

**Advisory Commission on the return of cultural property seized as a result of Nazi
persecution, especially Jewish property**

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Recommendation of the Advisory Commission

in the case of

Rüdenberg Heirs vs. the City of Hanover

Magdeburg – 1/10/2017. The Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, chaired by Deputy Chairman Professor Dr. Reinhard Rürüp, has made the following recommendation in the case of Rüdenberg Heirs vs. City of Hanover (Sprengel Museum Hanover).

1. The subject of these proceedings is the watercolor painting “Marsh Landscape with Red Windmill (The Windmill)” by Karl Schmidt-Rottluff, dated “1922” on recto, which is located at the Sprengel Museum in Hanover and is thus in the possession of the City of Hanover.

There are no documents directly pertaining to the provenance of the watercolor for the period between 1922 and the late 1930s. In 1939 the work was purchased by chocolate manufacturer and art collector Dr. Bernhard Sprengel of Hanover, who together with his wife Margrit had been assembling a collection of modern, mainly expressionist art since 1937. Large parts of this collection – including the Schmidt-Rottluff watercolor in question – were later gifted to the City of Hanover by Dr. Sprengel and his wife; they today form a significant part of the Sprengel Museum.

2. On April 22, 2013, the heirs of Jewish manufacturing couple Max and Margarethe Rüdenberg – their grandchildren Marianne Dumartheray, née Reynolds, Peter Reynolds, Professor Vernon Reynolds and Cecil Rudenberg – demanded that the City of Hanover return the watercolor as cultural property seized as a result of Nazi persecution.

Max Rüdenberg (1863–1942) and his wife Margarethe, née Grünberg, (1879–1943) resided at “Haus Schwanenburg”, Wunstorfer Str. 16A in Hanover with their children Eva (born 1900) and Ernst (born 1903). In the early 20th century Max Rüdenberg founded the company “Import und Reinigung chinesischer Bettfedern und Daunen” (“Import and Cleaning of Chinese Feathers and Down”) in Hanover-Limmer. The business, which had purchasing agencies in China, was financially very successful, employing around 60 people in 1916. Max Rüdenberg was also politically active in Hanover – he was elected to the city council, among other things – and a patron of the arts.

From 1933 onwards the family fell victim to the racist policies of the Nazis. The couple’s son Ernst emigrated to Cape Town with his wife in 1936, while the three children of their daughter Eva were taken to safety in Britain on a “Kindertransport” in 1939. Eva Rüdenberg was later also able to flee to Britain, but her husband was murdered in Auschwitz. Max and Margarethe Rüdenberg remained resident in Hanover until 1942; in 1941 they were forced to sell “Haus Schwanenburg” to the City of Hanover. The Nazi authorities declared the

property a “Judenhaus” (Jew house), and the Rüdenergs were only allowed to continue using two of its rooms. On July 23, Max and Margarethe Rüdenergs were deported to Theresienstadt, where Max Rüdenergs died in September 1942 and his wife Margarethe in October 1943. Their entire estate became the property of the Reich by order dated July 1, 1942.

The Rüdenergs collection focused mainly on East Asian art, but it also included modern art. Due to increased discrimination against Jewish businesspeople, the “Vermögensabgabe” (property levy) demanded of Jews after November 9, 1938, and other special levies the couple found themselves under such financial pressure that they were forced to sell items from their art collection. Under the pretext of protecting the collection from air raids Max Rüdenergs was then coerced into agreeing to the relocation of the rest of the collection. On August 2, 1942, the remaining collection – mainly items from East Asia – was taken to the Kestner Museum in twelve crates and later relocated further.

3. In light of the persecution suffered by the Rüdenergs family it is evident, as the City of Hanover also unreservedly acknowledges, that they belong to the group of people entitled to restitution for cultural property seized due to Nazi persecution.

Disputed in the present case is however whether the watercolor by Schmidt-Rottluff which the heirs are demanding be returned was part of the Rüdenergs collection, and if so, when and how it was transferred from that collection into the collection of the Sprengel family.

As the parties were unable to reach an agreement on this matter they agreed to submit the case to the Advisory Commission. They set out their positions in written statements dated 10/31/2015 and 09/19/2016 (Rüdenergs heirs) and 03/17/2016 and 11/14/2016 (City of Hanover) and moreover had the opportunity on November 22, 2016, to present their arguments orally at a hearing before the Commission.

4. As no purchase or sales documents for the acquisition of the watercolor by Max Rüdenergs or for its sale and its purchase by Dr. Sprengel survive, the Rüdenergs heirs base their claim for restitution on an inventory card from the Sprengel collection and on the information provided in the catalog for a Schmidt-Rottluff retrospective held at Staatsgalerie Stuttgart on the occasion of the artist’s 85th birthday in 1969.

The typed inventory card lists the provenance of the 1922 watercolor “Marsh Landscape with Red Windmill” by Karl Schmidt-Rottluff as follows: “Acquired from Pfeiffer, Hanover, 1939. Previous owner: unknown”. The last word was later crossed out by hand and corrected to: “Max Rüdenergs family, Hanover-Limmer”. While there is no agreement on whether the inventory card was created in the course of Dr. Alfred Hentzen’s efforts to compile a collection catalog in the late 1940s or during the cataloging work of then-trainee Barbara Mundt in the mid-1960s, the correction is undisputedly in the handwriting of Margrit Sprengel. It is assumed that this correction was made in the late 1960s. The entry listing the Rüdenergs family as previous owners remained unaltered for more than four decades, until the Rüdenergs heirs made their restitution claim.

For the 1969 retrospective, Dr. Günther Thiem (1917–2015), director of the Department of Prints, Drawings and Photographs at Staatsgalerie Stuttgart and an art historian, Schmidt-Rottluff expert and friend of the artist, compiled a catalog financed by, among others, Dr. Bernhard Sprengel. This catalog lists the “Marsh Landscape with Red Windmill” of 1922 under no. 23 with the following provenance information: “Provenance: Max Rüdenergs,

Hanover-Limmer (probably from an exhibition held by the Kestner Society). Dr. Bernhard Sprengel, Hanover". In the foreword to the catalog Dr. Thiem explained that he had made efforts to determine the provenance of the exhibited works but had not always succeeded.

Regarding the time at which the watercolor was acquired by Max Rüdberg the claimants point out that the director of the Kestner Society received 13 watercolors from Schmidt-Rottluff in 1922, one of which was described as "By the Windmill" (as the titles of Schmidt-Rottluff watercolors were often not definitive, but instead tended to vary, this may have been the watercolor in question). The information in the 1969 catalog, according to which Rüdberg bought the watercolor from an exhibition held by the Kestner Society, is supported by the fact that Rüdberg was one of the Society's founding members in 1916 and is proven to have purchased artworks from the exhibitions held by the Kestner Society.

A letter written by Dr. Sprengel to Berlin gallery owner Joseph Nierendorf on July 5, 1939, is presented as evidence for the date on which Dr. Sprengel acquired the watercolor. It reads: "Yesterday I found two pages at a friend's that we have with great pleasure added to our collection: 1 watercolor by Schmidt-Rottluff from 1922 and a lithograph of a woman in profile by Nolde. I paid RM 180.- for the Schmidt-Rottluff and RM 40.- for the Nolde lithograph. I think that is cheap." The fact that no other watercolor by Schmidt-Rottluff from 1922 is known to have existed in the Sprengel collection leads the claimants to the conclusion that the work in question must have been the "Marsh Landscape with Red Windmill" or "The Windmill" (the work's older title). This acquisition date would also, according to the claimants, match the period in which Rüdberg was forced to sell parts of his collection.

In connection with the letter to Nierendorf the claimants interpret the information "Purchased from Pfeiffer, Hanover, 1939" on the inventory card to mean that the "friend" was the antiques and art dealer Erich Pfeiffer in Hanover, with whom Rüdberg also had a business relationship at this time, making it highly likely that Pfeiffer had previously bought the watercolor from Rüdberg or agreed to sell it for him on commission.

5. The City of Hanover has countered the assumption of the watercolor's provenance from the Rüdberg collection by stating that firstly it is not proven that the painting was ever the property of Max Rüdberg and secondly it cannot be proven that he put such an item up for sale in the presumed period (1938/39).

The entries on the inventory card cannot be considered sufficient evidence, according to the respondent, and cannot replace definitive records of ownership or purchase. With regard to the handwritten entry by Margrit Sprengel the respondent notes that she was not an art historian and had not undertaken any research of her own into the collection. Furthermore, other provenance information in the collection's inventory had also proven incorrect. The provenance information in the 1969 catalog had been based only on assumptions by Dr. Thiem, not on verifiable facts; it should moreover be noted, according to the respondent, that the provenance information for even the very next catalog item, no. 24, is inadequate.

The City of Hanover further contends that the Rüdberg heirs cannot base their claims regarding ownership and loss of ownership on prima facie evidence, and notes that one of several possibilities being more likely than the other does not constitute adequate proof. According to the respondent, neither the inventory card nor the catalog information can be considered clear evidence of ownership or loss thereof. The City of Hanover claims that art dealer Pfeiffer dealt mainly in antiques, and not in modern art, making it highly unlikely that

the Schmidt-Rottluff watercolor was bought and sold by Pfeiffer; the documents of the Sprengel family moreover provide no indication of a business relationship with Pfeiffer. Even if one were to assume that Rüdberg had owned and sold the painting, this could, according to the respondent, also have occurred at a much earlier date, possibly before 1935. As Dr. Sprengel had also sold on paintings, his letter to Nierendorf might furthermore refer to another Schmidt-Rottluff watercolor that can no longer be identified. The respondent concludes that in light of the cited sources the standards of provenance research do not allow provenance to be ascertained with regard to Max Rüdberg, and the restitution claim is therefore unfounded.

6. The Advisory Commission has carefully examined the arguments presented by the parties and the documents they have submitted and has arrived at the following conclusions:

Both the inventory card and the catalog entry can fundamentally be considered facts that justify a strong assumption that Max Rüdberg owned the watercolor. Alongside the collection items themselves, inventory cards are a central component of any collection, as only they make it possible to identify the individual items in the collection. It can therefore be presumed that the inventory cards pertaining to a collection are not created without very reliable information. In the present case this applies both to the information from Barbara Mundt and to the correction made by Margrit Sprengel. That Margrit Sprengel was not a trained art historian is irrelevant in this regard. She was familiar with the creation and management of the collection; it is difficult to imagine that she would have made such a change without being certain, and further unlikely that she would have done so without consulting her husband. In this case it moreover seems reasonable to assume that the Sprengel and Rüdberg families were acquainted – both men were well-known in Hanover, were art lovers and collectors and also members of the Kestner Society. In light of the political and racist threat to the sellers' very existence Margrit Sprengel may therefore have better recalled the acquisition of this watercolor from the Rüdbergs (she used the term "Rüdberg family" in her correction) than she might other acquisitions made for the collection.

Regarding the note on provenance in the printed catalog it can hardly be assumed that the renowned art historian and Schmidt-Rottluff expert Dr. Thiem made this statement without verified information, not least as in contrast to the note on the acquisition "from an exhibition held by the Kestner Society" Max Rüdberg's name was not given as merely "probable". From experience it can reasonably be assumed that Thiem, if he had no written documents on the painting's provenance, would have asked the person who knew best: the buyer, owner and provider of the watercolor, Dr. Bernhard Sprengel himself, with whom Dr. Thiem had long been in contact and who was also involved in funding the catalog. There is moreover no obvious reason or explanation as to why Max Rüdberg should have been named as the previous owner in both the catalog and the inventory card of the Sprengel Collection if he was not. As opposed to an art dealer, who frequently sells items on commission, it must in the case of a collector like Max Rüdberg moreover be assumed that a work of art that was in his possession and sold by him would also be his property, if there is no evidence to the contrary

There is no concrete evidence for the assumption that Max Rüdberg might have sold the watercolor at a much earlier date than late 1938/1939. No information exists regarding sales from his collection before this time, and his financial situation up until then evidently did not necessitate that he sell any part of it. When intensifying persecution finally forced him to do so, it makes sense to assume that he initially left the core of his collection, the East Asian

items, untouched and instead sold other works less central to the collection, such as the watercolor in question. In light of the difficult persecution situation such sales regularly had to be made below value; the Rüdénbergs were also no longer able to freely dispose of the proceeds of the sale.

The role Hanover antiques and art dealer Erich Pfeiffer played in the transfer of ownership from Rüdénberg to Sprengel cannot be definitively established. There is clear evidence that Max Rüdénberg maintained a business relationship with Pfeiffer regarding the necessary sale of items from his property, so that it appears possible, perhaps even probable, that the watercolor was sold to or through Pfeiffer. Regarding its purchase by Dr. Sprengel, the inventory card unambiguously states, "Acquired from Pfeiffer, Hanover, 1939", whereas Dr. Sprengel himself reported in his letter to Nierendorf dated July 6, 1939, that he had "yesterday" bought a 1922 Schmidt-Rottluff watercolor from a "friend", which seems to argue against his having purchased it from Pfeiffer. The choice of words in the letter may however be explained by the fact that it was at this time already necessary to be particularly careful when trading in what was known as "degenerate art", so that it may have been preferable to avoid using names. This would resolve the apparent contradiction between having purchased from a dealer and the described purchase from a "friend".

7. Considering the evidential difficulties frequently arising from the persecution, forced emigration, deportation to camps, total loss of property and murder of previous owners in restitution cases, in the present case the inventory card and the provenance information in the exhibition catalog provide such a strong and reliable presumption of Max Rüdénberg's original ownership that a general claim that there may be a potential other owner or another possible course of events is insufficient to disprove it. No specific facts that would argue against this presumption have however been presented to the Commission.

Against this background the Advisory Commission has arrived at the conclusion that the watercolor "Marsh Landscape with Red Windmill (The Windmill)" by Karl Schmidt-Rottluff was taken from Max Rüdénberg, or from the Rüdénberg family, as a result of Nazi persecution. The Commission therefore recommends that the City of Hanover return the artwork to the heirs.

The function of the Advisory Committee is to mediate disagreements between those currently in possession of cultural property and the former owners of said cultural property, or their heirs, if requested to do so by both parties. The Commission can make an ethically based recommendation to resolve the conflict. Contributors to the above recommendation as members of the Commission in an honorary capacity were historian Professor Dr. Reinhard Rürup as acting deputy chairman; the former president of the German Bundestag, Professor Dr. Rita Süßmuth; the former president of the Federal Constitutional Court, Professor Dr. Hans-Jürgen Papier; legal scholar Dr. Hans Otto Bräutigam; philosopher of law Professor Dr. Dietmar von der Pfordten; art historian Professor Dr. Wolf Tegethoff; and philosopher Professor Dr. Ursula Wolf.

The German Lost Art Foundation is the office of the Advisory Commission and the point of contact for applicants.

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