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## Case Lighthouse With Rotating Beam – Flechtheim Heirs and Kunstmuseum Bonn

*Alfred Flechtheim – Kunstmuseum Bonn – Artwork/œuvre d'art – Nazi looted art/spoliations nazies – Negotiation/négociation – Settlement agreement/accord transactionnel – Ownership/propriété – Financial compensation/indemnisation – Symbolic gesture/geste symbolique*

*The heirs of the art dealer and collector Alfred Flechtheim besought the Kunstmuseum Bonn for the restitution of the painting “Lighthouse With Rotating Beam” by Paul Adolf Seehaus, alleging that it was part of Alfred Flechtheim’s collection before he fled Nazi persecution. After consideration of the claim, the Museum decided to keep the painting, but agreed to reimburse the heirs for half its market value.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.*

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## I. Chronology

### Nazi looted art

- **Until at least March 1932**, the painting “Lighthouse With Rotating Bream” (1913) by Paul Adolf Seehaus (1891-1919) was owned by **Alfred Flechtheim**, a Jewish collector and art dealer with branches in Germany and Austria<sup>1</sup>.
- **In 1933**, Flechtheim fled Germany and harassment by the Nazis, while the painting was on loan at the *Kronprinzenpalais* in Berlin<sup>2</sup>. The painting was assumingly in the possession of his associate dealer and member of the Nazi party **Alex Vömel** between the **summer of 1933 and 1949**.
- **In 1935**, Alfred Flechtheim succumbed to a severe operation in London.
- **In 1949**, the **Kunstmuseum Bonn** acquired the painting at an auction in Stuttgart (*Kunstkabinett Ketterer*).
- **In September 2009**, the Californian grandnephew of Alfred Flechtheim, Michael Hulton, besought the Kunstmuseum Bonn for the restitution of the painting. The museum subsequently evaluated the restitution demand by mandating two experts. The specialists were unable to elaborate the circumstances and motivation regarding the transfer of the painting to **Alex Vömel** and on the dealer’s intentions when selling it further.
- **On 12 April 2012**, the Museum announced that it recognized Flechtheim’s persecution by the Nazis and found a financial settlement with his heirs despite the lack of conclusive information on the painting’s exact provenance<sup>3</sup>.

## II. Dispute Resolution Process

### Negotiation – Settlement agreement

- The Flechtheim heirs directly addressed the Kunstmuseum Bonn with their restitution demand for the painting, supported by the relevant documentation. The museum responded to the request by mandating two experts to examine the painting’s provenance. The key issue which had to be dealt with was whether and in what circumstances Alfred Flechtheim or his heirs were dispossessed of the painting. Notwithstanding intensive research, the motivation of

<sup>1</sup> See Lost Art Internet Database, Koordinierungsstelle Magdeburg, “Flechtheim, Alfred,” accessed April 13, 2012, [http://www.lostart.de/Content/051\\_ProvenienzRaubkunst/DE/Sammler/F/Flechtheim,%20Alfred.html?nn=5144&lv2=5664&lv3=36110](http://www.lostart.de/Content/051_ProvenienzRaubkunst/DE/Sammler/F/Flechtheim,%20Alfred.html?nn=5144&lv2=5664&lv3=36110).

<sup>2</sup> Joint Press Release, “Kunstmuseum Bonn and Flechtheim Heirs,“ Bericht aus Bonn/Kultur – Paul Adolf Seehaus, “Leuchtturm mit rotierenden Strahlen“: Einigung zwischen den Erben von Alfred Flechtheim und dem Kunstmuseum Bonn,“ Stadt Bonn, April 13, 2012, accessed April 13, 2012, [http://www.bonn.de/rat\\_verwaltung\\_buergerdienste/presseportal/pressemitteilungen/18915/index.html?lang=de](http://www.bonn.de/rat_verwaltung_buergerdienste/presseportal/pressemitteilungen/18915/index.html?lang=de); Catherine Hickley, “Jewish Art Dealer’s Heir Settles Nazi-Era Claim With Bonn Museum,“ *Bloomberg*, April 12, 2012, accessed April 13, 2012, <http://www.bloomberg.com/news/2012-04-12/jewish-art-dealer-s-heir-settles-nazi-era-claim-with-bonn-museum.html>.

<sup>3</sup> The provenance of an art object is its ownership history.

Alfred Flechtheim when conveying the painting to his associate dealer Alex Vömel and the circumstances of this transfer before the sale of 1949 remained ambiguous.

- In spite of the unpropitious outcome of the commissioned investigations and presumably without any further involvement of the heirs, “the Museum expressly acknowledges Alfred Flechtheim’s fate of persecution”<sup>4</sup>. In particular, the museum established that most of the artworks in Flechtheim’s collection were defamed by the Nazis as degenerate art.
- The Washington Conference Principles on Nazi-Confiscated Art<sup>5</sup> emphasizes on the difficulties which Nazi looted art victims may face to produce evidence of their ownership, by stating that “consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era” (principle no. 4).
- The Kunstmuseum Bonn self-dependently arranged for what it considered being a “just and fair solution” pursuant to the guidelines based on the Washington Principles (no. 8 and 9) with the financial support of the “Society of Friends of the Kunstmuseum Bonn” (*Verein der Freunde des Kunstmuseums Bonn e.V.*).

### III. Legal Issues

#### Ownership

- The restitution demand for “Lighthouse with Rotating Bream” has been considered by the Kunstmuseum Bonn based on moral considerations, rather than legal ones.
- From a strictly legal viewpoint, the prospects of success of a restitution claim regarding a Nazi looted artwork remain extremely low, notwithstanding an increasing general awareness and acknowledgment of the issue. Particular difficulties for Nazi looted art victims reside first in the fact that the dispossession dates back over half a century and second in insufficient evidence of previous ownership. Under German law, the admission of a claim generally fails under considerations of prescription and good faith acquisition<sup>6</sup>. Based on the very few information regarding the circumstances of the 1949 acquisition of the painting by the Museum, it is not possible to conclude on the museum’s good or bad faith at that time.
- Nonetheless, “without recognition of a legal obligation”<sup>7</sup>, the Museum agreed to a “just and fair” outcome.

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<sup>4</sup> Joint Press Release, Kunstmuseum Bonn and Flechtheim Heirs, “Bericht aus Bonn/Kultur – Paul Adolf Seehaus, “Leuchtturm mit rotierenden Strahlen.“

<sup>5</sup> On a national level, the Washington Principles of 1998 incited Germany to issue the “Statement by the Federal Government, the *Länder* and the national associations of local authorities on the tracing and return of Nazi-confiscated Art, especially Jewish property” (*Gemeinsame Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz*) in December 1999 which was the basis for the 2001 guidelines on its implementation.

<sup>6</sup> See Gunnar Schnabel and Monika Tatzkow, *Nazi Looted Art – Handbuch Kunstrestitution weltweit* (Berlin: Proprietas Verlag, 2007), 39 et seqq.

<sup>7</sup> Joint Press Release, Kunstmuseum Bonn and Flechtheim Heirs, “Bericht aus Bonn/Kultur – Paul Adolf Seehaus, “Leuchtturm mit rotierenden Strahlen.“

#### IV. Adopted Solution

##### Financial compensation – Symbolic gesture

- The Kunstmuseum Bonn kept the ownership and possession of the painting, but agreed to reimburse the heirs with half of the painting's market value. Nothing was said on the manner in which the market value of the painting was assessed.
- On display at the museum, the painting is ever since the settlement accompanied by a label recalling its provenance and tragic history.

#### V. Comment

- As stated above, when receiving the restitution demand, the Kunstmuseum Bonn felt compelled to confront a moral duty in compliance with the Washington Principles and carefully evaluated the request. The approach is evocative of similar cases involving Nazi looted art held by a museum, which also assessed the accuracy of the restitution request. While the Kunstmuseum Bonn was unable to establish the painting's provenance, other museums have been more successful in substantiating the request<sup>8</sup>. In certain cases, notwithstanding an indubitably established looted provenance, museums have refused to meet the restitution demand<sup>9</sup>.
- From what has been revealed about the present case, the Kunstmuseum Bonn had self-dependently chosen an outcome to the dispute and evaluated what would be a "just and fair" solution in view of the underlying circumstances of the case. Neither the results of its provenance research nor the criteria which the museum referred to when establishing an outcome that it considered being just and fair were revealed<sup>10</sup>.
- It is too early to conclude on the impact of the case, in particular regarding further restitution claims by the Flechtheim heirs<sup>11</sup> or if other museums allegedly holding Nazi looted art will

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<sup>8</sup> See the cases concerning the Kunstmuseum Chur and the Max Silberberg heirs as well as the North Carolina Museum of Art and the Philipp von Gomperz heirs: Anne Laure Bandle, Raphael Contel, Marc-André Renold, "Case Nähsschule – Max Silberberg Heirs and Bündner Kunstmuseum Chur," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva; Alessandro Chechi, Raphael Contel, Marc-André Renold, "Case Madonna and Child in a Landscape – Philipp von Gomperz Heirs and North Carolina Museum of Art," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

<sup>9</sup> See the case involving the Fine Arts Museum of the City of la Chaux de Fonds and the Jaffé heirs: Anne Laure Bandle, Raphael Contel, Marc-André Renold, "Affaire La Vallée de la Stour – Héritiers Jaffé et Musée des beaux-arts La Chaux-de-Fonds et Ville de la Chaux-de-Fonds," Plateforme ArThemis (<http://unige.ch/art-adr>), Centre du droit de l'art, Université de Genève.

<sup>10</sup> See in particular the case between the Fine Arts Museum of the City of la Chaux de Fonds and the Jaffé heirs; the Museum published the legal opinion in consideration of which the restitution was denied (ibid.).

<sup>11</sup> According to the heirs' lawyer, Markus Stötzel, 15 to 20 further restitution demands for artworks which were allegedly part of the Flechtheim collection are pending (see Andreas Rossman, "Der Leuchtturm bleibt," *Frankfurter Allgemeine Zeitung Feuilleton*, April 12, 2012, accessed April 13, 2012, <http://m.faz.net/aktuell/feuilleton/kunst/ns-raubkunst-der-leuchtturm-bleibt-11715710.html>).

follow suit. The case, however, contributes in raising public awareness on the issue of Nazi looted art and provides an example of a somehow inventive outcome to a restitution claim.

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