

# A Decision—But Doubts Remain

Despite a judge's ruling, questions are still being asked  
about a Schiele drawing's murky past BY WILLIAM D. COHAN



In a controversial ruling in September, U.S. federal judge William H. Pauley III ordered that a drawing by Egon Schiele be returned to Massachusetts collector David Bakalar. The drawing, *Seated Woman with Bent Left Leg (Torso)*, 1917, was sold at Sotheby's London in 2005, but the sale was rescinded by Sotheby's after questions were raised about its provenance.

Pauley rejected the claim of Milos Vavra, a retired Czech insurance clerk, and Leon Fischer, a New York philatelist, that the Nazis had stolen the drawing from their relative, the Viennese actor and cabaret singer Fritz Grunbaum, after he was deported to Dachau in 1938. He died there in 1941 (see "Unraveling the Mystery of 'Dead City,'" April 2008).

Pauley's ruling could have wide-ranging consequences for the fate of

other works in Grunbaum's collection as well as Schiele's painting *Portrait of Wally* (1912), whose ownership is being litigated in another federal courtroom in Manhattan.

Raymond Dowd of Dunnington, Bartholow & Miller, attorney for Vavra and Fischer, argued that the Nazis stole Grunbaum's collection from him and his wife, who was deported to Minsk and murdered there. Dowd said that the stolen works, including *Seated Woman*, found their way after the war to Galerie Gutekunst & Klipstein—

◀ Egon Schiele's  
*Seated Woman  
with Bent Left Leg  
(Torso)*, 1917.

now Galerie  
Kornfeld—  
in Bern,  
Switzerland.  
In 1956  
Eberhard

Kornfeld, the gallery's proprietor, organized a show of 65 Schiele works that he knew came from Grunbaum's collection, stating so in the catalogue. Otto Kallir, the proprietor of Galerie St. Etienne in New York, bought 20 of those works. Kallir, former director of Neue Galerie in Vienna and author of a 1930 Schiele catalogue raisonné, had been allowed to leave Austria in the '30s with his collection. He sold the disputed Schiele drawing to Bakalar in 1963 for \$3,300. According to Dowd, Kallir did not provide Bakalar with a certificate of provenance or authenticity.

Kornfeld testified in a deposition that he had bought the bulk of Grunbaum's Schiele collection, including *Seated Woman*, from Mathilde Lukacs, Grunbaum's sister-in-law, who Kornfeld claimed visited him on numerous occasions in Switzerland after the war

to sell him paintings and drawings. He said he had bought *Seated Woman* from her in 1956.

Lukacs and her husband fled Vienna for Antwerp in 1938 and moved to Brussels in 1941. The documentation surrounding Lukacs's supposed sale to Kornfeld is murky. For instance, Kornfeld claimed that he had paid Lukacs by check, but he was unable to produce the canceled check; according to his logbook, he paid her in cash. Their correspondence has a variety of signatures, all purported to be Lukacs's. The receipts allegedly signed by Lukacs are in pencil and almost illegible.

Dowd argued that Kornfeld had forged the correspondence with Lukacs and that the alleged sale after the war was nothing more than an elaborate fencing operation for stolen goods. Accordingly, Dowd said, the Bakalar drawing should be returned to Grunbaum's rightful heirs.

Pauley rejected Dowd's argument, giving credence to Kornfeld's claim that the Lukacs sale was legitimate. In his decision Pauley cited evidence that before their departure from Vienna the Lukacses prepared an export permit application identifying 30 drawings, watercolors, and other artworks that they wanted to take with them. Customs stamps on the permit indicate that the art was shipped by rail on August 12, 1938, and passed through Austrian customs two days later.

The judge also cited the fact that Berthold Reiss, the husband of Grunbaum's wife's sister, was able to get 19 artworks out of Austria in 1939.

Pauley wrote that Sotheby's was "satisfied" that *Seated Woman* had remained in the Grunbaum family "without having been looted by the Nazis."

Another determining factor in the judge's ruling was his decision before the start of the weeklong trial that Swiss, rather than Austrian, law would apply. "Under Swiss law," Pauley wrote, "a person who acquires and takes possession of an object in good faith becomes the owner, even if the seller was not entitled or authorized to transfer ownership." Once Pauley had decided that Kornfeld had bought the artwork from Lukacs, he quickly

concluded that "because Lukacs possessed the drawing and the other Schiele works she sold to Kornfeld in 1956, Kornfeld was entitled to presume that she owned them. To the extent that the drawing may have been lost or stolen at some point prior to Kornfeld's purchase, any absolute claims to the property expired five years later, in 1961. There is no evidence that Kornfeld had actual knowledge that Lukacs lacked authority to sell the drawing. Therefore, Kornfeld was only required to exercise due diligence in purchasing it."

Under Swiss due diligence standards, Pauley wrote, "a purchaser of an object has no general duty to inquire about a seller's authority to sell the object." The judge concluded that after more than two years of discovery in the case, Dowd and his clients "have not produced any concrete evidence the Nazis looted the drawing or that it was otherwise taken from Grunbaum." He suggested that the drawing could

have been exported during the war.

Dowd said he was "studying options," including a possible appeal. "We presented an Austrian legal opinion showing that anyone in the chain of title following Fritz Grunbaum's imprisonment in Dachau had void title, which under common law is the equivalent of a thief," Dowd said.

A number of observers who are experienced in the field of restitution were unhappy with the judge's decision.

Erika Jakubovits, executive director of the Jewish Community Organization of Vienna, told *ARTnews* in an e-mail, "I feel the problem is that U.S. judges—without attacking them—do not understand the situation between 1938–1945 as well as after World War II and in the 1950s. They have no idea about the system or whether documents were available or not."

Bakalar's attorney, James Janowitz of Pryor Cashman, said that "the evidence was overwhelming that Kornfeld

had purchased the drawing from Lukacs. Kornfeld would have had to have been a criminal genius and a clairvoyant to create a record going back to 1953. Why would anybody do that? Such a record, such an archive, wouldn't make any sense." (Kornfeld began selling works he claims to have acquired from Lukacs in 1953.)

Janowitz added that he is the son of German Jewish refugees who left Europe in 1939 and were able to take out large pieces of furniture as well as a small sculpture. "Strange things happened," he said. "Emotionally, I am always on the side of people trying to recover art taken by the Nazis. The problem here is that this drawing was not taken by the Nazis." ■

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