

REQUEST FOR RECONSIDERATION OF CLAIMANTS' CLAIM REGARDING EIGHT DRAWINGS NOW IN POSSESSION OF THE SAMUEL COURTAULD TRUST FORMERLY THE PROPERTY OF PROF. DR. CURT GLASER

Claimants hereby respectfully but urgently submit a request for reconsideration of the Panel's recommendation regarding eight Drawings now in the possession of the Samuel Courtauld Trust.

Claimants are of the opinion that the Panel, inconsistent with its own Terms of Reference, in particular paragraph 12, did not (1) appropriately examine and determine the circumstances in which the claimant was deprived of the Drawings; (2) give due weight to the moral strength of the claimant's case; and (3) appropriately consider whether any moral obligation rests on the institution taking into account in particular the circumstances of its acquisition of the objects, and its knowledge at that juncture of the objects' provenance.

1. The Panel did not fully consider and determine the circumstances in which Glaser was deprived of the Drawings.

The Panel acknowledges that the sale of Prof. Dr. Glaser's art collection and art library was caused by persecution (§ 37). However, emphasis instead is put on the allegation that Glaser purportedly obtained "reasonable" market prices (§ 41).

Claimants dispute the emphasis placed on the purported "reasonable" market price and respectfully request the Panel to reconsider their determination. Claimants disagree with the Panel's assumption that Burchard's letter provided evidence for the fact that Glaser obtained good value for the sale of his collection. The analysis of the Panel is mainly based on a letter written by Burchard to Seilern in which he writes:

Dear Friend, here the results of my inspection of the stocks at Max Perl which were auctioned on 18.05 Nr. 1-681 and 19.05 (Nr. 690-1333) in the afternoon. [...] The estimates of the 1st Glaser sale were only exceeded with very desirable objects, but proved otherwise as correctly estimated. This time it will probably go the same way.

While it may be possible that Burchard thought the prices to be correctly estimated, this cannot be taken out of the context of the circumstances at a time when the art market was at a profound low. Burchard expressly states that the estimates were almost never exceeded but for specific desirable objects, but this also shows that the demand for these works was not strong at all at the time.

These circumstances cannot be taken out of the context of Glaser's persecution by the Nazis, as was determined under German legal proceedings. As the Panel and the Courtauld point out, Burchard was well acquainted with Glaser and had known him for a long time. But this also means that Burchard knew that Glaser had been dismissed from his position. The fact that Burchard was aware of Glaser's persecution by the Nazis is an important element that in our view considerably changes the moral equities.

We also would like to draw the Panel's attention to the following excerpt from an essay by Annegret Janda :

It was an unfortunate beginning. Nor was it the only order with which Schardt¹ had to comply. On Justi's desk he found a copy of the 'draft declaration' with its notorious paragraph from the Gesetz zur Wiederherstellung des Berufsbeamtentums (Professional civil service restoration act) of April 7, 1933, which an employee had to sign in order to prove his or her Aryan pedigree. The politicization of life had begun. Schardt had to ensure that "National Socialist ideas were disseminated among the civil service" and that every employee listened to the Prussian prime minister's speech in the Landtag (Provincial assembly) and read Hitler's Mein Kampf. He was also required to ensure that "positions in the public service that are free or likely to become free are filled by members of the Nationalsozialistische Deutsche Arbeiterpartei" and, finally, he had to specify the number of employees on the museum's payroll, since plans were being made to build "air-raid shelters in government-owned buildings"- preparations were already being made for war, and it was only 1933.

(Annegret Janda, The Fight for Modern Art – The Berlin Nationalgalerie after 1933 in "Degenerate Art" The Fate of the Avant-Garde in Nazi Germany, Los Angeles: Los Angeles County Museum of Art, 1991, pp. 105, 109).

This chilling account of the political situation at the Nationalgalerie shows that it would have been impossible for Glaser to pursue any professional career with any German cultural institution, as by the April 7, 1933 law the Nazis forbade Jewish people employment in the public sector. The fact that Glaser was stripped of his professional advancement by the Nazis is only the start of the inquiry, as this led to the impossibility for Glaser to sustain his livelihood in Germany and he was therefore forced to leave due to Nazi persecution. The circumstances of his emigration have been presented to the Panel by the Claimants, but were not considered in the Panel's recommendation. Had such circumstances been considered, the Panel would not have come to the conclusion it issued in its recommendation.

It is undisputed, and as determined under German compensation proceedings, that Glaser was persecuted and that he did not have a possibility to pursue his professional career in Germany because he was a victim of specific persecutory actions. His dismissal from his position as the Director of the Kunstbibliothek was persecutory under German Law.

While the Panel acknowledged these facts as true in its recommendation, no attention was drawn to the reasons presented by Claimants why Glaser had to sell his art collection and art library. We think this to be a crucial element of the claim and therefore urge the Panel to reconsider.

In 1933 the Nazis levied an exit tax of 25 % on the personal property of any individual who planned to emigrate from Germany permanently. These taxes had to be paid in Reichsmark, meaning that in the case of Glaser, had he asked for permission (which was required by law) to transfer his art collection and art library outside of Germany he would have had to pay 25% of the value of the entire collection in cash to the Nazi authorities. This would have been an amount that would have simply been impossible for Glaser to raise in such a short time.

¹ Alois Schardt, former director of the Moritzburg Museum in Halle, was appointed director of the Nationalgalerie in 1933, replacing Ludwig Justi, who was forced from his job by the Nazis. Schardt was dismissed within months, and his newly-hung galleries, like those of Justi before him, were not opened to the public.

In addition to the German exit taxes, Switzerland levied taxes on the import of personal property as well. Those taxes were usually payable on entry by the immigrant in Swiss Francs. For individuals who did not have enough Swiss currency this presented an insurmountable obstacle to take their artworks or other valuables such as art books to Switzerland. German Jewish émigrés especially were faced with this problem as German laws strictly regulated the currency exchange and did not allow an unlimited exchange.

These circumstances clearly explain two facts: (1) Glaser could not have exported his art collection and art library as he was unable to pay the exit and import taxes that would have been levied upon him, and (2) Glaser had to be careful not to have the German authorities know that he was going to emigrate permanently, as they would have forced an estimation of his entire property and in consequence force a tax demand upon him that he would not have been able to pay. This then would have caused possible criminal sanctions for the non-payment of taxes, which the Nazis used in many cases against Jewish individuals.

Further, the fact that Glaser sold almost his entire collection in two consecutive auctions at a time when the market for such objects was so negatively affected clearly shows that this was not a voluntary action but that he was motivated by the pressure put upon him by the Nazis. The act of packing up one's belongings and leaving one's birth country forever at an age where one is usually established with a home and a family should not be underestimated. It is also far from any usual life experience that two people who were born and raised in Berlin would suddenly decide to leave Berlin without any specific engagement or plans to live in another country or city, unless, as in Glaser's case, they had no other choice due to Nazi persecution. It proves that Glaser felt threatened and pressured because he did not see any possibility to continue his life in Germany.

In an earlier recommendation in respect of a painting now in the possession of the Glasgow City Council, dated 24 November 2004, the Panel had to determine the circumstances of a loss of a painting which was sold at auction by the owners of a gallery who were persecuted. In that case, the painting was sold for a price which doubled the estimate given in the catalogue and the entire auction sale gave the claimants in excess of 2/3 of what was needed to pay a discriminatory tax demand. The Panel considered these factors as non-decisive for the question whether the circumstances of the loss justified a recommendation to return the painting. In that case, the Panel stated that the moral strength of the claimants' case lay in the fact that they were persecuted, yet the fact that the painting was sold for fair market value did not weaken the strength of their claim.

It is unclear why the Panel is of a different opinion in the case at hand. Glaser's persecution and his individual tragic fate are undisputed and the Panel has acknowledged the facts asserted as true and convincing.

The Panel does not take in due consideration the restitution principles adopted by the Allies and thus disregards its own terms of reference (Terms of Reference ¶ 12 c). Similar to the claim regarding the painting at the Glasgow City Council which came before the panel in 2004, the Claimants assert that Glaser was deprived of his freedom to voluntarily retain or dispose of his property as and when he chose. Claimants referred in their claim to the restitution principles laid down by Military Law No. 59, the London Declaration, the Washington Conference Principles, as well as the restitution laws adopted by the German government after the war. We repeat and urge the Panel to consider these principles adequately in determining the circumstances of the loss of the Drawings. For example, according to Military Law No. 59 any transaction entered into between January 1933 and May 1945 by a person who was persecuted by the Nazi regime is to be presumed an act of confiscation. As Claimants stated before, if it is shown without

doubt (as is the case with the subject claim) that the sale was a direct result of some specific persecutory actions, no further inquiry is made as to the adequacy of the price obtained or the free right of disposal of the sums received. Under these circumstances a clear moral obligation exists to undo the wrong that has been done and return the property to the victim of Nazi persecution.

2. The Panel did not give due weight to the moral strength of the Claimants' case.

In order to assess the moral strength of the claim the Panel took into consideration (1) that the sale was caused by Nazi persecution, (2) that Glaser's motivation was mixed, (3) that Glaser obtained reasonable market prices, and that (4) Maria Ash (Glaser) was compensated for the loss of the collection.

In our opinion, the Panel has given factors other than Glaser's persecution too much weight and thus came to a determination that did not reflect reality at the time of the loss of the collection.

The Panel cites Glaser's May 19, 1933 letter to Edvard Munch and accepts the Courtauld's interpretation of this letter, that Glaser was also motivated to sell his collection because of the death of his wife Elsa. We respectfully disagree. The fact that Glaser does not mention his persecution directly to Munch is not an indicator for his motivation. There are various other reasons for this. Glaser had to prevent the authorities from learning that he was planning to emigrate. A Jewish emigrant in Germany who wanted to transfer his belongings had to go through an odyssey of draconian administrative procedures. An appraisal by the emigration office was required for the transfer of personal property, for the transfer of currency another appraisal was to be obtained from the chamber of industry and commerce. These appraisals had to be filed together with an application for the permission to transfer property as well as tax clearance certificates from the tax and revenue office, as well as from the city council. The permission was only granted for a minimal quantity of assets. It was only allowed to transfer as much assets as were needed for the foundation of a modest existence abroad. Without permission from the currency office the emigrants were not even allowed to transfer their basic household goods. In addition to that, Glaser would have had to pay the 25% exit tax in Reichsmark which he would not have been able to raise in a short amount of time. The Nazi authorities harshly pursued any non-compliance of these laws by the emigrants with criminal persecution. Had he informed the authorities about his pending emigration, he would further have lost his pension payments, the only source of income he would be living from while in exile. These pension payments were later cut off, when the authorities learned of his emigration. In order to avoid all this he claimed that his stays abroad were for "study purposes" and only temporary. It was a well known fact that the Nazis intercepted correspondence that was sent to other countries, so Glaser needed to be careful about what he wrote about. Therefore, Glaser simply could not tell Edvard Munch the entire truth about his situation.

It is clear, undisputed, and as already determined under German law, that Glaser was in fact persecuted by the Nazis, that he was dismissed from his position, and that he never could work for any museum or library, as the Nazis dismissed Jewish employees from all public positions. At that time almost any occupation Glaser could pursue would have been with a public institution as there were not many private cultural institutions in Germany at the time.

There are other factors that show that Glaser clearly was not motivated by the death of his former wife but that he had no choice but to sell his art collection and art library due to Nazi persecution. When Glaser was dismissed from his position as the Director of the Kunstbibliothek he also lost his large apartment in Prinz-Albrecht Strasse. This apartment had been provided to him by the state, he would not

have been able to afford an apartment of similar size. This was thus another reason why he had to sell almost all of his personal property, as there would have been no way for him to store his collection and library in Germany or elsewhere. The fact that he brought with him to Switzerland some 14 boxes of movable property, just as much as he was able to get out of Germany, shows that he did not want to get rid of his belongings that reminded him of the past, but that he in fact tried to hold on to whatever he was able to take with him. If he had wanted to make a new start he would not have gone through the pain of shipping these boxes and even insuring them for high value. In view of his economic situation, this shows that he did not voluntarily part from his belongings but had no choice but to sell some in order to finance and make possible his flight from the Nazis.

Maria Ash (Glaser) filled out a form for the Institute für Zeitgeschichte (Institute for History) in 1978 and stated Glaser's reason to leave Germany as follows "*direct motivation for the emigration: dismissal from public service*". This is yet another fact that clearly shows that Glaser was not motivated by reasons other than his persecution to leave Germany in 1933.

Therefore we urge the Panel to reconsider its determination and accept that Glaser's motivation to sell his art collection and art library was overwhelmingly based on his persecution by the Nazis. Therefore the moral strength of his claim is powerful and the legal basis under German compensation law confirms Glaser's persecution. He would never have sold his art collection in the absence of the Nazi regime. Because Glaser sold his art collection and art library due to Nazi persecution it is irrelevant that he might have obtained fair market value for the sale.

The Panel also argued as follows:

...Marie was awarded compensation, albeit modest, under the agreed settlement in the German proceedings, which stipulated that the awarding authority will 'seek to conclusively settle all claims filed by the petitioners for compensation'. Transfer of the drawings would therefore confer on the claimants double recompense. (¶ 43)

To consider the awarded amount of DM 7,100 for the monetary loss realized from the auction sales for the loss of over 1,500 items a double recompense is in our opinion a mistaken assessment. In its recommendation of 24 November 2004 regarding a painting at the Glasgow City Council, the Panel stated the opposite, and we urge the Panel to consider the same conclusion also in this case. The Panel in the Glasgow matter stated the following:

*Following their claim under the Federal Compensation Act referred to above, the shareholders were paid DM 75,000 by the German Government as compensation for their loss on the sale. In answer to our enquiries whether this included any particular compensation for the loss of the painting, it was confirmed that the compensation sum represented an overall payment for the entire loss, and could not be broken down for particular individual objects. **In any event only a tiny fraction of the compensation would be attributable to the painting.** Report of the Spoliation Advisory Panel in Respect of a Painting Now in the Possession of Glasgow City Council, 24 November 2004, ¶ 24)*

In the matter at hand the Claimants received merely DM 7,100, and it also was a sum that represented an overall payment for the loss of over 1,500 items! Here an even smaller fraction would be attributable to the Drawings, and it cannot therefore be taken into account as a double compensation. And even if this amount was taken into account, the Claimant would be obliged to pay back this part of the compensation received to the compensation office in the event of the return of the Drawings. Under German restitution law no double compensation exists.

It has been presented to and acknowledged by the Panel that Glaser was persecuted by the Nazi Regime. Not only did he lose his position and his apartment, but he also had to fear further acts against him in the general atmosphere at the time in Germany being one of the early targets of Nazi persecution. In consideration of these circumstances the sale of his collection was a tragic incident that requires a strong moral acknowledgement. Therefore we urge the Panel to reconsider its decision rejecting the Claimants' request for the return of the artworks.

- 3. The Panel did not consider whether any moral obligation rests on the institution taking into account in particular the circumstances of its acquisition of the objects, and its knowledge at that juncture of the objects' provenance.**

The Panel argues that no criticism can be raised against the acquisition of the Drawings by Count Seilern and therefore no strong moral obligation rests on the Courtauld to return the Drawings.

Claimants strongly disagree. The moral obligation does not only stem from dishonest acts of the purchaser, but the circumstances as a whole must be taken into account to correctly assess the moral obligation. The Panel has not taken in consideration that Count Seilern bought the Drawings directly at the auction, probably well aware of Glaser's fate. The fact that a purchaser of lost or stolen property is open and candid about the source of acquisition cannot be an exoneration of the duty to return the property. Also we do not see the moral strength of this argument. On the contrary, even if Seilern was not intentionally taking advantage of Glaser's situation, he nevertheless must have known of Glaser's dismissal through Burchard, and he took the opportunity and purchased the Drawings at prices that were dramatically off historical values.

Weighing the moral interests on both sides we come to the conclusion that Glaser has a much stronger claim than the Courtauld. Glaser was persecuted by the Nazis and he had to leave his former life and property behind in Germany. He could not pursue his reputable profession as director of the state art library but instead became a struggling émigré who never obtained the same social status again as he had prior to the Nazi regime. He lost almost everything due to persecution.

Count Seilern, on the contrary, bought the Drawings for a low price at the auction and was able to further enhance his collection. The Courtauld did not spend any money on the acquisition but obtained the Drawings by donation directly from Count Seilern. Therefore, the Courtauld would not incur any financial or other prejudice if it was to return the Drawings to the Claimants. The heirs of Prof. Dr. Curt Glaser on the contrary would finally receive just compensation for the persecutorial wrong that was done to their family.

Dated: New York, New York
July 8, 2009

Respectfully submitted,

ROWLAND & ASSOCIATES

By: _____
David J. Rowland

Two Park Avenue
New York, New York 10016
+212-685-5509
+212-685-8862 fax

Attorneys for the Heirs of Prof. Dr. Curt Glaser
As Claimants