

PROVENANCE RESEARCH AND THE ART TRADE

Ed. Peter Wehrle

KETTERER  KUNST

CONTENT

- 07 **Introductory note**
Gudrun und Robert Ketterer
- 09 **Preface**
Peter Wehrle
- Essays
- 15 **The gap between the academic art world and the art trade –
on the status quo and the future of an uneasy relationship**
Christian Fuhrmeister and Stephan Klingen
- 27 **Case study The Mengers family – collectors and traders**
Agnes Thum
- 41 **Art trade documentary sources and their benefits for scholars and the trade**
Theresa Sepp
- 51 **Case study The Kühns art dealership – an approximation**
Sarah von der Lieth
- 63 **Auction catalogs and provenance research**
Susanne Meyer-Abich
- 71 **Case study The art collection of Kommerzienrat Isidor Bach –
a reconstruction approach**
Sabine Disterheft

- 83 **The Paul Cassirer & Walter Feilchenfeldt Archive, Zurich**
Christina Feilchenfeldt
- 93 **Case study The Jewish art dealer Arthur Dahlheim**
Carolin Faude-Nagel
- 105 **Dr. No or: How I learned to love the reverse sides of paintings –
Looking back on 28 years with a Berlin auction house**
Stefan Pucks
- 115 **Case study The Paul Metz Collection and the ‘Ettle Case’**
Katharina Thurmair
- 127 **The Holocaust Claims Processing Office and the art trade: an unlikely partnership**
Anna B. Rubin
- 135 **Case study The unknown brother: Fritz Benjamin and his art collection**
Agnes Thum
- 147 **The archival sources of Galerie Fischer, Lucerne**
Sandra Sykora
- 157 **Case study ‘Degenerate Art’ in the art trade**
Mario-Andreas von Lüttichau
- 169 **Authors**
- 176 **Imprint**



THE HOLOCAUST CLAIMS PROCESSING OFFICE AND THE ART TRADE: AN UNLIKELY PARTNERSHIP

Working in the arena of restitution can seem like both a solitary endeavor and an adversarial David versus Goliath scenario, where the victim of Nazi persecution tries to obtain justice on their own for the crimes committed against them from a larger more powerful adversary, be that a museum, a formidable private collector, or the sprawling art trade. Concurrently, the art trade vets the many objects offered for consignment and attempts to resolve outstanding questions regarding past ownership, sometimes with the aid of agencies such as the London based Art Loss Register, sometimes on their own. However, neither the Holocaust victim nor the art trade need to remain isolated in their silos; partnerships can be found in the least likely places. For the past several years, the Holocaust Claims Processing Office (HCPO) has worked together with the trade as well as cultural institutions to facilitate the resolution of claims. The HCPO was established to advocate for and assist Holocaust victims and their heirs, and it therefore may seem contradictory for the office to work together with the art trade given that we sit on opposite sides of the table. Nonetheless symbiosis is not only possible but a reality.

The origins of the HCPO of the New York State Department of Financial Services (DFS)¹ can be traced to the mid-1990s when state banking and insurance regulators led investigations into dormant bank accounts and unpaid insurance policies. The resulting formation of burgeoning claims programs made it clear that the aging population of Holocaust victims and their heirs needed support and established the HCPO in 1997 to aid claimants, entirely free of charge and regardless of their residence.² Many of the claims for bank accounts and insurance policies presented to the HCPO also revealed the deficiencies and limitation of postwar restitution of spoliated artworks, and the office quickly broadened its mission to address these claims as well.

The complex political, economic and legal history of the Nazi period and the intricate nature of restitution claims led the HCPO to develop a concise yet rigorous approach to handle cases. First, we undertake extensive genealogical research to identify the heirs of the asset owner. Then we reconstruct the original asset owner's holdings through comprehensive

Fig. left: detail from fig. 4.

© Ketterer Kunst GmbH & Co. KG

research in domestic and international public and private archives and specialized libraries to substantiate restitution claims. Third, we endeavor to locate the missing items, provided that the object is uniquely identifiable. Finally, once our research is complete and the missing object has been located, the HCPO assumes the role of advocate and facilitator with the goal of reaching a mutually agreeable resolution to the claim.

Following the Washington Conference on Holocaust-Era Assets in 1998 and the signing of the Washington Conference Principles on Nazi-Confiscated Art,³ there was renewed global attention on researching the ownership history of artworks that changed hands in Europe between 1933 and 1945, publicly listing information about such objects with suspect provenance, and resolving claims for artworks lost as a result of Nazi persecution. The ensuing years have seen great strides in these endeavors from the launch of the Lost Art Database of the German Lost Art Foundation⁴ to the funding of research projects to better understand the fate of lost collections and the creation of in-house provenance research units in museums, libraries and auction houses.

As attitudes regarding provenance research and the perception of restitution evolved in the art trade, more and more auction houses have either established in-house provenance research teams or contracted with freelance researchers to investigate the ownership history of artwork with questionable pasts. However, much like Holocaust victims and their heirs, it is not necessary for anyone or any entity, be it a cultural institution or member of the art trade, to pursue these matters on their own. Having developed subject matter expertise in the many facets of a restitution claim, the HCPO is in a unique position to offer aid to those seeking to resolve claims, including the art trade.

Finding Heirs

This new era of increased scrutiny into Nazi-period losses led the HCPO to develop great proficiency in the field of genealogical research and locating the heirs of a victim of Nazi persecution. The rationale for positioning genealogical research as the primary pillar of our process is to ensure that all heirs of the original owner of the asset are a party to the claim and that we are working with the correct heirs, especially as it does not always follow that biological descendants are the legal heirs. Moreover, on a sadder note, since the office open in 1997 many of our original claimants have died, and we have therefore refined our skills in locating heirs and identified means to undertake such research.

In the course of investigating the ownership history of a work of art presented for sale, the team at an art dealership may conclude that the work was indeed lost as a result of Nazi persecution, or they may determine that even in the face of a provenance gap or uncertainty as to the precise loss transaction, the experiences of the persecuted owner warrant a “just and fair” solution. However, a dealer may not know who the heirs are or how to locate them. In such instances, the HCPO can provide assistance with determining and tracing the heirs of the victim as in the case of the Estate of Lesser Ury.

When renowned German impressionist Lesser Ury died in 1931, he was unmarried and childless. While the bulk of his estate, which was comprised of hundreds of works of art, was sold at auction, 11 of his cousins were named as his heirs and inherited specific works



Fig. 1: Lesser Ury (1861–1931), *The Way to the Mill*, ca. 1880, oil on canvas, ca. 36 x 52.5 cm.

© Karl & Faber Kunstauktionen GmbH

of art. Ury's estate was settled in 1932 when the NSDAP was on the rise, and it was less than a year later that the party came to power and began implementation of its antisemitic agenda. As Jews, Lesser Ury's cousins were all directly impacted by Nazi policies.

The Way to the Mill, a painting known to have been part of the Ury estate and inherited by his first cousin Sophie Bieber née Schwarz, was recently presented to Karl & Faber Kunstauktionen GmbH for consignment, raising questions regarding its provenance and who Bieber's heirs were (Fig. 1). Bieber was known to have consigned several works of art by Ury to the Max Perl auction house in March 1934 including the painting presently offered for sale. In November 1935, Sophie Bieber took her own life. She was survived by her son, but details of his life remained elusive as did the identity of his heirs.

Romana Forst, head of the legal and compliance team that Karl & Faber assembled to review the provenance of consigned artwork and ensure the proper handling of claims, reached out the HCPO for help unraveling these outstanding questions. Working amicably together, we were able to procure the necessary estate files from Berlin, locate the Bieber heirs and reach a solution that acknowledged the history of the Ury family and allowed the painting to be offered clear of any potential claim concerns.

Since commencing operations in 1997, the HCPO has received thousands of inquiries from all over the world. It is therefore plausible that the HCPO may already be in contact with the sought-after heirs as was the situation in a matter concerning a Renoir painting that was formerly in the collection of Dr. Erich von Kahler and Antoinette von Kahler (Fig. 2). When Christie's reached out to ask if the HCPO had any knowledge of who the Kahlers' heirs were, we were able to confirm that not only did we know the identity of the heir, but we were already working with on other claims.



Fig. 2: Pierre-Auguste Renoir (1841–1919), *Head of a young girl wearing a garden hat*, ca. 1895, oil on canvas, 28.2 x 26 cm.

© Christie's

Researching Ownership

Little has changed from the establishment of the HCPO to today with respect to how claims are treated by our office; the most notable development in the past two decades has been the accessibility and digitization of information enabling us to more easily trace and locate works of art with a problematic provenance. From the outset of a claim, the HCPO works to collect the most comprehensive and accurate evidence possible about the original owner's life, including the time before the rise of the NSDAP as well as postwar efforts related to restitution. These facts are used to contextualize how the collector lost possession of his/her artwork within the narrative of their persecution. In addition, the HCPO strives to obtain details about the lost artwork as well as locate its present location primarily through provenance research. The office handles all aspects of researching a claim in-house and has cultivated congenial relationships with archives, libraries, and other repositories of historical information not only in Europe but throughout the globe. The documentation that the HCPO secures on behalf of claimants has proven instrumental in substantiating their claims.

The HCPO can use these skills to supplement research undertaken by the trade; working together, we can unravel the mysteries of ownership and loss. When Max Liebermann's *Netzflickerin* (Fig. 3) was recently consigned to Auktionshaus Stahl, the information pre-



Fig. 3: Max Liebermann (1847–1935), *Netzflickerin*, 1887, oil on cardboard, 59 x 79 cm.

© Auktionshaus Stahl, Hamburg

sented clearly showed the painting was stolen during an *M-Aktion* in Belgium, but who it was looted from remained unverified. Stahl, being sensitive to the provenance of the work, agreed to further investigation. The HCPO and Auktionshaus Stahl consulted numerous archives in Germany as well as prewar sales records and was able to confirm not only who the persecuted owner of the painting was but precisely how the work was lost. By jointly investigating the history of the artwork and its owners we clarified the provenance and negotiated a settlement.

Guiding Settlements

As cyberattacks and phishing have become more prevalent, contacting Holocaust victims or their heirs without having established a preexisting relationship can be a fraught endeavor that is often met with apprehension. Potential claimants are frequently wary of unsolicited communications offering compensation for or the restitution of assets they might never have been aware of and that may have belonged to a distant or even unknown relative, and they are understandably cautious about engaging with an unfamiliar and usually foreign enterprise. Hence, being able to refer an individual to the HCPO for guidance can more easily pave the way to resolution.



Fig. 4: Hans Thoma (1839–1924), *Flora*, 1882, oil on paper, mounted on canvas, 113 x 62 cm.

© Ketterer Kunst GmbH & Co. KG

Additionally, claimants inexperienced with matters of restitution who are confronted with a settlement offer and written agreements containing language and terms wholly unfamiliar to them are left to question whether they are being treated fairly, if the provisions in the agreement comport with standard restitution practices, if the terms are appropriate, and if their rights are adequately represented. When art dealers have concluded the provenance research, determined a settlement is in order, and located and contacted the relevant heirs of the victimized collector, they may now be placed in an awkward position of being asked to represent the interests of their clients as well as those of the claimant. To avoid any potential conflict of interest, the heirs can be directed to the HCPO to address their litany of potential questions. As the HCPO does not charge claimants a fee or take a percentage of the value of the asset, auction houses and dealers can refer claimants to our office knowing that they will not incur any costs related to the resolution of the claim.

Such was the case in the matter concerning a painting by Hans Thoma (*Fig. 4*). The HCPO was contacted by the heirs upon referral from Ketterer Kunst GmbH & Co. KG. The office was able to liaise with the heirs, review the auction house's findings, examine the settlement offer and contract and address all the claimant's concerns. Moreover, as is often the case, the collector in that case lost more than one painting, and the HCPO is now assisting with the location and recovery of the other artworks.

By assisting the trade with finding heirs, researching the provenance of items brought to market and guiding claimants through the restitution process, the HCPO bridges a divide and secures a small measure of justice for the crimes perpetrated against victims of Nazi persecution. Though not a traditional method of assisting claimants, these collaborative efforts are consistent with our office's mission and demonstrate that the restitution process need not be adversarial.

ANNOTATIONS

- 1 https://www.dfs.ny.gov/consumers/holocaust_claims.
- 2 From its inception, the HCPO has received claims from over 5,900 individuals from 46 states, the District of Columbia, and 39 countries. Of the claims filed with the HCPO, 202 (from 19 states, the District of Columbia, and 13 countries) are for cultural objects and include thousands of works of art. In total, the HCPO has successfully resolved more than 16,000 claims in which an offer was presented, or the asset was deemed non-compensable. To date, the HCPO has secured over 8,500 offers; the combined total of offers for bank, insurance, and other material losses amounts to over 183,000,000 US dollars and has facilitated restitution settlements involving 234 cultural objects.
- 3 <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>.
- 4 <https://www.lostart.de/de/start>.

PROVENANCE RESEARCH AND THE ART TRADE

Legal notice / bibliographic information

© 2024 Ernest Rathenau Verlag, Karlsruhe, and the authors
The image rights are indicated with the image.

Editor	Peter Wehrle, Managing Director Ketterer Kunst GmbH & Co. KG
Concept and editorial Essays	Agnes Thum, Sabine Disterheft, Sarah von der Lieth Sabine Disterheft, Carolin Faude-Nagel, Christina Feilchenfeldt, Christian Fuhrmeister, Robert und Gudrun Ketterer, Stephan Klingen, Sarah von der Lieth, Mario-Andreas von Lüttichau, Susanne Meyer-Abich, Stefan Pucks, Anna B. Rubin, Theresa Sepp, Sandra Sykora, Agnes Thum, Katharina Thurmair, Peter Wehrle.
Translation	André Liebhold, Hamburg
Copyediting	Elke Thode, Text & Kunst Kontor, Stockach, and Susanne Meyer-Abich, Berlin
Layout	Friedrich Art, Hamburg
Cover	Ilona Singer, <i>Bildnis Robert von Mendelssohn</i> , 1928, oil on canvas, 55 x 46 cm (detail) / © Ketterer Kunst GmbH & Co. KG
Produced by	Ernest Rathenau Verlag, Karlsruhe
Printed by	Offizin Scheufele, Stuttgart Printed in Europe
Published by	Ernest Rathenau Verlag Lorenzstr. 2 76135 Karlsruhe info@ernest-rathenau-verlag.com ISBN 978-3-946476-14-6 (softcover English edition)



Essays contained herein published under
the Creative Commons Licence CC BY-SA 4.0

The copyright of the essays lies with the respective authors.
The illustrations are subject to the respective terms of use.

This publication is available permanently and for free (Open Access) online
at <https://www.kettererkunst.de>, <https://ernest-rathenau-verlag.com>,
<https://books.google.de> and <https://archive.org>.

ISBN 978-3-946476-16-0 (PDF German edition)
ISBN 978-3-946476-17-7 (PDF English edition)

Bibliographic information of the German National Library: The German National Library
lists this publication in the German National Bibliography; detailed bibliographic data
can be found online at <http://dnb.dnb.de>.