

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]

and to Claimant [REDACTED 2]

and to Claimant [REDACTED 3]
also acting on behalf of [REDACTED 4] and [REDACTED 5]

in re Account of Victor Portheim

Claim Numbers: 500665/KG;¹ 500891/KG;² 501199/KG³

Award Amount: 162,500.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2], née [REDACTED] (“Claimant [REDACTED 2]”) and [REDACTED 3], née [REDACTED] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the published account of Victor Portheim (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.

¹ Claimant [REDACTED 1] submitted additional claims to the accounts of [REDACTED], [REDACTED], [REDACTED], Victor and [REDACTED] von Portheim and to the account of [REDACTED] which are registered under the Claim Numbers 500540 and 500664, respectively. The CRT will treat the claims to these accounts in separate decisions.

² Claimant [REDACTED 2] submitted additional claims to the accounts of [REDACTED] and to the account of [REDACTED] which are registered under the Claim Numbers 500890 and 500892 respectively. The CRT will treat the claims to these accounts in separate decisions.

³ Claimant [REDACTED 3] submitted an additional claim to the account of [REDACTED] which is registered under the Claim number 501112. Represented party [REDACTED 5] submitted an additional claim to the account of [REDACTED] which is registered under the Claim Number 501517. The CRT will treat the claims to these accounts in separate decisions.

Information Provided by the Claimants

Claimant [REDACTED 3]

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owner as her paternal uncle, Victor Moriz Portheim, also known as Victor Porges Ritter von Portheim, who was born as one of seven children of [REDACTED] and [REDACTED] née [REDACTED], on 19 February 1871 in Prague, Czechoslovakia (now the Czech Republic). Claimant [REDACTED 3] indicated that her uncle, who never married, lived in Vienna, Austria, at Opernring 3 until his death in 1939. According to Claimant [REDACTED 3], her uncle, who was Jewish, was persecuted by the Nazis and committed suicide in August 1939 in Bad Ischl, Austria, after his position in Vienna became untenable. Claimant [REDACTED 3] further stated that two of her uncle's brothers were deported to Theresienstadt where they perished and that one of his sisters committed suicide after learning that she was to be deported. Claimant [REDACTED 3] explained that only two of Victor Portheim's siblings, her father, [REDACTED], and Fanny, the mother of [REDACTED 4] and [REDACTED 5], whom she represents, survived the Second World War.

Claimant [REDACTED 3] submitted documents in support of her claim, including a detailed family tree; her own birth certificate indicating that she was born in Vienna to [REDACTED] and [REDACTED], née [REDACTED]; and her marriage certificate showing that her father was [REDACTED].

Claimant [REDACTED 3] stated that she was born on 15 March 1917 in Vienna. Claimant [REDACTED 3] represents the children of her cousin, [REDACTED], née [REDACTED]: [REDACTED 4] who was born on 14 November 1918 in Vienna and [REDACTED 5], née [REDACTED], who was born on 6 November 1915 in Vienna.

Claimant [REDACTED 1]

Claimant [REDACTED 1] submitted a Claim Form identifying the Account Owner as his great-grandmother's nephew, Victor Portheim, who was born on 19 February 1871 in Prague. Claimant [REDACTED 1] indicated that his relative was Jewish. In support of his claim, Claimant [REDACTED 1] submitted a detailed family tree and short biographies of other members of the von Portheim family. Claimant [REDACTED 1] stated that he was born on 30 November 1917 in Hamburg, Germany.

Claimant [REDACTED 2]

Claimant [REDACTED 2], who is Claimant [REDACTED 1]'s brother, submitted a Claim Form identifying the Account Owner as her great-grandmother's nephew, Victor Portheim, who was born on 19 February 1871 in Prague. Claimant [REDACTED 2] indicated that most of the von Portheim family, which was Jewish, was killed in concentration camps during the Holocaust. In support of her claim, Claimant [REDACTED 2] submitted a detailed family tree. Claimant [REDACTED 2] stated that she was born on 4 April 1921 in Germany.

Information Available in the Bank's Records

The Bank's records consist of a customer card and an excerpt of a list of closed custody accounts belonging to Austrian customers. According to these records, the Account Owner was Victor Portheim who resided at Opernring 3 in Vienna I, Austria. The Bank's records indicate that the Account Owner held a custody account numbered 31013. The records show that some of the assets, worth 2,000.00 Swiss Francs ("SF") were transferred from the account on 29 July 1938 to the *Oesterreichische Credit Anstalt - Wiener Bankverein* in Vienna. The Bank's records indicate that the Account Owner was deceased by 29 November 1939. The records further show that the custody account had been blocked on 28 November 1939, and that access to the account was to be determined by the Bank's legal department. Finally, the records indicate that the account was closed on 9 September 1941. The amount in the account on the date of its closure is not known. There is no evidence in the Bank's records that the Account Owner's heirs 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, and/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 Victor Portheim, numbered 2442. These records indicate that Victor Portheim was born on 19 February 1871 and was a citizen of Czechoslovakia. According to these records, Victor Portheim resided at Vienna 1, Opernring 3. The records indicate that Victor Portheim owned securities in banks in Austria and Germany, and that he had savings and cash assets worth 17,548.00 Reichsmark ("RM"). These records also contain a detailed valuation by an art dealer of the watch, glass and other collections in Victor Portheim's home, which were estimated to be worth RM 25,656.00. These records do not make any 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 three 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, city and country of residence match the published name, city and country of residence of the

Account Owner. Claimant [REDACTED 3] identified her relative's street address, which matches unpublished information about the Account Owner contained in the Bank's records. Furthermore, Claimant [REDACTED 3] identified the fact that her relative died in August 1939, which is consistent with unpublished information contained in the Bank's records that the Account Owner was deceased by November 1939. The Claimants all identified their relative's date of birth, which matches unpublished information about the Account Owner contained in the 1938 Census records.

The CRT notes that the name Victor Portheim appears only once on the February 2001 list of accounts determined by the Independent Committee of Eminent Persons ("ICEP") to be probably or possibly those of victims of Nazi persecution and that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. Claimant [REDACTED 3] stated that her uncle was Jewish, that he was persecuted by the Nazis and that he committed suicide in August 1939. Claimant [REDACTED 3] also noted that two of the Account Owner's brothers were deported to Theresienstadt where they were murdered. Claimant [REDACTED 1] and Claimant [REDACTED 2] stated that their relative was Jewish and Claimant [REDACTED 2] indicated that most of the Account Owner's family were killed in concentration camps during the Holocaust.

The Claimants' Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting specific information, demonstrating that the Account Owner was Claimant [REDACTED 3]'s paternal uncle and the nephew of Claimant [REDACTED 1]'s and Claimant [REDACTED 2]'s great-grandmother.

The CRT notes that Claimant [REDACTED 3] identified unpublished information about the Account Owner as contained in the Bank's records and that all Claimants correctly identified the Account Owner's date of birth as noted in the records held by the Austrian State Archive. The CRT further notes that each of the Claimants submitted copies of detailed family trees outlining various branches of the Portheim family. The CRT notes that it is plausible that such documents are documents which most likely only a family member would possess. The CRT also notes that Claimant [REDACTED 3] submitted her birth and marriage certificates, showing that her father was [REDACTED], and that she was born in Vienna, which provides independent verification that Claimant [REDACTED 3]'s relatives bore the same family name and resided in the same city 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 Claimants as family member, and all of this information supports the plausibility that the Claimants are related to the Account Owner, as they asserted in their Claim Form.

There is no information to indicate that the Account Owner has surviving heirs other than the parties whom Claimant [REDACTED 3] is representing.

The Issue of Who Received the Proceeds

Given that the Account Owner resided in Nazi-controlled Austria before committing suicide in August 1939; that the Account Owner had been deceased for two years before the closure of his account; that some of the assets from his account were transferred to the *Oesterreichische Credit Anstalt-Wiener Bankverein* on 29 July 1938; that the Account heirs would not have been able to obtain information about his 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 (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 Governing the Claims Resolution Process, as amended (the "Rules") (see Appendix A), 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 Claimant [REDACTED 3] and the parties whom she represents. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, Claimant [REDACTED 3] has plausibly demonstrated that the Account Owner was her uncle, and the great-uncle of the parties whom she represents, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither the Account Owner nor his heirs received the proceeds of the claimed account.

Further, the CRT notes that Claimant [REDACTED 3] and the parties whom Claimant [REDACTED 3] represents, namely [REDACTED 4] and [REDACTED 5], are the Account Owner's niece, grand-nephew and grand-niece, respectively, and therefore, as descendants of the Account Owner's parents, have a better entitlement to the account than Claimant [REDACTED 1] and Claimant [REDACTED 2], who are descendants of the Account Owner's grandparents.

Amount of the Award

In this case, the Account Owner held one custody 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 ICEP (the "ICEP Investigation"), in 1945 the average value of a custody account was SF 13,000.00. 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 162,500.00.

Division of the Award

As indicated above, Claimant [REDACTED 3] and the parties she represents have a better entitlement to the account than Claimants [REDACTED 1] and [REDACTED 2]. According to Article 23(1)(d) of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favour of any descendants of the Account Owner's parents who have submitted a claim, in equal shares by representation. Accordingly, Claimant [REDACTED 3] is entitled to one-half of the total award amount and her cousin's children, [REDACTED 4] and [REDACTED 5], who are siblings, are each entitled to one-quarter of the total award amount.

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
31 March 2005