

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

to Claimant [REDACTED 2]

to Claimant [REDACTED 3]
represented by Dr. Walter Friedrich

and to Claimant [REDACTED 4]
also acting on behalf [REDACTED 5] and the Estate of [REDACTED 6]¹

in re Account of Max Portheim, *Selig*

Claim Numbers: 500664/KG;² 500892/AZ/KG;³ 501112/KG; 501199/KG; 501736/KG

Award Amount: 338,150.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2], née [REDACTED] (“Claimant [REDACTED 2]”) to the account of Max Portheim, the claims of [REDACTED 4], née [REDACTED] (“Claimant [REDACTED 4]”) to the accounts of Emil Portheim and Victor Portheim⁴ and the claim of [REDACTED 3] (“Claimant [REDACTED 3]”) (together, the “Claimants”) to the account of Robert A. J. Pollak.⁵ This Award is to the published account of Max Portheim, *selig* (deceased) (the “Account

¹ On 29 April 2005, [REDACTED], the son of represented party [REDACTED 6], informed the CRT that his father had passed away on 23 September 2004.

² Claimant [REDACTED 1] (“Claimant [REDACTED 1]”) submitted two additional claims, which are registered under the Claim Numbers 500540 and 500665. In separate decisions, the CRT awarded the accounts of Emil Portheim and Victor Portheim to Claimant [REDACTED 4] (“Claimant [REDACTED 4]”) and the parties she represents and also treated the claims of Claimant [REDACTED 1] and Claimant [REDACTED 2] (“Claimant [REDACTED 2]”). See *In re Accounts of Emil Portheim* (approved on 9 March 2005) and *In re Account of Victor Portheim* (approved on 11 April 2005).

³ Claimant [REDACTED 2] (“Claimant [REDACTED 2]”) submitted two additional claims, which are registered under the Claim Numbers 500890 and 500891. These claims have been treated in separate decisions, as noted above (see note 2).

⁴ In separate decisions, the CRT treated the claims of Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 4] and the parties she represents to these accounts. See note 2. In an additional decision, the CRT awarded the accounts of Franziska Maass-Von Portheim to [REDACTED 5] (a represented party in this Award but a claimant in that decision) and also treated the claim of Claimant [REDACTED 4] and the entitlement of represented party [REDACTED 6]. See *In re Accounts of Franziska Maass-von Portheim* (approved on 14 December 2005).

⁵ The CRT notes that Claimant [REDACTED 3]’s claim to this account is treated in this Award.

Owner”), for which [REDACTED] was the contact person (the “Contact Person”), at the Basel branch of the [REDACTED] (the “Bank”).⁶

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 Claimants

Claimant [REDACTED 1] and Claimant [REDACTED 2]

Claimant [REDACTED 1] and Claimant [REDACTED 2], who are siblings, submitted Claim Forms identifying the Account Owner as the Estate of their relative, Max von Portheim, who was born on 12 May 1857 in Prague, Austria-Hungary (now the Czech Republic). Claimant [REDACTED 1] and Claimant [REDACTED 2] identified Max von Portheim as the cousin of their paternal grandmother, [REDACTED].

Claimant [REDACTED 1] and Claimant [REDACTED 2] indicated that their relative, Max von Portheim, who was Jewish, resided in Prague and in Vienna, Austria, where he was a well-known historian and collector and where his extensive collection is regularly displayed to this day. Claimant [REDACTED 1] and Claimant [REDACTED 2] stated that Max von Portheim was born on 12 May 1857 and died without issue on 28 January 1937 in Prague. According to Claimant [REDACTED 1], other members of the von Portheim family were killed by the Nazis during the Second World War.

In support of their claims, Claimant [REDACTED 1] and Claimant [REDACTED 2] submitted a detailed family tree which indicates that they are descendants of Max von Portheim’s grandfather, [REDACTED] (who later became [REDACTED]), who was born on 3 April 1785 and who married [REDACTED] in 1815. This document indicates that [REDACTED] had nine children, including [REDACTED] (the father of Max von Portheim), [REDACTED], [REDACTED], and [REDACTED]. According to the family tree, [REDACTED]’s daughter [REDACTED] married [REDACTED] and they had seven children, including [REDACTED] (the paternal grandmother of Claimant [REDACTED 1] and Claimant [REDACTED 2]). [REDACTED] in turn married [REDACTED], with whom she had five children, including [REDACTED], who also had five children, all of whom have passed away, with the exception of the two youngest, [REDACTED 1] (Claimant [REDACTED 1]) and [REDACTED 2] (Claimant [REDACTED 2]). The family tree indicates that [REDACTED]’s son [REDACTED] had seven children including [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. Finally,

⁶ 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”), a person named Robert A.J. Pollak is separately listed as an account owner. However, as discussed below, upon careful review, the CRT has concluded that the Bank’s record indicates that there was only one account held by the Estate of Max Portheim and that Robert A.J. Pollak was not a joint account owner or otherwise entitled to the proceeds of the account but rather that he was merely the Contact Person for the account.

the family tree indicates that [REDACTED]'s daughter, [REDACTED], married [REDACTED], with whom she had five children, including [REDACTED], who was born on 3 June 1841. In addition, Claimant [REDACTED 1] submitted two certificates from the Federation of Jewish Communities in Prague, dated 4 September 1997, indicating that [REDACTED], who was born on 15 October 1870, perished in Dachau in 1942 and that [REDACTED] perished in Treblinka, also in 1942; and extracts about the descendants of [REDACTED] from an unnamed publication. In addition, Claimant [REDACTED 1] submitted internet biographies of members of the von Portheim family, indicating that Max von Portheim, who was born on 12 May 1857 in Prague and died on 28 January 1937 in Prague, was the son of [REDACTED] and the grandson of [REDACTED] (formerly [REDACTED]). This biography, incorporating an article published in a Vienna newspaper in 1927, further indicates that Max Portheim was Jewish, that he was a researcher and historian and that his extensive collection of documents, maps, artwork, and memorabilia is displayed in Vienna.

Claimant [REDACTED 1] indicated that he was born on 30 November 1917 in Hamburg, Germany and Claimant [REDACTED 4] indicated that she was born on 4 April 1921, also in Hamburg.

Claimant [REDACTED 4]

Claimant [REDACTED 4] did not identify the Account Owner or the Contact Person for the account as her relatives. However, she submitted Claim Forms, attaching family trees which indicate that she and the parties she represents are also descendants of Max von Portheim's paternal grandfather, [REDACTED], who was born on 3 April 1785 and who was married to [REDACTED]. These documents indicate that the offspring of [REDACTED] included [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The family trees further indicate that [REDACTED] had seven children, including [REDACTED], who was born on 14 April 1857 in Prague; [REDACTED], who was born on 19 February 1858, also in Prague; [REDACTED]; and [REDACTED]. The family tree shows that [REDACTED]'s daughter was [REDACTED], who in turn had two children, [REDACTED 5] and [REDACTED 6] (represented parties [REDACTED 5] and [REDACTED 6]). According to the family trees submitted by Claimant [REDACTED 4], [REDACTED]'s son [REDACTED] had a daughter, [REDACTED 4], who is Claimant [REDACTED 4]. The family trees also indicate that [REDACTED]'s daughter [REDACTED] was married to [REDACTED].

The family trees also indicate that several members of the extended von Portheim family perished in concentration camps during the Second World War, including two of the sons of [REDACTED], [REDACTED] and [REDACTED], and one of the sons of [REDACTED], [REDACTED] (Claimant [REDACTED 4]'s brother).

In addition to the family trees described in detail above, Claimant [REDACTED 4] also submitted copies of documents, including: (1) her own birth certificate, indicating that she was born [REDACTED 4] on 15 March 1917 in Vienna and that her father was [REDACTED]; (2) her marriage certificate, indicating that [REDACTED 4] married [REDACTED] (sic) on 22 November 1941 in England and that her father's name was [REDACTED]; (3) an undated decision issued by the Compensation Office (*Ausgleichsamt*) of Aachen, Germany, to Claimant

[REDACTED 4] and represented party [REDACTED 6] with respect to property owned by [REDACTED], both of whom perished in the Second World War; (4) a letter from the Council of Jewish Religion for the Czech region, dated 15 May 1968, with respect to [REDACTED] and [REDACTED], indicating that they were deported to Theresienstadt, where [REDACTED] perished and that [REDACTED] perished later in Treblinka.

Claimant [REDACTED 4] indicated that she was born on 15 March 1917 in Vienna. Claimant [REDACTED 4] is representing the estate of her cousin, [REDACTED 6] (the son of [REDACTED]), who was born on 14 November 1918 in Vienna and her cousin (the daughter of [REDACTED] and [REDACTED 6]'s sibling), [REDACTED 5], who was born on 6 November 1915, also in Vienna.

Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted a Claim Form, identifying the Contact Person for the Account Owner as his paternal grandfather, [REDACTED], who was born on 20 April 1877 in Vienna and was married to [REDACTED], née [REDACTED], on 15 November 1911, in Brno, Austria-Hungary (today, the Czech Republic). Claimant [REDACTED 3] stated that his grandfather, who was Jewish, resided in Zistersdorf, Austria, and later at Meidlinger Hauptstrasse 56-58 in Vienna, and that he was the Chief Justice of the Vienna Commercial Court. According to Claimant [REDACTED 3], his grandparents had one child, [REDACTED] (Claimant [REDACTED 3]'s father), who was born in September 1916 in Vienna. Claimant [REDACTED 3] indicated that his grandfather survived the Second World War and that he died on 16 October 1961 in Vienna.

In support of his claim, Claimant [REDACTED 3] submitted copies of documents, including: (1) pages from a parish register in Vienna regarding his father, indicating that [REDACTED] was born on 13 September 1916 and that his father was [REDACTED], who was born on 20 April 1877 in Vienna; (2) his grandfather's 1938 Census declaration described in detail below; (3) his own birth certificate, indicating that [REDACTED 3] was born on 23 November 1945 in Salzburg, Austria and that his father was [REDACTED] who resided in Vienna; and (4) a family tree indicating that [REDACTED]'s father's name was [REDACTED].

The CRT notes that a comparison of the information contained in the Claimants' claim forms indicates that Claimant [REDACTED 3]'s paternal grandfather was the son of [REDACTED], who was the son of [REDACTED] and [REDACTED], née [REDACTED] (one of the children of [REDACTED] and [REDACTED]). Claimant [REDACTED 3]'s grandfather was therefore the son of Max von Portheim's cousin, [REDACTED].

Claimant [REDACTED 3] indicated that he was born on 23 November 1945 in Salzburg.

Information Available in the Bank's Record

The Bank's record consists of a printout from the Bank's database. According to this record, the Account Owner was the estate of the late Max Portheim of Vienna, Austria, and the Contact

Person for the account was [REDACTED], who resided at Meidlinger Hauptstrasse 56 in Vienna. The Bank's record indicates that the Account Owner held a custody account, which contained a balance of 27,002.00 Swiss Francs ("SF") as of 17 February 1945, when it was frozen by the Bank pursuant to the 1945 freeze of assets held in Switzerland by the citizens of Germany and the territories incorporated into the Third Reich (the "1945 Freeze").

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 not find this account in the Bank's system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1945. There is no evidence in the Bank's record that the Account Owner or its successors in interest closed the account 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 [REDACTED], numbered 41081. These records indicate that [REDACTED] was born on 20 April 1877 and that he was married to [REDACTED], née [REDACTED]. The 1938 Census declaration further indicates that he was Jewish, that he was the retired Vice President of the Commercial Court in Vienna, and that he resided at Meidlinger Hauptstrasse 56-58. Documents included with [REDACTED]'s 1938 Census file indicate that his wife, [REDACTED], was not Jewish and that his son, [REDACTED], went by her surname and was regarded as being of mixed race (*Mischling*) by Nazi authorities.

The documents further include a flight tax assessment and security order (*Reichsfluchtsteuer* and *Sicherheitsbescheid*), dated 27 January 1940, amounting to 23,800.00 Reichsmark ("RM") on net assets worth RM 95,015.00 as of 1 January 1938; official correspondence regarding [REDACTED] having made a gift of his ownership share in their residence to his non-Jewish wife and son in time for the associated amount to be deducted from his atonement tax (*Sühneabgabe*) assessment; an undated letter from [REDACTED] to the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property (*Vermögensverkehrsstelle* or "VVSt.") advising that he had paid the first installment of atonement tax to the amount of RM 3,050.00, being one quarter of the total amount due; and a letter, dated 8 December 1938, to the VVSt which indicates that, as part of an inheritance agreement, he had extended a loan to the firm *Emil & Alfred Pollak*.

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 five claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The Claimants' relative's name and city and country of residence match the published name and city and country of residence of Max Portheim.⁷ The CRT notes that the Claimants stated that their relative died in 1937, which is reflected in the fact that the claimed account was held by the Estate of the Account Owner.

The CRT notes that Claimant [REDACTED 1], Claimant [REDACTED 2] and Claimant [REDACTED 4] all identified relatives with the last name "[REDACTED]," which matches the surname of the Contact Person for the estate which was published separately from the Account Owner's name. In addition, the CRT notes that Claimant [REDACTED 3] has plausibly identified the Contact Person for the Account Owner, [REDACTED]. Claimant [REDACTED 3]'s paternal grandfather's name and city and country of residence match the published name and city and country of residence of the Contact Person. Claimant [REDACTED 3] further identified his grandfather's date of birth, street address, profession and the names of his spouse and son, which match information about the Contact Person contained in the 1938 Census records. In addition, the CRT notes that the individuals named in the firm *Emil & Alfred Pollak* to whom [REDACTED] extended a loan as part of an inheritance agreement, as recorded in his 1938 Census declaration, match the names of [REDACTED]'s father and paternal uncle.

In support of his claim, Claimant [REDACTED 3] submitted documents, including extracts from a parish register, providing independent verification that the person who is claimed to be the Contact Person had the same name and resided in the same town recorded in the Bank's record as the name and city of residence of the Contact Person.

The CRT notes that the names Max Portheim and [REDACTED] appear only once on the February 2001 published list of accounts determined by the ICEP to be probably or possibly those of victims of Nazi persecution (the "ICEP List"). Finally, the CRT notes that there are no other claims to this account.

⁷ The CRT notes that Claimant [REDACTED 1] and Claimant [REDACTED 2] indicated that their relative had the noble title "von" whereas the Bank's record does not include this title. However, the CRT notes that the Bank's record consists merely of a printout from the Bank's database and that the Contact Person would not have had an opportunity to check the accuracy of the name entered. In addition, the CRT notes that it is plausible that the Bank simply omitted the "von" title from the Account Owner's name. Accordingly, the CRT concludes that this minor discrepancy does not adversely affect the plausibility of the Claimants' identification of the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The CRT notes that while Max Portheim died in 1937, prior to the Nazi occupation of Czechoslovakia, his Estate, and the Swiss bank account in its name, continued to exist at least until 1945, when it was frozen in the 1945 Freeze. The Claimants stated that Max Portheim was Jewish, as were the heirs to his Estate. Max Portheim's heirs resided in Nazi occupied Czechoslovakia and in Austria after its incorporation into the Reich in March 1938 (the "Anschluss"). The CRT notes that information and documents submitted by the Claimants, including certificates from the Federation of Jewish Communities in Prague, indicate that several members of the von Portheim family, including Max Portheim's cousins, [REDACTED] and [REDACTED], perished in concentration camps during the Second World War.

The CRT notes that the names and dates and places of birth of persons corresponding to individuals on the Claimants' family trees - including [REDACTED] and [REDACTED], among others - were included in a database containing the names of Victims of Nazi Persecution. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Finally, the CRT notes that the Contact Person for the account was required to register his assets pursuant to the 1938 Census.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to Max Portheim by submitting specific biographical information, described in detail above, demonstrating that they are all descendants of Max Portheim's grandparents, [REDACTED] and [REDACTED]. With respect to the relationship between Max Portheim, whose assets were transferred to the Account Owner, and the Contact Person, the CRT notes that the family tree submitted by Claimant [REDACTED 3] indicates that the Contact Person's father's name was [REDACTED]. The CRT further notes that information submitted by Claimant [REDACTED 1] and Claimant [REDACTED 2] indicates that one of the children of Max Portheim's grandfather, [REDACTED] ([REDACTED]), [REDACTED], married [REDACTED] and that they had son called [REDACTED]. As noted above, the CRT concludes that the Contact Person was the son of Max Portheim's cousin and the descendant of his grandfather and that, accordingly, so too is Claimant [REDACTED 3].

The CRT notes that the Claimants identified unpublished information about the Account Owner and the Contact Person as contained in the Bank's record. The CRT further notes that the Claimants submitted copies of certificates from the Federation of Jewish Communities in Prague, relating to [REDACTED] and [REDACTED]; Claimant [REDACTED 4]'s birth and marriage certificates, indicating that her maiden name was [REDACTED] and a decision issued by the Aachen Compensation Office with respect to property owned by [REDACTED] and [REDACTED], which provide independent verification that the Claimants' relatives bore the same family name as the Account Owner and that they resided in Vienna. 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 Claimants are related to the Account Owner, as they have asserted in their Claim Forms.

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

The Issue of Who Received the Proceeds

The Bank's records indicate that the account was frozen in the 1945 Freeze and subsequently closed on an unspecified date.

Given that Max Portheim died in 1937; that his relatives, including the Contact Person for the account, were Victims of Nazi Persecution, and that many of them perished in the Holocaust; that the account was frozen in the 1945 Freeze; that there is no record of the payment of the Account Owner's account to the estate or its successors, or to any heir of Max Portheim, nor any date of closure of the account; that the Account Owner and its successors would not have been able to obtain information about the account 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 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 its successors. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their successors received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants and the represented parties. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants and the represented parties have plausibly demonstrated that the Account Owner was their relative by indicating that they are descendants of the Account Owner's grandparents and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor the heirs of Max Portheim received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owner held one custody account. The Bank's record does not specify the contents of the account but does indicate that the value of the custody account as of 17 February 1945 was SF 27,002.00. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of SF 50.00, which reflects standardized bank fees charged to the custody account in 1945. Consequently, the adjusted balance of the account at issue is SF 27,052.00. The current value of the amount of the award is determined by multiplying the

adjusted balance by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 338,150.00.

Division of the Award

According to Article 23(1)(e) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner's parents have filed a claim, the award shall be in favor of any descendants of the Account Owner's grandparents who have filed a claim, in equal shares by representation. In this case, the Claimants and represented parties are all descendants of the Account Owner's paternal grandparents, namely [REDACTED] and [REDACTED]. Claimant [REDACTED 1] and Claimant [REDACTED 2], who are siblings, are the descendants of the Account Owner's grandparents' child, [REDACTED]. Claimant [REDACTED 4] and the parties she represents are the descendants of the Account Owner's grandparents' child, [REDACTED] - Claimant [REDACTED 4] through his son [REDACTED] and the represented parties, who are siblings, through his daughter [REDACTED]. Finally, Claimant [REDACTED 3] is the descendant of the Account Owner's grandparents' child, [REDACTED].

Accordingly Claimant [REDACTED 3] is entitled to one third of the total award amount. Claimant [REDACTED 3] and Claimant [REDACTED 2] are entitled to share equally another third of the total award amount, or one-sixth of the total award amount each. Claimant [REDACTED 4] and the persons she represents are entitled to the remaining third of the total award amount. Of this amount, Claimant [REDACTED 4] is entitled to one-half, or one-sixth of the total award amount, and [REDACTED 5] and the estate of [REDACTED 6] are each entitled to an equal division of the other half, or one-twelfth each of the total award amount. Table 1 below summarizes the award distribution.

Table 1. Distribution of Award Amount by Party

Name of Party	Total
Claimant [REDACTED 1]	SF 56,358.33
Claimant [REDACTED 2]	SF 56,358.33
Claimant [REDACTED 4]	SF 56,358.33
Claimant [REDACTED 3]	SF 112,716.67
Represented Party [REDACTED 5]	SF 28,179.17
Represented Party [REDACTED 6]	SF 28,179.17
Total	SF 338,150.00

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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
15 November 2007