

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

**Office: German Lost Art Foundation,
Humboldtstraße 12, 39112 Magdeburg, Germany**

Explanatory statement on the recommendation of the Advisory Commission
in the case of
Dr. Max James Emden vs. The Federal Republic of Germany

Magdeburg – 4/23/2019. On March 26, 2019 the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, chaired by Prof. Hans-Jürgen Papier, announced that, in the case of Dr. Max James Emden vs. the Federal Republic of Germany, it had decided at its meeting of March 21, 2019 to recommend the paintings “The Zwinger Moat in Dresden” and “The Karlskirche in Vienna” (both by Bernardo Bellotto, also called Canaletto) be restituted to the heirs of Dr. Max James Emden. The two artworks are currently owned by the German government.

The Commission’s reasons for the recommendation are set out below.

The dispute concerns the two paintings named above, both of which are replicas or variants by the artist of earlier, larger versions. They are currently on permanent loan from the German government to the Militärhistorisches Museum Dresden (Zwinger Moat) and the Museum Kunstpalast Düsseldorf (Karlskirche). A third Bellotto of the same origin (Marketplace at Pirna) was erroneously restituted to the Netherlands after 1945 and is now considered lost.

The three paintings come from a collection owned by Dr. Max Emden, who acquired them between 1928 and 1930. In June 1938, art dealer Anna Caspari arranged the sale of the works to Karl Haberstock, who was a buyer of artworks for Adolf Hitler and his planned “Führermuseum” in Linz. The purchase price for all three Bellotto paintings was SFr. 60,000 in total, which—as handwritten on Caspari’s shipping notification to Haberstock dated June 13, 1938 and also noted in Haberstock’s cash book entry—corresponded to an equivalent value at the time of RM 34,250 or £2,777 15s 7d. A subsequent letter from Haberstock dated April 5, 1940 indicates that the foreign currency required was taken from the special EK account, i.e. derived from the (foreign) proceeds of works seized as “degenerate art”. There is no evidence that Max Emden actually benefited from the negotiated purchase price. It may have been true that the “transfer to Dr. E”, as Haberstock claimed in an undated letter to Caspari, “(was) completed on the first day of my stay in London”, but there is no corresponding account note in the files of the specified “Schweiz. Kreditanstalt Lugano” or “Locarno”. In Haberstock’s inventory books, both the receipt and the resale of the paintings to the Reichskanzlei on June 30, 1938 are recorded, which confirms that Haberstock was working officially on behalf of Hitler on this occasion. The paintings were given the Linz numbers 27, 35 and 115 and were temporarily deposited in Munich’s Führerbau as of approx. 1939/40 (Haberstock’s letter of April 5, 1940), from where they were transferred to the holdings of Munich’s Central Collecting Point, either directly or indirectly via one of the

storage sites. From there, as mentioned above, the painting “Marketplace at Pirna”—as alleged Nazi-confiscated Jewish property—was restituted to the Dutch state, who later resold it on the art market. The other two Bellottos under discussion here, for which no claimant had been found by the time the Collecting Point was closed (Max Emden’s sole heir, Hans Erich Emden, had emigrated to South America in 1941), became the property of the Federal Republic and were “held in trust”.

The descendants of Max Emden, as the claimants, are collectively of the opinion that particularly the forced sales carried out under the rule of National Socialism and the expropriation of his assets located in Germany led to the financial ruin of Max Emden. They maintain that the purchase price was also unreasonably low and was a result of Max Emden’s economic plight, which was entirely caused by the racial persecution to which he was subjected. They say it is incorrect that the sale was carried out “from a safe foreign country”, as there was no restriction on where persecuted citizens could “dispose of” their property during the National Socialist regime.

However, the Federal Republic of Germany (claimant) takes the position that sales from safe foreign countries did not constitute forced sales as defined by the Allied Restitution Law. It states that this case also fails to provide sufficient evidence that would make compensation for a case of hardship appropriate. It says that the sale did not take place under tight time constraints associated, for example, with emigration or flight, nor was it undertaken as a result of financial hardship, because at the point the two disputed paintings were sold in June 1938, Max Emden had already been living in Switzerland for 10 years and had not found himself in serious financial distress that threatened his existence during this period.

Max James Emden was born in Hamburg in 1874 as the son of an eminent Jewish family of merchants and rabbis (on his mother’s side). He converted to Protestantism in 1893. After studying chemistry and mineralogy and completing a PhD, he took over his father’s trading company M. J. Emden Söhne in 1904 and gradually developed it into one of the leading department store operators in what was then the German Empire. In 1926, he sold a large part of the business to Rudolf Karstadt AG, but continued to retain ownership of a considerable amount of property and shares under the old company name. With a clear affinity for the Lebensreform (“life reform”) movement centered around Monte Verità, he acquired the two Brissago Islands on Lake Maggiore in 1927 and began redeveloping them as his permanent residence in 1929. The municipality of Porto Ronco granted Emden citizenship rights in 1934, which meant he was also a Swiss citizen from this date onwards. His portfolio of securities deposited with Hamburg banks allegedly amounted to an estimated RM 2 million in the mid-1930s; however, due to the tightening of restrictions on exporting foreign currency from 1933 onwards, these became “blocked accounts” and he was effectively deprived of access to them. The same applied to the rental income he obtained from property that he still owned and returns from company shareholdings. The confiscation and forced sale of Emden’s remaining real estate holdings and assets began in 1937. In addition, there were the customary restrictions, harassment and arbitrary measures taken against Jewish business owners and shareholders, as the Buomberger report for the (then still) Free City of Danzig showed in the case of Emden. Obviously, the originally existing but non-transferable capital assets increasingly served to cover artificially created and non-amortizable corporate loans and fictitious tax liabilities, which eventually resulted in the liquidation of M.J. Emden Söhne (June 5, 1939). For Max Emden, the apparent blessing of Swiss citizenship practically led to his economic downfall; while he could still have managed his arrangements and made provisions relatively unhindered until 1935, as a Swiss citizen he

was already prevented from doing so prior to 1935 solely on account of the Third Reich's restrictive foreign exchange policy.

The systematic destruction of people's economic livelihoods by the Third Reich as a tool of National Socialist racial policy (and precursor to the Final Solution) thus also applied in the case of Max Emden. The growing financial difficulties were already noticeable everywhere by 1937, as his then secretary and confidante, Olga Ammann, credibly claimed. At the end of the 1930s, Emden was thus no longer able to pay his domestic staff and meet his tax obligations in Switzerland, while the properties on the Brissago Islands became more and more of an unmanageable burden. The policy of persecution pursued by the National Socialists therefore caused the financial ruin of Max Emden, who died in Porto Ronco on November 26, 1940. Consequently, there is also no doubt that the sale of the aforementioned three paintings by Bernardo Bellotto to Karl Haberstock in early summer 1937 was not undertaken voluntarily but was entirely due to worsening economic hardship ("loss of assets as a result of persecution"), confirmed not least by the fact that Emden was forced to sell other valuable items from his household at the same time.

Finally, it remains to be clarified whether the purchase price of SFr. 60,000 (i.e. SFr. 20,000 or rounded up to RM 11,500 for each of the three paintings) corresponded to the market value that could be achieved at that time, i.e. can be considered reasonable. Irrespective of the fact that offers and counteroffers are part of day-to-day business (not only) in the art trade, Anna Caspari's note (letter of November 25, 1937 to Haberstock) that we "(have) just caught the right psychological moment, he has probably lost a lot on the stock exchange and would therefore accept this price" not only confirms Emden's financial predicament during the period of the sales negotiations. It also clearly indicates how much this predicament was deliberately exploited by potential buyers and also how every effort was made in the following seven and a half months to lower the price further until Emden finally rejected any further reduction with the remark that "the price has already been brought down by more than 20 percent" (Caspari to Haberstock on June 16, 1938). And finally, may the information provided by the claimant also be taken into account that just a short while later, the Reichskanzlei—probably on behalf of Hitler—acquired a painting "in the style of Bellotto" (thus by an imitator whose name was not known and who therefore was traded at a much lower price) for RM 15,000 from the Munich art market.

Notwithstanding the questions as to the reasonableness of the purchase price and the missing proof of transfer, the core facts of the case are Max Emden's economic plight, which was directly caused by National Socialist persecution, and the associated loss of assets as a result of persecution. The Commission therefore arrives at the majority decision to recommend the return of the two paintings currently owned by the German government to the rightful heirs of Hans Erich Emden, as the former sole heir of Dr. Max Emden.

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The function of the Advisory Commission is to mediate in the event of disputes between those currently in possession of cultural goods and the former owners of said cultural goods, 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 the former president of the Federal Constitutional Court, Professor Hans-Jürgen Papier (chair of the Commission); art historian Professor Wolf Tegethoff (deputy chair of the Commission); the former president of the German Bundestag, Professor Rita Süßmuth; former member of the Bundestag,

Marieluise Beck; the former president of the Federal Administrative Court, Marion Eckertz-Höfer; historian Prof. Raphael Gross; the former president of the Association of German Cities, Dr. Eva Lohse; the former director of the Museum für Kunst und Gewerbe Hamburg, Dr. Sabine Schulze; humanities scholar Dr. Gary Smith and philosopher of law Professor Dietmar von der Pfordten.

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

Contact: German Lost Art Foundation, Humboldtstraße 12, 39112 Magdeburg, Germany, Dr. Michael Franz, telephone +49 (0)391 727 763 12, fax +49 (0)391 727 763 6, michael.franz@kulturgutverluste.de, www.kulturgutverluste.de