

# PROVENIENZFORSCHUNG UND KUNSTHANDEL

herausgegeben von Peter Wehrle

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# 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)<sup>1</sup> 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.<sup>2</sup> 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

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Fig. previous page: detail from fig. 4.

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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,<sup>3</sup> 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 Foundation<sup>4</sup> 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 presented 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



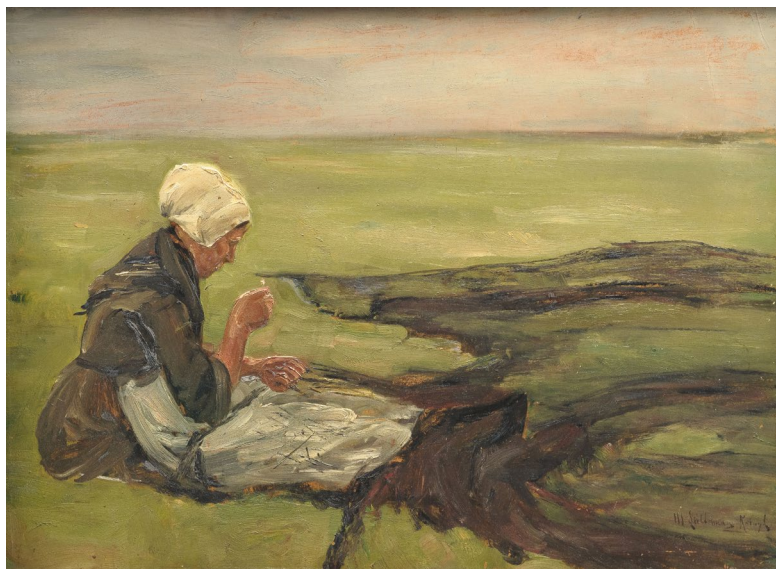


Fig. 3: Max Liebermann (1847–1935), *Netzflickerin*, 1887, oil on cardboard, 59 x 79 cm.

© Auktionshaus Stahl, Hamburg

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.

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



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

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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.

## ABSTRACT

Das Holocaust Claims Processing Office (HCPO) des New York State Department of Financial Services setzt sich für die Opfer der nationalsozialistischen Verfolgung ein. Es ist keineswegs ein Widerspruch, dass die Organisation dabei auch eng mit dem Kunsthandel zusammenarbeitet. Denn es geht nicht zwangsläufig um gegensätzliche Interessen. Auf der Grundlage einer offenen und aufrichtigen Zusammenarbeit können wir gewährleisten, dass die Herkunft der zum Verkauf angebotenen Kulturgüter so genau wie möglich bestimmt wird und dass die historischen Aufzeichnungen und Bezüge wiederhergestellt werden, die die früheren Besitzer eines Kunstwerks, die Opfer von NS-Verfolgung waren, häufig nicht erwähnen. Es muss niemand auf sich allein gestellt bleiben, seien es die Holocaust-Opfer und ihre Erben, Kulturinstitutionen oder der Kunsthandel. Da das HCPO eine umfangreiche Expertise in allen Bereichen des Umgangs mit Restitutionsansprüchen erlangt hat, bietet es alle Möglichkeiten, um diejenigen zu unterstützen, die Ansprüche geltend machen möchten. Hierzu gehört auch der Kunsthandel. Die Organisation ist bei der Suche nach Erben behilflich, untersucht die Herkunft der auf den Markt gebrachten Gegenstände und begleitet Antragsteller durch den gesamten Restitutionsprozess. Das HCPO verlangt weder ein Entgelt noch erhebt es Anspruch auf eine prozentuale Beteiligung. So können sowohl Auktionshäuser als auch Kunsthändler die Antragsteller mit der Gewissheit an das HCPO verweisen, dass dem Holocaust-Opfer oder seinen Erben durch uns keinerlei zusätzliche Kosten entstehen. Gemeinsam können wir eine Kluft überbrücken und für ein wenig Gerechtigkeit für die Verbrechen sorgen, die an den Opfern der NS-Verfolgung begangen wurden.

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## ANMERKUNGEN

- 1 [https://www.dfs.ny.gov/consumers/holocaust\\_claims](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>.

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