

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award and Award Amendment upon Request for Reconsideration**

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 of [REDACTED 5]  
and the Estate of [REDACTED 6]

### **in re Account of Max Portheim, *Selig***

Claim Numbers:

500664/BW; 500892/BW; 501112/BW; 501199/BW; 501736/BW

Appeal Number: 1931

Original Award Amount: 338,150.00 Swiss Francs

Award and Award Amendment Amount: 387,656.63 Swiss Francs

This Certified Award and Award Amendment upon Request for Reconsideration 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 Portheim;<sup>1</sup> and the claim of [REDACTED 3] (“Claimant [REDACTED 3]”) (together, the “Claimants”) to the account of Robert A. J. Pollak. This Award and Award Amendment upon Request for Reconsideration is to the published account of Max Portheim, *Selig* (deceased) (the “Account Owner”), for which Robert A. J. Pollak was the contact person (the “Contact Person”), at the Basel branch of the [REDACTED] (the “Bank”).<sup>2</sup>

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<sup>1</sup> In separate decisions, the accounts of Emil Portheim and Victor Portheim were awarded to [REDACTED 4] (“Claimant [REDACTED 4]”) and the parties she represents. In those decisions, [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) were determined to be less entitled to those accounts than Claimant [REDACTED 4] and the parties she represents. See *In re Accounts of Emil Portheim* (approved on 9 March 2005) and *In re Account of Victor Portheim* (approved on 31 March 2005).

<sup>2</sup> In a separate decision, the Claimants were awarded the account of the Estate of Max Portheim. See *In re Account of Max Portheim, Selig* (approved on 15 November 2007). This decision is the subject of the current request for reconsideration.

All awards and award amendments are published, but where a claimant has requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owner, and the bank have been redacted.

## **Procedural History**

On 15 November 2007, the Court approved an Award to the Claimants for an account belonging to the Account Owner (the “November 2007 Award”). In the November 2007 Award, the CRT determined that the Account Owner was the Estate of Max Portheim, and that it owned one custody account. The CRT further determined that the Claimants plausibly identified Max Portheim as their relative and plausibly demonstrated that his Estate was targeted by the Nazis. Additionally, the CRT determined that it was plausible that heirs of Max Portheim’s Estate did not receive the proceeds of the custody account. The CRT noted that the Bank’s records indicated that the value of the account was 27,002.00 Swiss Francs (“SF”). In accordance with Article 31(1) of the Rules, this amount was 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 was SF 27,052.00. The current value of this amount was determined by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules. Consequently, the November 2007 Award amount was SF 338,150.00. The CRT determined that Claimant [REDACTED 1], Claimant [REDACTED 2], and Claimant [REDACTED 4] were each entitled to one-sixth of the award amount; that Claimant [REDACTED 3] was entitled to one-third of the award amount; and that represented parties [REDACTED 5] and [REDACTED 6] were each entitled to one-twelfth of the award amount.

On 11 December 2007, Claimant [REDACTED 3]’s representative requested reconsideration of the November 2007 Award. With his request for reconsideration, Claimant [REDACTED 3] submitted new documents that refer to the value of the custody account and to another account held by the Estate. These documents are described in detail below.

## **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] stated 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 Dr. [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, 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.

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] (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] and [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, Dr. Robert Adam Pollak, 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 Dr Robert Adam Pollak, who was born on 20 April 1877 in Vienna; (2) his grandfather's 1938 Census declaration; (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 Robert Adam Pollak'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.

In his request for reconsideration, Claimant [REDACTED 3] submitted additional documents not previously submitted with his claim form. Claimant [REDACTED 3] stated that he obtained these documents from Max Portheim's probate file in the Vienna City Archive.<sup>3</sup> These documents refer to assets belonging to Max Portheim's estate and are described in detail below.

### **Information Available in the Bank's Record**

As detailed in the November 2007 Award, the Bank's record consists of a printout from the Bank's database, which includes the name and address of the Account Owner and the contact person for the account. According to this record, the Estate of Max Portheim held a custody account at the Bank, which had a balance of SF 27,002.00 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 Bank's records also indicate that the contact person for the account was Dr. Robert A.J. Pollak, who resided at Meidlinger Hauptstrasse 56 in Vienna.

As noted in the November 2007 Award, 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.

As noted above, in his request for reconsideration, Claimant [REDACTED 3] submitted additional records regarding assets belonging to the estate of Max Portheim. These documents include:

- (1) a letter from the Bank dated 31 March 1937, with an attached account statement (the "1937 Letter and Account Statement");

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<sup>3</sup> Specifically, Claimant [REDACTED 3]'s representative Dr. Walter Friedrich indicated that he obtained these new documents from Max Portheim's probate file numbered 6 A 283/42 from the Döbling District Court (*Bezirksgericht Döbling*), which can be requisitioned and viewed at the Vienna City Archive.

- (2) an inventory of the bank assets held by the Estate of Max Portheim prepared on 10 May 1937 (the “1937 Inventory”);
- (3) two reports of the executor of the Estate of Max Portheim, dated January 1938 and September 1938 (the “1938 Reports”);
- (4) a document from the Döbling District Court (*Bezirksgericht Döbling*) dated 15 January 1938 regarding the Estate of Max Portheim; and
- (5) a draft report outlining remaining assets in Max Portheim’s Estate, dated approximately 2 May 1939 (the “1939 Draft Report”).<sup>4</sup>

### The 1937 Letter and Account Statement

The letter from the Bank dated 31 March 1937 is addressed to Dr. Friedrich Krimmer, Notary of Vienna, who was appointed by the probate court in matters relating to the Estate of Max Portheim. The Bank indicated that it had received a decision from the Döbling District Court regarding the Estate of Max Portheim, and that it was accordingly responding to Dr. Krimmer’s inquiry regarding assets held by the Estate at the Bank. The Bank indicated that as of 31 March 1937, the Estate of Max Portheim held a demand deposit account with a value of SF 2,483.30. The Bank also attached to the letter an account statement for the Estate’s custody account at the Bank.

The account statement indicates that the Estate of Max Portheim of Vienna held a custody account numbered 17383 at the Basel branch of the Bank, and that that account contained the following securities as of 31 March 1937:

- *4½% Anatolische Eisenbahn Gesellschaft Serie II Em. vom Jahr 1893 bonds* with a face value of SF 42,000.00;<sup>5</sup>
- *13 Certificates for back payment of interest from the year 1929 on the 4½% Anatolische Eisenbahn Gesellschaft II Em. vom Jahr 1893 bonds*, each with a face value of SF 450.00;<sup>6</sup>
- *3½% Chemins de Fer Egyptiens et le Port d’Alexandrie bonds*, with a face value of SF 37,500.00;<sup>7</sup>
- *7% Austrian Republic International bonds 1930*, with a face value of SF 53,000.00, including interest coupons valued at SF 278.24;<sup>8</sup>
- *4½% National Railways of Mexico 1926 Deposit Certificates*, with a face value of 2,000.00 United States Dollars (“US \$”);<sup>9</sup>

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<sup>4</sup> The actual date of the report is not clear. The document contains a signature dated 2 May 1939 and references to assets as of 31 December 1938. Accordingly, the CRT concludes that the draft report was drafted some time between 1 January 1939 and May 2 1939.

<sup>5</sup> The CRT notes that the currency denomination for this security is listed on the account statement as “Frs.” The CRT has determined that this security was denominated in Swiss Francs (“SF”).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* The CRT notes that it considers that the SF 278.24 value of the interest coupons was subsequently deposited in the demand deposit account of the Account Owner and will not be further considered as having remained in the custody account.

- *Etats Unis du Mexique Series 'A' Certificates*, with a face value of US \$270.00;<sup>10</sup>
- *Etats Unis du Mexique Series 'B' Certificates*, with a face value of US \$540.00;<sup>11</sup> and
- *150 Compagnie des Chemins de Fer Danube-Save-Adriatique bonds*.

### The 1937 Inventory

The 1937 Inventory was prepared by Dr. Krimmer. It lists the same securities that were held by the Estate of Max Portheim at the Bank and includes the same entries as those listed in the 1937 Letter and Account Statement from the Bank.<sup>12</sup> The 1937 Inventory also contains valuation information pertaining to the assets of the Account Owner, and includes a section that values the securities held by the Account Owner at the Bank as of March 1937, with valuation quotes obtained from the Vienna Securities Exchange (*Wiener Borsenkammer*). Additionally, the 1937 Inventory indicates that the *3½% Chemins de Fer Egyptiens et le Port d'Alexandrie* were considered by Dr. Krimmer to be equivalent to a security indicated as *3½% Egypte Privilegiée 1876-1900*.

In reviewing the information prepared by Dr. Krimmer in this statement, the CRT, as well as Claimant [REDACTED 3], has concluded that a number of the mathematical calculations of Dr. Krimmer in the 1937 Inventory are incorrect.<sup>13</sup> Specifically, the CRT notes the following miscalculations and their correct valuation according to the quotes provided by Dr. Krimmer in the 1937 Inventory:

- *4½% Anatolische Eisenbahn Gesellschaft Serie II Em. vom Jahr 1893 bonds* with a face value of SF 42,000.00 (84 certificates at SF 500.00 each). Dr. Krimmer indicates that the valuation quote for this security is 700 Belgian Francs (“BF”) per SF 500.00 in value, however incorrectly calculates the subtotal as BF 5,880.00, which he then converts into 1,067.22 Austrian Schilling (“AS”) at the rate of AS 18.15 for BF 100.00. The correctly calculated subtotal should be BF 58,800.00 which equals AS 10,672.00 at the same exchange rate.
- *13 Certificates for back payment of interest from the year 1929 on the 4½% Anatolische Eisenbahn Gesellschaft II Em. vom Jahr 1893 bonds*, each with a face value of SF 450.00. Dr. Krimmer indicates that the valuation quote for this security is SF 110.00 per piece, and correctly calculates the subtotal for all 13 certificates as SF 1,430.00. The subsequent calculation of this subtotal into AS however is incorrect. Dr. Krimmer

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<sup>9</sup> The CRT notes that the currency denomination for this security is listed on the account statement as “\$.” The CRT has determined that this security was denominated in United States Dollars (“US \$”).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> The inventory of the bank assets held by the Estate of Max Portheim prepared on 10 May 1937 (the “1937 Inventory”) indicates that the account held “37,900.00” face value of *3½% Chemins de Fer Egyptiens et le Port d'Alexandrie* (not “37,500.00”, as indicated in the account statement). The CRT has determined that this was a typographical error, and that the Account Owner held “37,500.00” *3½% Chemins de Fer Egyptiens et le Port d'Alexandrie* as indicated in the Bank’s statement of the Account Owner’s assets held in the custody account.

<sup>13</sup> The calculation mistakes in the 1937 Inventory were recognized by Claimant [REDACTED 3]’s representative Dr. Walter Friedrich, who states in the request for reconsideration regarding the 1937 Inventory, “[o]n its pages 6 and 7 it lists the securities in the Basel account and states their values, but there are mistakes.”

indicates that the total equals AS 1,859.75 at the exchange rate indicated of AS 123.06 per SF 100.00; however the correct total as calculated at this exchange rate equals AS 1,759.75.

- *3½% Chemins de Fer Egyptiens et le Port d’Alexandrie bonds (3½% Egypte Privilegiée 1876-1900)*, with a face value of SF 37,500.00. Dr. Krimmer indicates that the valuation quote for this security is BF 435.00 per SF 500.00 nominal value, but calculates the subtotal as SF 32,190.00, which is then converted into AS 39,613.50 using the SF to AS exchange rate of AS 123.06 per SF 100.00, even though he indicates in the 1937 Inventory that he is making the calculation using the exchange rate of AS 18.15 per BF 100.00. Given that this security was of good quality and the total amount was actually determined using the AS to SF exchange rate, the CRT has determined that Dr. Krimmer’s use of “BF 435.00” was a typographical error, and that the correct valuation he used to perform this calculation was the valuation quote of SF 435.00 per SF 500.00 of par value. Given this, the correct calculation of the valuation of this security using the quote of SF 435.00 per SF 500.00 nominal value results in a subtotal of SF 32,625.00, which equals AS 40,148.33 at the exchange rate of AS 123.06 per SF 100.00.

Given these corrected calculations, the CRT notes that the value of the securities in the custody account as evidenced by the 1937 Inventory was AS 137,430.80 and not AS 127,391.20 as indicated.

### The 1938 Reports

The January 1938 report of Dr. Wilhelm Pappenheim, who was a lawyer from Vienna and the executor of the estate, details the legacies payable from the Estate of Max Portheim. According to this report, the value of legacies due totaled AS 225,260.00, and the value of the assets in the estate totaled AS 265,030.00. The assets held by the estate and listed in the January 1938 report included cash at the Bank totaling SF 8,800.00 and a custody account valued at approximately SF 100,000.00 as of 20 November 1937.

According to the document from the Döbling District court dated 15 January 1938, SF 13,000.00 face value of the *7% Austrian Republic International bonds 1930*, were transferred on 14 January 1938 by the Bank to the *Wiener Giro und Cassenverein* for the account of the Central Tax and Fees Office (*Zentral- Tax- und Gebührenbemessungsamt*) in Vienna, in order to pay estate fees in the amount of AS 16,545.10.

The September 1938 report of Dr. Pappenheim provides an update about the status of the estate. In this report, Dr. Pappenheim wrote that the estate could soon expect a credit in Swiss Francs, which would result from the sale of assets at the Bank that had been ordered by the *Reichsbank* main office in Vienna.<sup>14</sup>

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<sup>14</sup> The original German reads: “*Ich bemerke weiters, dass noch die Gutschrift des Gegenwertes eines grosseren sfr. Betrages, den ich durch die [Bank] über Anordnung der Reichsbankhauptstelle Wien verkaufen liess, zu erwarten ist...*”

## The 1939 Draft Report

The 1939 Draft Report lists the remaining assets in the estate of Max Portheim (“*Entwurf einer Zusammenstellung über das restliche Substitutionsvermögen nach Herrn Max Portheim*”) and includes the assets held by the estate at the Bank. This report lists the same securities as those listed in the 31 March 1937 account statement, but for the *7% Austrian Republic International bonds 1930*. According to this report, none of these bonds remained in the custody account as of 2 May 1939. The 1939 Draft Report also indicates that the estate held cash assets in the amount of SF 693.30 at the Bank as of 31 December 1938, which includes SF 161.80 in coupon payments for 150 *Donau-Save-Adria* coupons that had recently been redeemed.<sup>15</sup>

The 1939 Draft Report indicates that a number of smaller items from the Estate were being held by Dr. Pappenheim. Included in the list of those objects is a pocket watch with an enamel portrait of “Emperor Josef II in Josefsplatz.” The report states that Dr. Robert Adam Pollak had expressed interest in the pocket watch, which was valued at AS 30.00, and that the heirs had not raised any objection to him receiving the watch, as they were grateful to Dr. Pollak for his selflessness and his valuable contributions to legal discussions regarding the Estate, which, according to the heirs, well exceeded in value the value of the pocket watch.<sup>16</sup> Finally, a notation on the 1939 Draft Report indicates that the remaining value of the securities in the account was valued at AS 54,893.20.

## **The CRT’s Analysis**

### The Issue of Who Received the Proceeds

The CRT notes that the documents submitted in the request for reconsideration indicate that the Account Owner held a demand deposit account at the Bank. With regard to this account, given that the *Reichsbank* requested that some of the assets held by the Account Owner at the Bank be sold in 1938; that there is no record of the payment of the Account Owner’s account to the estate, nor any record of a date of closure of the demand deposit account, nor any record from the Bank about this account; that the Account Owner and its successors in interest would not have been able to obtain information about the demand deposit 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 (f), (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 proceeds of the demand deposit account were not paid to the Account Owner or his heirs.

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<sup>15</sup> The CRT notes that it considers that the SF 161.80 value of the interest coupons was subsequently deposited in the demand deposit account of the Account Owner and will not be further considered as having remained in the custody account.

<sup>16</sup> The original German reads: “*Herr Dr. Robert Adam Pollak, hat den begreiflichen Wunsch ausgesprochen, aus dem Nachlasse als Andenken, die Taschenuhr mit dem Bildes des Kaiser Josef zu erhalten. Von Seite der Erben wird kein wie immer gearteter Widerspruch erhoben, sie sind dem Herrn Dr. Pollak für seine Uneigennützigkeit und seine wertvolle Teilnahme an den juristischen Diskussionen sehr zu Dank verbunden. Ihr Wert übersteigt selbstverständlich den Wert der Uhr um ein Vielfaches. Sie wurde auf S 30.00 geschätzt...*”

With regard to the custody account, the documents submitted in Claimant [[REDACTED 3]]'s request for reconsideration show that as of 31 March 1937, the custody account contained the following securities:

- *4½% Anatolische Eisenbahn Gesellschaft Serie II Em. vom Jahr 1893 bonds*, with a face value of SF 42,000.00;
- *13 Certificates for back payment of interest from the year 1929 on the 4½% Anatolische Eisenbahn Gesellschaft II Em. vom Jahr 1893 bonds*, each with a face value of SF 450.00;
- *3½% Chemins de Fer Egyptiens et le Port d’Alexandrie bonds* (equivalent to the *3½% Egypte Privilegiée 1876-1900*) with a face value of SF 37,500.00;
- *4½% National Railways of Mexico 1926 Deposit Certificates*, with a face value of US \$2,000.00;
- *Etats Unis du Mexique Series ‘A’ Certificates*, with a face value of US \$270.00;
- *Etats Unis du Mexique Series ‘B’ Certificates*, with a face value of US \$540.00;
- *7% Austrian Republic International bonds 1930*, with a face value of SF 53,000.00; and
- *150 Compagnie des Chemins de Fer Danube-Save-Adriatique bonds*.

According to the document from the Döbling District court dated 15 January 1938, SF 13,000.00 in face value of the total SF 53,000.00 face value of *7% Austrian Republic International bonds 1930* were transferred on 14 January 1938 by the Bank to the *Wiener Giro und Cassenverein* for the account of the Central Tax and Fees Office (*Zentral- Tax- und Gebührenbemessungsamt*) in Vienna, in order to pay estate fees in the amount of AS 16,545.10, leaving bonds with a face value of SF 40,000.00 in the account after that date. As the SF 13,000.00 face value of bonds was used by the executor to pay estate fees, and as this transfer took place prior to the incorporation of Austria into the Reich in March 1938 (the “*Anschluss*”), the CRT concludes that these assets were properly disposed of by the executor of the estate.

The CRT notes that the 1939 Draft Report indicates that the estate held the same securities as those listed in the 1937 Inventory, but for the *7% Austrian Republic International 1930 bonds* with a face value of SF 53,000.00. As noted above, an amount of these bonds with a face value of SF 13,000.00 were transferred on 14 January 1938 to Vienna to pay estate fees. With regard to the remaining bonds with a face value of SF 40,000.00, the CRT notes that Dr. Pappenheim’s September 1938 report states that the estate could soon expect a credit in Swiss Francs resulting from the sale of assets at the Bank that had been ordered by the Reichsbank Main Office in Vienna. The CRT therefore concludes that the remaining *7% Austrian Republic International bonds 1930* with a face value of SF 40,000.00 were sold by the Bank upon orders of the Reichsbank. There is no evidence that the proceeds of this sale were credited to the estate, or, if they were, that they were distributed to the heirs. Given these facts, and given that the remaining securities appear to have remained in the account, which was subsequently frozen in the 1945 Freeze of German assets, and given the considerations outlined in the November 2007 Award, namely, 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, 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 and Award Amendment

With regard to the demand deposit account held at the Bank, 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 Max Portheim 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.

With regard to the custody account held at the Bank, the CRT has determined that an Award Amendment may be made in favor of the Claimants and the represented parties. The CRT has determined that the new documents submitted upon Claimant [REDACTED 3]'s request for reconsideration indicate that the value of the account was higher than that awarded in the November 2007 Award.

#### Amount of the Award and Award Amendment

With regard to the custody account, the documents submitted in Claimant [REDACTED 3]'s request for reconsideration show that as 2 May 1939, the custody account contained the same securities as those listed in the 1937 Inventory, but for the *7% Austrian Republic International bonds 1930* with a face value of SF 53,000.00. As detailed above, SF 13,000.00 face value of these bonds were transferred to Vienna in January 1938 to cover estate fees, leaving SF 40,000.00 face value worth of these bonds in the account, which, according to the documentation, were later sold after the *Anschluss* at the direction of the Reichsbank.

The CRT therefore concludes that the custody account contained the following securities as of September 1938, the month that the Executor of the Account Owner's Estate indicated that he had sold unnamed assets in the Estate's bank accounts upon orders of the Reichsbank, and the date that the CRT considers as the date the Account Owner lost control over the account:

- *4½% Anatolische Eisenbahn Gesellschaft Serie II Em. vom Jahr 1893 bonds*, with a face value of SF 42,000.00;

- 13 Certificates for back payment of interest from the year 1929 on the 4½% *Anatolische Eisenbahn Gesellschaft II Em. vom Jahr 1893* bonds, each with a face value of SF 450.00;
- 3½% *Chemins de Fer Egyptiens et le Port d’Alexandrie* bonds (equivalent to the 3½% *Egypte Privilegiée 1876-1900*) with a face value of SF 37,500.00;
- 4½% *National Railways of Mexico 1926 Deposit Certificates*, with a face value of US \$2,000.00;
- *Etats Unis du Mexique Series ‘A’ Certificates*, with a face value of US \$270.00;
- *Etats Unis du Mexique Series ‘B’ Certificates*, with a face value of US \$540.00;
- 150 *Compagnie des Chemins de Fer Danube-Save-Adriatique* bonds; and
- 7% *Austrian Republic International bonds 1930* with a face value of SF 40,000.00.

According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the face value of bonds not in default shall be awarded if the market value was below the face value on the date the account owner is deemed to have lost control over the account. The CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond to maturity to avoid a capital loss. Bonds in default are awarded at market value.

Thus, the securities held in the custody account shall be valued as follows:

- 4½% *Anatolische Eisenbahn Gesellschaft Serie II Em. vom Jahr 1893* bonds, with a face value of SF 42,000.00. These bonds were in default and were trading at 16.25% on 28 December 1938.<sup>17</sup> The total market value of these bonds was SF 6,825.00.<sup>18</sup>
- 13 Certificates for back payment of interest from the year 1929 on the 4½% *Anatolische Eisenbahn Gesellschaft II Em. vom Jahr 1893* bonds, each with a face value of SF 450.00. These certificates were in default, and were trading at 16.25% on 28 December 1938.<sup>19</sup> The total market value of these bonds was SF 950.63.
- 3½% *Chemins de Fer Egyptiens et le Port d’Alexandrie* bonds (equivalent to the 3½% *Egypte Privilegiée 1876-1900*) with a face value of SF 37,500.00. These bonds were of good quality and were trading at 84½% on 19 December 1938.<sup>20</sup> As these bonds were of good quality, but had a market value below their face value, they shall be valued at their total face value of SF 37,500.00.

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<sup>17</sup> The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938. The market price used is the closing price in Zurich on 28 December 1938 for the 2.25% (formerly 4.5%) bonds of the *Anatolische Eisenbahn-Gesellschaft Series II* from 1912.

<sup>18</sup> The CRT uses official exchange rates for currency conversions.

<sup>19</sup> According to research conducted by the CRT, these securities functioned as guarantee certificates which were essentially certificates issued in lieu of interest repayments due on the underlying debt obligation. Therefore, these securities will be treated and valued according to the market values obtained for their associated obligations. See *supra* note 17.

<sup>20</sup> The market value for this security was obtained from the *Financial Times*, 20 December 1938. The market price used is the closing price in London on 19 December 1938 for the 3½% *Preferred Egyptian* bond. According to research conducted by the CRT, this security was called for redemption at par value by the Egyptian government on 10 December 1943.

- *4½% National Railways of Mexico 1926 Deposit Certificates*, with a face value of US \$2,000.00. These bonds were in default, and were trading at 0.5% on 29 December 1938. The total market value of these bonds was US \$10.00, which was equivalent to SF 43.70.<sup>21</sup>
- *Etats Unis du Mexique Series 'A' Certificates*, with a face value of US \$270.00 and *Etats Unis du Mexique Series 'B' Certificates*, with a face value of US \$540.00. These certificates were in default and were trading at 0.5% on 29 December 1938.<sup>22</sup> The total market value of these securities was US \$4.05, which was equivalent to SF 17.70.
- *150 Compagnie des Chemins de Fer Danube-Save-Adriatique* bonds. These bonds were of good quality and were trading at SF 15.25 each on 29 December 1938.<sup>23</sup> The total market value for these bonds was SF 2,287.50.
- *7% Austrian Republic International bonds 1930* with a face value of SF 40,000.00. These bonds were in default, and were trading at 20.75% on 29 December 1938.<sup>24</sup> The total market value of these bonds was SF 8,300.00.

Accordingly, the total value of the securities in the account was SF 55,924.53. In the November 2007 Award, the adjusted value of the custody account was determined to be SF 27,052.00. Thus, SF 28,872.53 remains to be paid. The current value of this amount 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. Consequently, the total award amendment amount for the custody account is SF 360,906.63.

With regard to the demand deposit account, the documents submitted in Claimant [REDACTED 3]'s request for reconsideration show that the Estate of Max Portheim held a demand deposit account at the Bank, and that that account had a balance of SF 693.30 on 31 December 1938. 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.<sup>25</sup> The current value of this amount 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. Consequently, the total award amount for the demand deposit account is SF 26,750.00.

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<sup>21</sup> The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938. The market price used is the closing price in Zurich on 29 December 1938 for the *4½% National Railways of Mexico* bonds from 1907.

<sup>22</sup> According to research conducted by the CRT, these securities functioned as guarantee certificates which were essentially certificates issued in lieu of interest repayments due on the underlying debt obligation. Therefore, these securities will be treated and valued according to the market values obtained for their associated obligations. See *supra* note 21.

<sup>23</sup> The market value for this security was obtained from the *Zürcher Kursblatt*, 30 December 1938.

<sup>24</sup> *Id.*

<sup>25</sup> The CRT notes that, in an Order dated 16 June 2010, the Court amended Article 29 of the Rules, which establishes value presumptions for accounts with unknown or low values. Full information regarding the methodology and procedure used to determine the revised Article 29 presumptive values is available at [www.swissbankclaims.com](http://www.swissbankclaims.com). The CRT notes that any adjustment for accounts awarded at the previous presumptive value amounts, such as the demand deposit account described herein, will be addressed to the Claimants and represented parties separately.

Therefore, the total award and award amendment amount is SF 387,656.63.

#### Division of the Award and Award Amendment

The division of the award and award amendment amount remains the same as the division of the November 2007 Award. As detailed in that decision, according to Article 23(1)(3) 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 the represented parties are all descendants of the Account Owner's paternal grandparents, [REDACTED] and [REDACTED]. Accordingly Claimant [REDACTED 3] is entitled to one third of the total award and award amendment amount. Claimant [REDACTED 1] and Claimant [REDACTED 2] are entitled to share equally another third of the total award amount, or one-sixth of the total award and award amendment amount each. Claimant [REDACTED 4] and the persons she represents are entitled to the remaining third of the total award and award amendment amount. Of this amount, Claimant [REDACTED 4] is entitled to one-half, or one-sixth of the total award and award amendment 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 and award amendment amount. Table 1 below summarizes the distribution.

**Table 1. Distribution of Award and Award Amendment Amount by Party**

<b>Name of Party</b>	<b>Distribution</b>	<b>Total</b>
Claimant [REDACTED 1]	(1/6) One-sixth	SF 64,609.44
Claimant [REDACTED 2]	(1/6) One-sixth	SF 64,609.44
Claimant [REDACTED 4]	(1/6) One-sixth	SF 64,609.44
Claimant [REDACTED 3]	(1/3) One-third	SF 129,218.87
Represented Party [REDACTED 5]	(1/12) One-twelfth	SF 32,304.72
Represented Party [REDACTED 6]	(1/12) One-twelfth	SF 32,304.72
<b>Total</b>		<b>SF 387,656.63</b>

#### **Certification of the Award and Award Amendment upon Request for Reconsideration**

The CRT certifies this Award and Award Amendment upon Request for Reconsideration for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal  
17 December 2010