding Elmer's motivation for this claim, stating the whistleblower should be happy about the money and the bank dropping its complaint.

Again, various other entities have been contacted by Rudolf Elmer, in his desperate and continuous search for help, with no real success. He contacted the Swiss Foundation of the International Social Service in respect to their *Rights for Children* program, to find help for his daughters protection of the harassment, yet no success. He was told these were if at all legal matters, and as he already found out, there is no legal basis or protection against stalking or observation by a private entity engaged by a private corporation. Not for children or anyone at all in the free country of Switzerland.

Rarely does it get as clear as at this point: not only are financial institutions in Switzerland very eager to avoid any attention by anyone, but also are those banks being protected by certain legal institutions. As one of the side effects of this story, the Swiss federal tax entity was very interested in having access to what was obtained by the Zurich Prosecutor's Office in relation to this case, yet have they also been denied access to those files. So leaving the premises of Bank Julius Baer for a short moment one could wonder if even after Jean Ziegler stood up as a hero and was actually able to change parts of the Swiss banking system to something morally and judicially more sound, the Swiss banking world is still as tightly knotted with parts of the legal system as much that it appears bizarre to anyone of non-helvetic origin. This also poses the important question in how much Switzerland with this attitude will ever be able to harmonize with the EU on the issue of banking transparency in order to stop illegal money flows.

While a lot of the extensive information and documentation is very hard to interpret, if at all, this was the rough story of a Rudolf Elmer, fighting like David against the bear Goliath. And this is also the story of one of the biggest banks involved into offshoring business on the Caymans, dealing with an issue related to the privacy of their businesses. A story of a bank that by its actions right from the beginning to all action taken today, shows it has a lot to hide from all parties eventually involved. A story of a bank that rather uses scare tactics than talk about its business in a proper lawsuit. A story of a bank that seems about willing to do anything to silence what Rudolf Elmer has to say.

Documents related to this story can be found at:

- Bank Julius Baer
- Bank Julius Baer vs. Wikileaks
- Rudolf Elmer vs. Bank Julius Baer (german/english)
- Bank Julius Baer Polygraph test of Rudolf Elmer (english)
- Bank Julius Baer vs. Rudolf Elmer - no data theft (german/english)

*Rudolf Elmer to this day claims he has not leaked any documentation related to Bank Julius Baer in order to harm anyone, only setup an insurance for his and his family's personal safety. Whether this assertion is true, technically true, or untrue, or whether Mr. Elmer has been driven a bit batty by the pressure should not distract us from the actions of Bank Julius Baer in its attempts to silence its former high-level employee or the role it plays in supporting ultra-rich's offshore tax avoidance, tax evasion, asset hiding and money laundering..*

**Wikileaks would like to encourage everyone out there to have a look at the information. We encourage anyone dealing with tax fraud and evasion and offshore/Swiss banking to review the material posted with us. This will make sure we can verify the relevance and validity of the material presented. Bank Julius Baer has decided to go for the next round in trying to silence Wikileaks. This will not happen and only proves that at least parts of the material hold valid information.**

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