

## WORKING TRANSLATION

**Advisory Commission**  
**on the return of cultural property seized as a result of Nazi persecution, especially Jewish**  
**property**  
**Recommendation of the Advisory Commission regarding the painting**  
**"Three Graces" by Lovis Corinth**

Berlin, 21 August 2014 - The Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property has issued a new recommendation.

The recommendation is based on the following facts:

Clara Levy, née Isaak (26 March 1864 - 27 March 1940 in Luxembourg) was a cloth manufacturer who was persecuted by the National Socialists because she was Jewish. She lived in Berlin and emigrated in March 1939 to join her son Frederick (Fritz) Levy in Schleifmühle, Luxembourg, taking along most of her household effects including at least 78 paintings. Clara Levy had three other children (Erna Heymann, Edith Loevensohn, Else Bergmann) who, from 1938 onwards, had successively left Germany. One of them, Else Bergmann, emigrated to New York in 1939.

The painting "Three Graces", an early work of Lovis Corinth (1902/04), had been owned and possessed by Clara Levy's deceased husband, Ludwig Levy, since 1917. Upon his death in 1921, Clara Levy had inherited the painting. In March 1939, the painting together with Clara Levy's household effects was moved to the cloth mill in Schleifmühle, Luxembourg, which was managed by her son, Fritz Levy. Clara Levy died on 27 March 1940 in Luxembourg leaving her estate in equal shares to her four children so that the ownership of the painting passed to the four children upon her death.

According to an affidavit given in 1961 by Paula Levy, the former girlfriend and later the wife and heiress of Fritz Levy, part of Clara Levy's household effects were shipped from Luxembourg to New York in the spring of 1940. According to the bill of lading submitted by Paula Levy, the painting was among these household effects. (The freight list features: "Lovis Corinth: The Three Graces"). This bill of lading bears the instruction "to be delivered to Else Bergmann" and was signed "Else Bergmann". It was also signed by the ship's captain and the carrier. The bill of lading also contains the following arrival stamp and handwritten entries which were entered into the document upon the ship's arrival in the US: „*New York, Dec. 5/41 19..the property entered by this Bill of Lading manifested on Steamer San Francisco arrived at New York June 3/40 Compagnie Generale Transatlantique Hol Lesquette*“ (the signature is not clearly legible).

The remainder of Clara Levy's household effects and estate remained in Luxembourg even when German troops invaded the Grand Duchy on 10 May 1940 and several rooms of the administrative building at Schleifmühle were used to billet troops. This part of the household effects was seized by the German Reich on the basis of an order dated 9 July 1941, subsequently removed from Schleifmühle and disposed of by 8 October 1942.

On 8 September 1959, Paula Levy, the wife and heiress of Fritz Levy, represented by her attorney, Henry Zacharias, brought a restitution claim for money damages against the German Reich for these confiscated household effects. Annexed to the claim was a detailed list of the objects allegedly seized by the German authorities, including seventeen pictures, eight of which from the offices (referred to as "factory equipment") and nine of which from the hall which were not described in more detail. The painting by Lovis Corinth cannot have been part of the office furnishings, because it was no "factory equipment". Nor can it have

been in the hall, because Rita Hubbard, one of Clara Levy's granddaughters, wrote in a letter that the painting had hung in her grandmother's dining room. The restitution claim was turned down, because there was no proof that the objects had been transferred from abroad to the territory of the German Reich.

From 1940 or 1941 until 1949, the painting "Three Graces" was located in the Buchholz Gallery Curt Valentin, New York. In a letter dated 15 February 1951, the art dealer Siegfried Rosengart (Lucerne) who resold the painting in 1949, wrote that he had reports from New York that Curt Valentin had "acquired (the painting) about ten years ago at a Public Auction Sale", i. e. circa 1941.

In 1949, the said Siegfried Rosengart sold the painting on commission for the Buchholz Gallery Curt Valentin, New York, to Prof. Dr Max Huggler, the Director of the Kunstmuseum Bern, and brought it to Bern.

In March 1950, the Bavarian State Painting Collections (Bayerische Staatsgemäldesammlungen) acquired the painting from Max Huggler or the Kunstmuseum Bern.

In 2002, Clara Levy's heirs filed a claim for the restitution of the painting arguing that it was confiscated as a result of Nazi persecution: They argued that one had to assume that German authorities intervened even before the planned shipment of the painting in May 1940, since the painting never reached the family members who had emigrated to the U.S.A. (New York). In this context, they argued, one also had to take into account the confiscation in 1941 of the household effects and other personal items of Clara Levy. Since her emigration in March 1939, these objects had been stored at the Luxembourg premises of her son, Fritz Levy (who had been living in Luxembourg since October 1938 and then moved to Brussels where he lived from August 1940 until July 1945). It was to be assumed that the painting was among these objects and had therefore not been shipped by freight vessel to New York. The heirs claimed that the bill of lading dated 11 May 1940 did not confirm that the cargo was actually shipped on board the vessel "San Francisco" which is indicated in the bill of lading, because there was no unequivocal proof that the ship actually left for New York at the time in question. They also challenged the authenticity of the alleged signature of Clara Levy's daughter, Else Bergmann, on the receipt. An affidavit given by Peter Levy, a grandson and heir of Clara Levy, also confirmed that neither the painting nor the furniture ever reached the family in the U.S.A.

The Bavarian State Painting Collections refuse to reconstitute the painting arguing that there was nothing to indicate that it was misappropriated as a result of Nazi persecution either through confiscation by the Nazi authorities or by sale under duress. The cargo vessel "San Francisco" reached New York via Le Havre on 3 June 1940. There was proof that Clara Levy's household effects including the painting were handed over to Else Bergmann, one of Clara Levy's daughters and heirs. The museum states that for this reason it was safe to assume that the painting had been sold privately by the Levy family in 1941 in the U.S.A. The stamp on the bill of lading showed that the shipment - including the painting - actually reached its destination. The signature of Clara Levy's daughter, Else Bergmann, on the document proved that she received the shipment. The stamp of the photographer Studly on the reverse side of a photo that was taken of the painting proved that it was subsequently owned by Curt Valentin and constituted further evidence of the painting's arrival in New York. A photograph of the painting that is contained in the Curt Valentin Papers (Museum of Modern Art) is referred to as another piece of evidence showing that the painting was with Curt Valentin in the U.S.A.

According to Rosengart's letter the painting was consigned to and sold at a public auction in the U.S.A. by Else Bergmann or the heirs. The museum argues that there are no known cases of Curt Valentin having utilized works seized from persecuted individuals in Germany or in countries occupied by German troops. Nor are there any indications suggesting that Curt Valentin received the painting from German authorities or troops in the second half of 1941.

The parties were unable to reach an agreement and hence decided to submit the case to the Advisory Commission for a recommendation.

The Commission cannot recommend a restitution of the painting "Three Graces" by Lovis Corinth, because the undisputed facts do not warrant the conclusion that the heirs of Clara Levy lost the painting as a result of Nazi persecution. The undisputable fact that Clara Levy and her heirs were persecuted by the National Socialists because they were Jews, that they had to emigrate or conceal themselves for years, does not justify the conclusion that the painting was lost as a result of persecution. The Washington Principles stipulate that for a work of art to be recognized as having been seized as a result of Nazi persecution it must have been confiscated by the National Socialists or sold under duress without obtaining a fair price which the seller is free to dispose of.

The painting in question cannot have been part of the household effects confiscated by the Nazi authorities in Luxembourg, because in the reparations claim Paula Levy mentioned only the pictures in the office ("factory equipment") and the hall, whereas the painting in question hang in the dining room. Furthermore, the bill of lading explicitly lists the painting "Three Graces" as being part of the household goods that were shipped to New York. And finally it is in line with general experience that Fritz Levy would have shipped the lightweight and valuable paintings rather than the heavy pieces of furniture.

The arrival stamp and the handwritten entries on the freight documents show that there cannot be any reasonable doubt that the freight ship "San Francisco" and its cargo reached New York on 3 June 1940, where the painting listed in the freight list was to be delivered to Else Bergmann as indicated on the bill of lading. There is nothing to indicate that the French shipping company did not deliver the painting or that the US authorities intervened to prevent the delivery. How should Paula Levy, Fritz Levy's wife, have come by a copy of the bill of lading and of the freight list including the arrival stamp if Else Bergmann did not sign the bill of lading and take delivery of the household effects? Apart from that neither Paula Levy nor her attorney Henry Zacharias expressed any doubt in the reparations proceedings that the household effects including the painting had in fact arrived in New York.

Apart from these facts it seems extremely unlikely that the Nazi authorities would have shipped the painting to New York in the second half of 1941, i. e. in the middle of the war which was also waged in the Atlantic, particularly because it featured a classical subject from the early phase of Lovis Corinth's work and was not a work of avant-garde art or - in the parlance of the Nazi authorities - "degenerate art."

The fact that the painting was resold to Europe by Curt Valentin almost ten years later shows that in those years the market in New York was not particularly good for such rather traditional paintings. Why should the Nazi authorities have taken the risk of having the painting shipped to New York in the second half of 1941 even though it was not a work of "degenerate art" and even though they could not expect to obtain a good sales price in New York.

Now as before there is no reason to doubt the information provided by Siegfried Rosengart who, like Curt Valentin, was of Jewish origin and stated that the painting was bought by Curt Valentin in 1940 or 1941 at a public auction in New York. Why should Siegfried Rosengart or Curt Valentin have told any lies about this matter in 1951? There is nothing to suggest that Curt Valentin acquired the painting in an unlawful way.

Considering these facts the Commission does not see any indication of a sale under duress: If the painting was sold by one of the heirs, Else Bergmann, at a public auction in New York, i. e. in a safe country outside Germany, in 1940 or 1941, there is no doubt that she obtained what was the market price at the time. It is not to be presumed that the Washington Declaration even if it is interpreted in the widest possible sense and thus extended to cover also forced sales or other forms of persecution-related confiscation, aims to reverse sales transactions such as this one (which was effectively concluded under civil law by the rightful owners in New York) and the subsequent re-sales of the painting.

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 can issue an ethically grounded recommendation for resolving the dispute. Former Federal President Dr Richard von Weizsäcker, former President of the German Bundestag Professor Dr Rita Süßmuth, former President of the Federal Constitutional Court Professor Dr Jutta Limbach, legal scholar Dr Hans Otto Bräutigam, legal philosopher Professor Dr Dr Dietmar von der Pfordten, historian Professor Dr Reinhard Rürup, art historian Professor Dr Wolf Tegethoff and philosopher Professor Dr Ursula Wolff have agreed to serve as honorary members of the Commission.

The Coordination Office for Lost Cultural Assets ([www.lostart.de](http://www.lostart.de)) in Magdeburg is the office of the Advisory Commission and point of contact for those submitting claims.

**Contact: Koordinierungsstelle Magdeburg, Turmschanzenstraße 32, 39114 Magdeburg, Dr Michael Franz, Tel.: 0391 / 567 3891, Fax: 0391 / 567 3899, e-mail: [michael.franz@mk.sachsen-anhalt.de](mailto:michael.franz@mk.sachsen-anhalt.de), [www.lostart.de](http://www.lostart.de)**