

Art and cultural assets news – autumn: decision of the Spoliation Advisory Panel in relation to eight drawings in the possession of the Samuel Courtauld Trust

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The Spoliation Advisory Panel has recently considered a claim by the heirs of Professor Dr Curt Glaser against the Samuel Courtauld Trust in respect of eight drawings in the Courtauld collection. The heirs claimed that Professor Glaser was forced to sell the drawings by auction in May 1933 as a result of Nazi persecution.

The role of the Spoliation Advisory Panel

The task of the Spoliation Panel is to consider claims from anyone, or their heirs, who lost possession of a cultural object during the Nazi era (1933-1945) where such an object is now in the possession of a UK museum or gallery established for public benefit and to advise the Secretary of State for Culture, Media and Sport on what action should be taken in relation to the claim.

In making the report, the Panel considered the submissions by Professor Glaser's heirs and the Courtauld to decide whether they were deprived of the drawings as a result of spoliation and, if so, to assess the moral strength of the heirs' claim to decide whether the Courtauld should return the drawings to the family.

Background

Professor Glaser was an eminent art expert whose collection included works by Edvard Munch, Max Beckmann, Lovis Corinth and Max Klinger. In 1924, he was appointed as Director of the State Art Library in Berlin and held this post until 1933, shortly after the Nazis came to power. In April 1933, the Nazis enacted a law which allowed the dismissal of state employees who were Jewish or regarded as politically unreliable. Although Professor Glaser had converted to Protestantism in 1914, his Jewish origins and his prominent position in the modern art world made him a target.

Following his dismissal in April 1933, the Nazis seized Professor Glaser's apartment and he was forced to sell the bulk of his collection at two auction sales in May 1933. He left Germany for good in June 1933 and went to Switzerland to where he had 14 crates of art objects and other valuable items shipped. In May 1941 he immigrated with his second wife to the USA and he died in New York in 1943.

A few years after Professor Glaser's death, his wife submitted claims under German compensation laws for the loss of her husband's job and for the loss of his art collection. In October 1959, she was awarded DM 25,839.81 in damages for loss of earnings and pension benefits. In 1963 she accepted a settlement for DM 7,100 for the monetary loss from the auction sales. She died on 9 August 1981.

Key issues

Were the works of art subject to a forced sale?

Professor Glaser's heirs argued that he was directly discriminated against by the Nazis and, as a result of his dismissal, he was unable to earn a living and lost the apartment which went with his job and in which he kept his paintings. His Jewish origin put him at risk of arrest and being sent to a concentration camp. He had no option other than to leave Germany in 1933. The decision to leave Germany, led to his decision to sell the works of art at auction. The fact that the works of art were purchased in good faith was irrelevant, as the auction was the direct result of Nazi persecution, which argument was supported by the compensation payments made to his wife in 1959 and 1963.

The Courtauld argued that a letter from Professor Glaser to Edvard Munch in May 1933 suggested that the death of his first wife and the desire for a new start meant that he sold the works of art of his own free will rather than under any compulsion. The auction sales would have required several months of planning which suggests that they were already being planned before.

Professor Glaser lost his job and apartment. The sale of the works of art occurred shortly after the Nazis came to power and before the worst atrocities were committed. Professor Glaser also arranged for some works of art to be shipped to Switzerland and kept in contact with the museums with which he left paintings and subsequently arranged for them to be shipped out of Germany. The Panel concluded that Professor

Glaser's decision to sell the works of art arose from mixed motives. Although the Panel considered that the predominant reason was Nazi persecution, this conclusion was not decisive to the outcome of the case. Other issues were considered.

Were the sums achieved at auction such as they could have been expected to attain in an open market?

Professor Glaser's heirs relied on the evidence of his second wife and her sister-in-law as evidence that the drawings were sold at an undervalue. The Courtauld relied on a letter from Ludwig Burchard, a distinguished art historian, and his annotated catalogue to support their argument that the auction prices reflected the market prices. Ludwig Burchard wrote to Count Antoine Seilern, who purchased the drawings, indicating that the prices at the first auction had been correctly established and the sales at the second auction would be similar. The Panel preferred the contemporaneous evidence of Ludwig Burchard and concluded that the auction prices reflected the current market value and were not depressed by the Nazi regime.

What consequences, if any, should be attached to the conduct of the parties?

The Panel indicated that the transfer of the drawings to Professor Glaser's heirs would confer double compensation in light of the compensation payment made to his second wife in 1959 and 1963. The Panel also considered whether any moral obligation rested on the Courtauld to return them to the family by taking into account the circumstances of Count Seilern's and the Courtauld's acquisition of them and their knowledge at that time of the provenance of the drawings.

In view of the fact that Count Seilern was an eminent scholar who opposed the Nazi regime, that he paid the market price for the drawings and was advised by Ludwig Burchard who was a friend of Professor Glaser's, the Panel could find no reason for criticism of his conduct. Furthermore, Count Seilern meticulously identified the provenance of the drawings in his catalogues of 1959, 1961 and 1971.

The Courtauld acquired the drawings under Count Seilern's will, together with the catalogues which identified their provenance. The drawings were part of a vast collection and there was no reason to suspect that the acquisition was not bona fide. The Panel concluded there was no criticism of the Courtauld.

Did the moral strength of the claim justify a recommendation that the drawings be transferred to Professor Glaser's heirs?

The Panel decided that the moral claim was insufficiently strong to justify recommending that the drawings should be transferred to Professor Glaser's heirs. However, the Panel recommended that whenever the drawings are on display, the Courtauld should display details of the history and provenance, with special reference to the heirs' relationship and historical interest in the drawings.

Withers advised the Spoliation Advisory Panel.