

## WORKING TRANSLATION

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

Office: Deutsches Zentrum Kulturgutverluste (German Lost Art Foundation),  
Humboldtstraße 12, 39112 Magdeburg

#### Recommendation of the Advisory Commission

#### in the matter of the Heirs of Felix Hildesheimer

v.

#### Franz Hofmann und Sophie Hagemann-Stiftung

**Magdeburg – 07.12.2016.** The Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, chaired by Prof. Rürup (deputy chair of the Commission) has produced the following opinion in the matter of the Heirs of Felix Hildesheimer v. Franz Hofmann und Sophie Hagemann-Stiftung.

1. The proceedings concern a violin built by Giuseppe Guarneri (Josephus Guarnerius filius Andreae) in Cremona in 1706. A number of experts have certified that the violin is an authentic Guarneri.

Most of the history of this instrument is unknown. All that is known for sure is that in 1937, it was in the possession of Hama & Co., a Stuttgart music instrument dealer, which sold it to Felix Hildesheimer, a dealer in music supplies in Speyer, in January 1938. The next known date is 1974, when the violinist Sophie Hagemann acquired the violin from Ludwig Höfer, a violin maker in Cologne.

After Sophie Hagemann died in 2010, the instrument came into the possession of the Franz Hofmann und Sophie Hagemann Stiftung (a civil-law foundation based at the Nuremberg University of Music), which Sophie Hagemann had founded in 2005 and named as her sole heir. In addition to promoting the public performance of compositions by her husband, the composer and pianist Franz Hofmann, who went missing in action in World War II, the main purpose of the foundation is to promote especially talented young musicians.

2. The Hildesheim heirs, represented by the Holocaust Claims Processing Office of the New York State Department of Financial Services, base their claim above all on the fact that Felix Hildesheimer and his family were subject to racist persecution during the National Socialist era.

In 1898, Felix Hildesheimer took over the music store that his father had founded in 1870. The store was subject to a boycott starting in 1933, and was partly demolished in 1934. In 1937, Felix Hildesheimer found himself forced to give up his business and sell his house. Both of his daughters emigrated: Martha to the U.S. in September 1938 and Elisabeth to Australia in spring 1939. Felix Hildesheimer and his wife Helene then tried unsuccessfully to follow their younger daughter to Australia. Felix Hildesheimer committed suicide on 1 August 1939; Helene Hildesheimer was deported to Gurs, in southern France in October 1940. She had to leave behind all her property, which was seized by the Gestapo. In early 1941, she was able to flee to the U.S.

Because the Guarneri violin was not in the possession of the family members who had emigrated, the heirs argue that Felix Hildesheimer must have sold it under the pressure of persecution – and thus for less than its actual worth. Or, if it was still in the family's possession at the time Helene Hildesheimer was deported, then it must have been seized by the Gestapo. In either case, according to the heirs, it constituted a loss of property as the result of Nazi persecution (*NS-verfolgungsbedingter Vermögensverlust*) justifying a claim to restitution.

Helene Hildesheimer died in 1990; her heirs were her daughters Martha Hildesheimer Strauss and Elisabeth Hildesheimer Locke. They and their husbands have also died in the meantime. The active legitimate heirs are their children, Sidney Strauss and David Sand (formerly Locke).

3. The Franz Hofmann und Sophie Hagemann Stiftung, which undertook intensive, though largely unsuccessful, efforts to clarify the violin's provenance, question the restitution claim, because the Stiftung says that no information was available on the fate of the violin after Felix Hildesheimer acquired it.

According to the Stiftung, it is unclear how the family lost possession of the instrument and who acquired it, under what circumstances and for what price. The Stiftung says that it was also unclear from whom Hamma & Co. acquired the violin and on whose behalf they sold it. According to the Stiftung, this transaction could have also constituted a loss of property as the result of Nazi persecution. The Stiftung also says that it was worth noting that, in her compensation proceedings, Helene Hildesheimer claimed the loss of a Berdux grand piano but not the Guarneri violin.

The Stiftung says that Sophie Hagemann acquired the violin in 1974 in good faith, and that the 70,000 Deutschmark she paid, along with a violin given in trade, represented a fair market price.

4. Regardless of the legal positions they represent, both sides have expressed their interest in agreeing on a fair and just solution in line with the Washington Principles. For this reason, the Stiftung called the Advisory Commission, and the Holocaust Claims Processing Office, as the representative of the Hildesheimer heirs, joined in without hesitation. After the Commission agreed to the proceedings, the parties presented their positions in written statements of 23 November 2015 and 22 January 2016. A hearing that was to take place via Skype was cancelled at the last minute by the Holocaust Claims Processing Office; it took place on 6 July 2016. Owing to the lack of documents to clarify the right of inheritance, the Commission could not come to a final conclusion at that time. Advising was set to continue on 22 November 2016.

5. After carefully examining the statements and documents as well as the oral arguments presented, the Advisory Commission came to the following conclusion:

It is impossible to determine what happened to the violin acquired by Felix Hildesheimer in January 1938 up to the time of his suicide in August 1939 or of the deportation of Helene Hildesheimer in October 1940 and the following seizure of her property. However, it is undisputed that Felix Hildesheimer was the last known owner of the instrument, and that he and his family were driven by racist persecution into emigration and death. Under these circumstances, it is very likely that the violin was sold under duress or seized, constituting a loss of property. In line with the Washington Principles and the Joint Declaration of the Federation, the federal states and the national associations of local authorities to implement

these principles, a loss of property as the result of Nazi persecution should be assumed in such a case.

On the other hand, it should be recognized in the present case that the violin was acquired in good faith, and that the Stiftung as owner undertook an exemplary effort to clarify the provenance of the violin and any possible restitution claims. In 2012, it appointed an expert committee which conducted research in the relevant archives; in April 2013, it reported the violin to the Lost Art Internet Database as found; at the same time, it attempted with the help of a well-known provenance researcher to contact the heirs living in the U.S. In January 2014, it made its documentation on the difficult issue of provenance public at a press conference.

The Stiftung would like to have the violin restored, as it is currently in poor condition, in order to lend it to talented students of the Nuremberg University of Music for one to three years, in line with the purpose of the foundation. It also plans to require the musicians to whom the violin is lent to give concerts in Speyer with an appropriate programme commemorating the history of the Hildesheimer family and their music store.

Under these circumstances, the Advisory Commission believes that the fair and just solution desired by both sides consists in a balance of interests. It therefore recommends that the violin, with an estimated market value of about 150,000 euros, less the necessary cost of restoration amounting to about 50,000 euros, should remain with the Stiftung, which should pay the heirs a sum of 100,000 euros in compensation.

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The task of the Advisory Commission is to mediate in case of disputes between the parties presently in possession of cultural goods and their former owners or the heirs of the latter, if both parties so desire. The Commission may issue an ethically grounded recommendation for resolving the dispute. The current honorary members of the Commission are historian Professor Dr Reinhard Rürup, currently serving as deputy chair; 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;

legal philosopher Professor Dr Dietmar von der Pfordten; art historian Professor Dr Wolf Tegethoff; and philosopher Professor Dr Ursula Wolf.

The Deutsches Zentrum Kulturgutverluste (German Lost Art Foundation) is the office of the Advisory Commission and point of contact for those submitting claims.

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