

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Elizabeth Juliana Neuwelt
also representing Maria Dorothea Simon, Walter Simon,
Birgit Povlsen and Niels Povlsen

in re Accounts of Otto Simon and Josef Simon

Claim Numbers: 213687/MW; 213688/MW

Award Amount: 351,750.00 Swiss Francs

This Certified Award is based upon the claims of Elizabeth Juliana Neuwelt, née Simon, (the “Claimant”) to the published accounts of Otto Simon (“Account Owner Otto Simon”) and Josef Simon (“Account Owner Josef Simon”) (together the “Account Owners”) at the Zurich branch of the [REDACTED] (the “Bank”).

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

Information Provided by the Claimant

The Claimant submitted Claim Forms identifying the Account Owners as her father, Dr. Josef (Joseph) Theodor (Thorwald) Simon, and her paternal grandfather, Prof. Otto Simon. The Claimant indicated that her father, who was born on 24 May 1912 in Vienna, Austria, and resided at Billrothstrasse 31 in Vienna, was an attorney who worked as a director of the *Anker Versicherung* insurance company in Vienna. The Claimant explained that her father, who was Jewish, was imprisoned for allegedly conducting activities for the then illegal Social Democratic Party in 1937. According to the Claimant, in 1937 her father fled from Austria to the United States via Denmark, Sweden, Russia, Japan and the United Kingdom. The Claimant stated that her father was married to the Claimant’s mother, Maria Dorothea Simon, née Pollatschek, while in the United Kingdom. The Claimant indicated that her father arrived in the United States in 1941, joined the United States Army and became a United States citizen before returning to Vienna in 1946, where he died on 23 January 1976.

The Claimant indicated that her grandfather, Prof. Otto Simon was born on 7 January 1876 in Vienna, and resided at the same address as her father, Billrothstrasse 31 in Vienna. The Claimant indicated that her grandfather, who was Jewish, was a mathematics professor, and that he was married to Anna Simon, née Gersuny, with whom he had three children: the Claimant’s father, Josef Simon; Hanna Povlsen, née Simon; and Walter Simon. The Claimant stated that her

father, who was already living in Denmark by 1937, was able to acquire Danish visas for his parents and his siblings, and in the autumn of 1938, her grandfather and his family fled Austria to Denmark, and then to the United States, where he later died on 4 April 1941.

The Claimant submitted her birth certificate, which indicates that she was born on Billrothstrasse in Vienna to Josef Thorwald Simon and Maria Dorothea Simon; her parents' marriage certificate, which indicates that Joseph Simon was married to Maria Polackova on 10 April 1944, that Joseph Simon was an attorney, and that Joseph Simon's father was Otto Simon, and was deceased at the time of the marriage; her father's identity card, which contains his signature sample; and the birth certificate of her paternal uncle, Walter Simon, demonstrating that he is Jewish, that his father was Prof. Otto Simon, who was born on 7 January 1876 in Vienna, and that his family resided at Billrothstrasse 31 in Vienna. The Claimant indicated that she was born on 10 February 1948 in Vienna. The Claimant is representing her mother, Maria Dorothea Simon, who was born on 6 August 1918; her uncle, Walter Simon, who was born on 8 April 1918 in Vienna, Austria; and her cousins, Birgit Povlsen and Niels Povlsen.

Information Available in the Bank's Records

The Bank's records consist of two customer cards, two power of attorney forms, a letter to the Bank, a list of custody accounts, an account-opening contract, and printouts from the Bank's database.

Account Owner Otto Simon

The Bank's records indicate that Account Owner Otto Simon was *Studienrat Prof.* Otto Simon, who resided at Billrothstrasse 31 in Vienna, Austria. These records further indicate that Account Owner Otto Simon held one custody account and one demand deposit account, both numbered 36258.¹ According to the Bank's records, Account Owner Otto Simon granted power of attorney to *Frau* (Mrs.) Anna Simon, *Fräulein* (Miss) Hanna Simon, and Josef Simon on 21 April 1933, all of whom resided at Billrothstrasse 31 in Vienna. The Bank's records contain the signatures of Account Owner Otto Simon and the Power of Attorney Holders. The Bank's records further indicate that the accounts held by Account Owner Otto Simon were closed on 31 March 1938. The amounts in the accounts on the date of their closure are unknown.

Account Owner Josef Simon

The Bank's records indicate that Account Owner Josef Simon was Dr. Josef Simon, who resided in Vienna at 31 Billrothstrasse in 1933. The Bank's records further indicate that Account Owner Josef Simon held a custody account, numbered 41846, which was opened on 2 April 1938. According to the Bank's records, the opening contract was signed by Account Owner Josef

¹ The CRT notes that, on the February 2001 published list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"), Otto Simon held four accounts. Upon careful review, the CRT concludes that the Bank's records evidences that Account Owner Otto Simon held two accounts instead of four accounts.

Simon in Holte. According to the Bank's records, at the time that the account was opened, Account Owner Josef Simon resided at an address, care of Pastor Th. Povlsen, in Holte.

The Bank's records indicate that Account Owner Josef Simon granted power of attorney over his account to Prof. Otto Simon, *Frau* (Mrs.) Anna Simon, and *Fräulein* (Miss) Dr. Hanna Simon on 2 April 1938, with the right to access the account for their own use (*zu ihren eigenen Gunsten verfügen*). The Bank's records also indicate that the account was closed on 9 May 1938. The Bank's records do not indicate the value of the account.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within the Reich, including Austria, as well as Jewish nationals outside the Reich who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of *Studienrat* Professor Otto Simon. These documents include a census form, numbered 8179, which was signed and submitted by Professor Otto Simon on 10 July 1938. According to these records, Professor Otto Simon, who was Jewish, was born on 7 January 1876, resided with his wife Anna Simon, née Gersuni, who was Jewish, at Billrothstrasse 31 in Vienna XIX, Austria, and worked as a lecturer. The records indicate that Prof. Otto Simon owned assets, including a retirement pension, a savings account, cash and jewelry. These records make no mention of a Swiss bank account.

There are no documents in the records of the Austrian State Archive concerning the assets of Dr. Josef Simon, Anna Simon or Hanna Simon.

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. Her father's name and her grandfather's name match the published names of the Account Owners, and her aunt's name and her grandmother's name match the published names of the Power of Attorney Holders. The Claimant also identified Josef Simon's street address in Vienna, and the professional titles of Otto and Josef Simon, which match unpublished information about the Account Owners contained in the Bank's records. The Claimant also stated that her aunt's married name was Povlsen, which also matches the care of address in Josef Simon's account records. In support of

her claim, the Claimant submitted her birth certificate, which indicates that she was born on Billrothstrasse in Vienna to Josef Thorwald Simon and Maria Dorothea Simon; her parents' marriage certificate, which indicates that Joseph Simon was married to Maria Polackova on 10 April 1944, that Joseph Simon was an attorney, and that Joseph Simon's father was Otto Simon, and was deceased at the time of the marriage; her father's identity card, containing his signature sample; and the birth certificate of her paternal uncle, Walter Simon, indicating that he is Jewish, that his father was Prof. Otto Simon, that his father was born on 7 January 1876 in Vienna, and that his family resided at Billrothstrasse 31 in Vienna. These documents provide independent verification that the persons who are claimed to be the Account Owners have the same names and resided at the same addresses recorded in the Bank's records as the names and addresses of the Account Owners. The CRT notes that the signature sample of Dr. Josef Simon provided by the Claimant is substantially similar to the signature sample contained in the Bank's records. The CRT further notes that the other claims to these accounts were disconfirmed because those claimants provided different cities and a different countries of residence than the city and country of residence of the Account Owners, and did not identify the names of the Power of Attorney Holders.

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 Account Owner Otto Simon and his family fled Nazi-controlled Austria in late 1938 to Denmark. The CRT notes that the Austrian State Archives indicate that Account Owner Otto Simon registered his assets with the Nazi authorities on 10 July 1938.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting specific information and documents, demonstrating that Account Owner Josef Simon was the Claimant's father, and that Account Owner Otto Simon was the Claimant's paternal grandfather. These documents include her birth certificate, which indicates that her father was Josef Thorwald Simon; her parents' marriage certificate, which indicates that Joseph Simon's father was Otto Simon, who was deceased at the time of the marriage; and the birth certificate of her paternal uncle, Walter Simon, which indicates that his father was Prof. Otto Simon.

The Issue of Who Received the Proceeds

With regard to Account Owner Josef Simon, the Bank's records indicate that he held one custody account, numbered 41846. The CRT notes that the Bank's records indicate that the account was closed on 9 May 1938, at which time, according to information provided by the Claimant, Account Owner Josef Simone was outside Nazi-dominated territory. However, given that the Bank's records do not indicate to whom the account was closed, that Account Owner Josef Simon fled his country of origin due to Nazi persecution, that Account Owner Josef Simon 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 Account Owner Josef Simon and his heirs would not have been able to obtain information about his account 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 (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 Josef Simon, the power of attorney holders, 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 Account Owner Otto Simon, given that Account Owner Otto Simon's custody account and demand deposit account were closed after the *Anschluss*, while Account Owner Otto Simon was still in Vienna; that the Nazis had, at the time of the *Anschluss*, immediately begun a major effort to confiscate the assets of the Jewish population of Austria, including those held abroad and the CRT has found numerous examples of repatriation of Swiss bank accounts, the proceeds of which would not have been under the control of their owners; that the Claimant stated that Account Owner Otto Simon was forced to flee Austria after the *Anschluss*; that there is no record of the payment of Account Owner Otto Simon's accounts to him; that Account Owner Otto Simon's heirs would not have been able to obtain information about her closed 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 (a), (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 Otto Simon 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.

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 Account Owner Otto Simon was her paternal grandfather and that relationship justifies an Award. Further, the CRT notes that the Claimant, Birgit Povlsen, and Niels Povlsen, as Account Owner Otto Simon's grandchildren, and Walter Simon, as Account Owner Otto Simon's son, have a better entitlement to the accounts than Maria Simon, Account Owner Otto Simon's daughter-in-law. Third, the CRT has determined that it is plausible that neither Account Owner Otto Simon, nor the Power of Attorney Holders nor his heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, Account Owner Josef Simon held one custody account and Account Owner Otto Simon held one custody account and one demand deposit account. 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 investigation carried out pursuant to the instructions of the Independent Committee of Eminent Persons (“ICEP” or 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 demand deposit account was SF 2,140.00. The total average value of the three accounts was SF 28,140.00. 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 351,750.00.

Division of the Award

In this case, the Claimant is representing her mother, Maria Dorothea Simon; her uncle, Walter Simon; and her cousins, Birgit Povlsen and Niels Povlsen. As stated above, the Claimant, Walter Simon, Birgit Povlsen, and Niels Povlsen have a better entitlement to the award than Maria Simon. According to Article 23(1)(c) of the Rules, if the Account Owner’s spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Accordingly, the Claimant is entitled to one-third, Birgit Povlsen and Niels Povlsen are each entitled to one-sixth, and Walter Simon is entitled to one-third 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 claims 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 August 2004