

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED]

**in re Accounts of Fanny von Seemann**

Claim Number: 601280/MBC<sup>1</sup>

Award Amount: 351,750.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of [REDACTED].<sup>2</sup> This Award is to the published accounts of Fanny von Seemann (the “Account Owner”), over which Franz von Seemann (“Power of Attorney Holder Seemann”), Ernst Simon (“Power of Attorney Holder Simon”) and [REDACTED] (“Power of Attorney Holder [REDACTED]”) (together the “Power of Attorney Holders”) held powers of attorney,<sup>3</sup> at the Zurich branch of 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 a claim to the Holocaust Claims Processing Office (“HCPO”) identifying the Account Owner as his paternal grandmother, Fanny (Franziska) Simon, née Aninger (Anninger), who was born on 16 March 1879 in Vienna, Austria, and was married to [REDACTED] on 25 March 1900 in Vienna. According to information provided by the Claimant, Fanny and [REDACTED] Simon had a son, [REDACTED] (the Claimant’s father), who was born on 23 July 1902. The Claimant and the Claimant’s mother, [REDACTED], further stated that, at some point prior to 1938, Fanny Simon married her second husband, Major [REDACTED]. The Claimant’s mother stated that her late husband’s father, [REDACTED] and

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<sup>1</sup> The Claimant submitted a claim, numbered B-02146, on 8 January 2000, to the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601280.

<sup>2</sup> The CRT will treat the claim to this account in a separate determination.

<sup>3</sup> 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”), *Frau* Fanny von Seemann is indicated as having three accounts, and Franz von Seemann as having one account. Upon careful review, the CRT has concluded that the Bank’s records evidence the existence of three accounts that were all owned by Fanny von Seemann, and that Franz von Seemann held a power of attorney over these accounts.

his brother, Ernst, co-owned the company *Gebrüder Simon* in Vienna. According to information provided by the Claimant, after the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), Fanny and [REDACTED] fled Austria to Prague, Czechoslovakia (now, Czech Republic) on 30 June 1938 and then to Brazil. The Claimant’s mother stated that Fanny and [REDACTED] Simon had passed away, but she did not know their dates of death.

In support of his claim, the Claimant submitted several documents, including his father’s birth certificate, which indicates that [REDACTED] was born at Margarethenstrasse 87 in Vienna and that his parents were [REDACTED] and Fanni Simon, née Anninger; his baptism certificate, which indicates that he was born on 1 November 1937 and baptized on 23 July 1938, that his parents were [REDACTED] and [REDACTED], née [REDACTED], that his paternal grandparents were [REDACTED] and [REDACTED], née [REDACTED], and that his godmother was Dr. [REDACTED], the therapist (“*Heilspäaigogin*”) for Major Franz Seemann von Treuenwart; a certificate from the Chamber of Commerce of the City of Vienna, dated 12 July 1938, which indicates that [REDACTED] owned the company *Gebrüder Simon*, which was located at Margaretenstrasse 87 in Vienna; and a certificate, dated 5 November 1940, from a Gestapo official to *Kirschner & Co.* [a well-known moving company], indicating that on 19 August 1940 all property belonging to Erika and [REDACTED] of Taubstummengasse 13 in Vienna had been seized to be sold in favor of the tax authorities.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his father.

The Claimant indicated that he was born on 1 November 1937 in Vienna.

### **Information Available in the Bank’s Records**

The Bank’s records consist of power of attorney forms; signature sample cards; a consent form signed by the Account Owner’s husband; correspondence between the Account Owner and the Bank; a document pertaining to the 1945 freeze of assets deposited in Switzerland by nationals of Germany and the territories incorporated into the Reich (the “1945 Freeze”); and printouts from the Bank’s database. According to these records, the Account Owner was *Frau* (Mrs.) Fanny von Seemann, who resided at Margarethenstrasse 87 in Vienna, Austria. The Bank’s records indicate that Power of Attorney Holder Seemann was Franz von Seemann, the Account Owner’s husband; that Power of Attorney Holder Simon was Ernst Simon; and that Power of Attorney Holder [REDACTED] was [REDACTED], who resided in Wohlen, Aargau, Switzerland. The Bank’s records indicate that the Account Owner held one custody account numbered 32785, one gold custody account, and one demand deposit account.

The Bank’s records indicate that the custody account, numbered 32785, was opened no later than 4 July 1931 and that the gold custody account was opened no later than 10 March 1934. The Bank’s records indicate that the custody accounts were closed on 6 April 1938. The value of these accounts on the date of their closure is not known. There is no evidence in the Bank’s records that the Account Owner, the Power of Attorney Holders or their heirs closed the accounts and received the proceeds themselves.

The Bank’s records indicate that the demand deposit account was blocked in the 1945 Freeze,

and that its balance on 17 February 1945 was 40.00 Swiss Francs (“SF”). The Bank’s records further indicate that the account was transferred to a suspense account for dormant assets on 18 August 1955. The balance in the account on the date of the transfer was SF 32.50. 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”) reported that the account remains in the suspense account.

### **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 Fanny (Franziska) Seemann, numbered 65361. According to these records, Fanny Seeman was born on 16 March 1879, held Czech nationality, was married to Franz Seemann Ritter von Treuenwarth, who was Roman Catholic, and maintained, in addition to her residence in Prague, a residence in Vienna at Margarethenstrasse 87. The records indicate that Fanny Seeman, who was Jewish, left Vienna for Prague on 30 July 1938. According to Fanny Seeman’s 1938 Census declaration, her assets included, in addition to various securities, joint ownership of four houses in Vienna, a weekend cabin in Eritzendorf, Austria, an estate called Eichhoff in Anzbach, Austria, which she valued at 250,000.00 Reichsmark (“RM”) and which was aryanized in July 1938. The file contains correspondence regarding this aryanization, according to which the Nazi Party member who acquired the property did so at a fraction of the already too low valuation, and was herself the subject of a criminal proceeding. According to these records, as of 30 July 1938, Fanny Seemann owned assets totaling over RM 375,000.00. The file also includes a letter, dated 7 December 1938, from Fanny Seeman’s attorney, Dr. [REDACTED], in which he wrote that he did not know where Fanny Seemann was, but that she might be in Switzerland or France.

The records of the Austrian State Archive also include documents concerning the assets of [REDACTED], numbered 42070. According to these records, [REDACTED] was born on 23 July 1902 and was married to [REDACTED], née [REDACTED], and resided at Taubstummengasse 13 in Vienna. The records indicate that [REDACTED] owned a company named *Gebrüder Simon*, which was located at Margarethenstrasse 87 in Vienna and which exported merchandise for smokers. The records also indicate that [REDACTED] gave Fanny von Seemann-Treuenwarth 10,000.00 Austrian Shillings to buy goods for his company.

The records also include documents concerning the assets of Ernst Simon, numbered 65356. According to these records, Ernst Simon was born on 6 March 1870 in Vienna, was married to [REDACTED], née [REDACTED], who was born on 6 July 1873, and resided at Brucknerstrasse 6 in Vienna. These records indicate that Ernst and [REDACTED] Simon had a son, [REDACTED], who was born on 2 October 1907 in Vienna. The 1938 Census file contains correspondence indicating that Ernst Simon and his family had left Austria on 22 February 1938 for Zurich and the United States, including a letter from Ernst and [REDACTED] Simon transmitted through their attorney, Dr. [REDACTED], on 28 June 1938 to the Property Control Office (*Vermögensverkehrsstelle*) with the notation that the Simons were in Zurich at that time.

According to this letter, Ernst and [REDACTED] Simon left Austria on 22 February 1938. In the letter, the Simons declared their assets as of 27 April 1938 to be worth RM 335,733.00. The file also contains a letter, dated 14 June 1938, from Ernst Simon to the Governor of the Reich in Austria, in which he revised his estimated value of his assets down to RM 322,733.00 and provided a mailing address care of *Jonas & Naumburg Corp.*, in New York, the United States and estimated the net value of his assets at RM 322,733.00. The file also contains official internal correspondence, which indicates that Ernst Simon and his family had emigrated to the United States on 28 August 1938 and that, on 26 September 1939, the tax authorities issued a confiscation order for all domestically held assets of Ernst Simon and his family for failing to pay the flight tax.

## **The CRT's Analysis**

### Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The Claimant's paternal grandmother's name, title, and city and country of residence match the published name, title, and city and country of residence of the Account Owner. The Claimant's mother identified the names of the Claimant's grandmother's second husband and brother-in-law from her first marriage, which match the published names of the Power of Attorney Holders. Additionally, the Claimant identified his grandmother's street address and the familial relationship between the Claimant's grandmother and her second husband, which match unpublished information about the Account Owner and Power of Attorney Holder Seemann contained in the Bank's records.

In support of his claim, the Claimant submitted documents, including his father's birth certificate and his baptism certificate, 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 information provided by the Claimant regarding his father and grandmother is consistent with information contained in the 1938 Census records about the Account Owner. The CRT also notes that the signatures of the Account Owner and Power of Attorney Holder Ernst Simon match the signatures of Fanny Seemann and Ernst Simon contained in the 1938 Census records. This supports the credibility of the information provided by the Claimant. The CRT notes that there are no other claims to these accounts.

### 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 indicated that the Account Owner was Jewish and that, after the *Anschluss*, she emigrated from Austria to Czechoslovakia and then to Brazil.

### 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 paternal grandmother. These documents include the Claimant's baptism certificate, which indicates that his father was [REDACTED], who was the son of [REDACTED] and [REDACTED], née [REDACTED].

#### The Issue of Who Received the Proceeds

With respect to the demand deposit account, the Bank's records indicate that it was transferred to a suspense account on 18 August 1955. The auditors who carried out the ICEP Investigation reported that the account remains suspended.

With respect to the remaining two accounts that were closed on 6 April 1938, given that the Account Owner remained in Austria until after the *Anschluss*, when she fled to Prague and later to Brazil, and therefore could not have repatriated the accounts without losing ultimate control over the proceeds of the accounts; that there is no record of the payment of the Account Owner's accounts to her, nor any date of closure of the accounts; that the Account Owner and her heirs would not have been able to obtain information about her 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 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, the Power of Attorney Holders, or their 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 the Account Owner was his paternal grandmother, and that relationship justifies an Award. Third, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts.

#### Amount of the Award

In this case, the Account Owner held two custody and one demand deposit account. With respect to the demand deposit account, the Bank's records indicate that its value on 17 February 1945 was SF 40.00. According to Article 29 of the Rules, if the amount in a demand deposit account was less than SF 2,140.00 and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be SF 2,140.00. The current value of the amount of the award 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 26,750.00.

With respect to the Account Owner's two custody accounts, 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 ICEP Investigation, in 1945 the average value of a custody account was SF 13,000.00. Thus, the total 1945 average value of the two custody account is SF 26,000.00. The current value of this amount is determined by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 325,000.00.

Consequently, the total award amount is SF 351,750.00.

### **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 his claim to determine whether there are additional Swiss bank accounts to which he 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  
21 September 2005

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