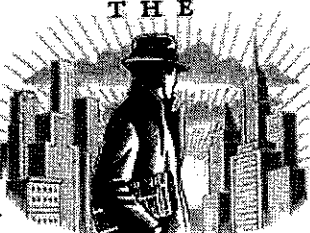


# THE NEW YORK OBSERVER



## Lawsuit Over Schiele Drawing Has Legs

**By:** Jason Horowitz

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On July 20, 1938, an Austrian art historian working for the new Nazi government appraised the collection of the popular Jewish cabaret singer and comedian Fritz Grünbaum at a worth of 5,791 Reichsmark.

A month earlier, the Nazis had deported Grünbaum to Dachau.

In his absence, Grünbaum's wife Lilly kept watch over the hundreds of works of art. In September of 1938, the moving and shipping company Schenker & Co. A.G. requested Nazi permission to export the collection on Lilly Grünbaum's behalf. Stamped with the Schenker insignia and Nazi swastikas, the export license was approved. The receipt for the shipment listed 21 oils, more than a dozen watercolors and nearly 300 drawings.

Grünbaum died in Dachau in 1941. The following year, the Nazis murdered Lilly in Minsk. And Grünbaum's singularly exquisite collection—including works by Oskar Kokoschka, Max Oppenheimer and Egon Schiele—vanished.

Among the five oils and more than 70 sheet drawings by Schiele was a gouache-and-black-crayon drawing of a headless woman clutching her knee. It has meandered for decades through art galleries and private collections before ending up in the middle of a pitched legal battle in New York's Southern District court, where two of Grünbaum's heirs—Leon Fischer, a New York stamp dealer, and Milos Vavra, who lives in Prague—have bickered for two years with the drawing's owner, David Bakalar.

Now, a key Swiss gallery owner is prepared to give a deposition for the first time about the drawing's provenance, and the presiding judge has expressed his eagerness to resolve the case.

At the same time, the heirs' New York lawyer, Ray Dowd, is weighing the potentially momentous step of going after the Viennese company Schenker & Co. A.G.

Schenker's global network of shipping firms amounts to one of the world's largest logistics companies, with more than 40,000 employees in dozens of countries and more than \$10 billion in turnover a year. Mr. Dowd contends that the company, which serves as the Olympic Games' official movers, stole the drawing and set in motion a litany of fictitious provenances that skip from Vienna to Brussels, from Bern to New York.

In pursuing Schenker, Mr. Dowd has drawn renewed attention to the company's unsavory Nazi-era history. At the same time, he has attempted to vastly broaden the definition of looted art to any work once seized or stored by Schenker.

If Mr. Dowd proves his case—which recent developments suggest is a long shot—the result would be a dramatic, even epochal, shift for the collectors of German and Austrian art, including Ronald Lauder, the New York billionaire and avid Schiele collector.

“If that receipt from Schenker is valid and nobody is contesting it, then it [the drawing] was stolen and we win,” said Mr. Dowd, who argues that the company essentially confiscated Grünbaum's collection. “If Mr. Lauder or any of the other collectors take one of Grünbaum's Schieles into their hands, they just stepped into the shoes of a thief.”

While the validity of the receipt has gone unchallenged, Mr. Dowd's opponents point out that there is no proof that Schenker ever physically took possession of the collection. They say that the provenance of the Schiele drawing is clear. After the war, they say, the collection ended up in the hands of Grünbaum's sister-in-law, Mathilde Lukacs. How she got her hands on it after the Schenker inventory is a mystery, they concede, but the important thing is that the works stayed in the family and then passed legitimately through the art market and into Mr. Bakalar's hands.

Mr. Dowd, 42, has a history as an agitator. As a Green Party candidate in 2000, he ran an insurgent campaign to remove the all-powerful State Assembly leader, Sheldon Silver, from his downtown district. Mr. Dowd lost, and he has since contented himself with delving into copyright law and representing the likes of Paolo Zampolli, the founder of ID Models and a gossip-page mainstay.

But the case of the allegedly looted Schiele has once again sparked his flammable sense of outrage. This time, Mr. Dowd seems intent on bringing down the firmament of Austrian art collectors and some of the city's most venerable cultural institutions.

“Schenker was an instrumentality. It was run by Nazis; it was used to plan the invasion of Austria in 1938. I mean, you had people giving their stuff to Schenker with money for export, and they were taking money and putting them on trains and executing them. This is hand-in-hand, in tandem,” said Mr. Dowd, adding: “We're up against billionaires here. Not just one—it's billionaire after billionaire. You've got major institutions.”

Mr. Lauder, a likely candidate to run for president of the World Jewish Congress, is a

prominent advocate for the restitution of art looted from Jews during the Holocaust. A chairman emeritus of the Museum of Modern Art and the co-founder of the Neue Galerie on Fifth Avenue, he has been collecting Schieles since his bar mitzvah years.

Mr. Dowd says that those credentials make the opacity of Mr. Lauder's private collection and the shrouded provenance of his present or past Schiele paintings all the more troubling.

Renée Price, the director of the Neue Galerie, pointed out that in 2006, the court rejected Mr. Dowd's attempts to include the museum in his suit.

"It has been clearly established that the only works in question with any connection either to Mr. Lauder or to the Neue Galerie—two drawings by Egon Schiele—were sold at auction by Mr. Grünbaum's sister-in-law, not looted by Nazis," Ms. Price said in a statement. She added that "Ronald Lauder has been an international leader in getting stolen art back to its rightful owners—doing more, investing more and accomplishing more than nearly anyone else."

Mr. Dowd's other critics—some of them prominent gallery owners whom he has accused of being fences for the Nazis or exploiters of Holocaust plunder because they bought works from the Grünbaum collection—have responded with assertions that his case is "ludicrous," a "smokescreen" and "irrelevant."

MR. DOWD'S CASE SUFFERED A SETBACK on the afternoon of Friday, Feb. 9, when he appeared with lawyers for Schenker's New York affiliate and for the drawing's owner, Mr. Bakalar, in courtroom 11D of a federal courthouse on Pearl Street. While the two white-haired attorneys representing white-shoe law firms chatted amiably on the soft crimson carpet, Mr. Dowd hunched over documents in his chair.

Immediately after rising to the lectern, Mr. Dowd, dressed in a subtle pinstripe suit and burgundy tie, hammered on the importance of the Schenker receipt.

"It sounds wild and preposterous, I admit, but these are Schenker's documents themselves. If there is a thief in the chain of property here, it is stolen," said Mr. Dowd. "We have shown that Schenker & Co. received all of these Schieles."

Mr. Dowd offered arguments that Schenker's American affiliate should be held responsible for the theft, despite being formed nearly 10 years after the Austrian company's alleged crime against Fritz Grünbaum. The case's presiding judge, William H. Pauley III, responded with a mocking smirk.

"I want to know what Schenker Inc., which was formed and sprang into being in 1947, did," Judge Pauley said deliberately.

He then dismissed all of the claims against the American Schenker affiliate, effectively

removing from the case the alleged perpetrator upon which Mr. Dowd has based much of his argument. Mr. Dowd's only recourse now would be going after Schenker's European headquarters, a much more arduous legal challenge involving international diplomacy and painstaking negotiations.

Only minutes after the judge dealt this blow to his case, Mr. Dowd sat in a restaurant a few blocks from the court and pondered the difficulties of holding Schenker & Co. A.G. accountable.

"I'll have to now take another look at my options and see whether there is room for us to serve Schenker A.G.," said Mr. Dowd, later adding about the Grünbaum drawing: "They have a receipt that they got it. They let it go somewhere. Where is the receipt that shows who they gave it to?"

For its part, the company said that if there ever was a receipt, it is long gone.

"We do not have the painting, and we do not have any documentation," said Dr. Gerhard Lipowec, the general counsel for Schenker & Co. A.G. "The first point is that, according to Austrian law, all Austrians are obliged to keep their records for seven years."

He said that many more years than that had passed, and that Allied bombing raids had destroyed the company's headquarters and warehouses during the war.

"We do not have any paper records," he said, adding that if Mr. Dowd attempted to investigate or take legal action against the company, "we have to react. We have to defend ourselves."

According to Mr. Lipowec, "there has not been" a class-action lawsuit or a major settlement with Holocaust survivors or heirs involving the company. In 1999, though, Schenker authorized a group of historians to write an account of the company's activities in the years leading up to and including the Nazi era.

According to that report, the company's namesake, Gottfried Schenker, founded the forwarding firm in Vienna with two Jewish partners in 1872. In 1931, the German National Railway secretly acquired Schenker under the guise of a Zurich holding company in order to avoid paying further World War I reparations to the Allies. As a result of the takeover, central management of the company moved from Vienna to Berlin. Adolf Hitler came to power in 1933, and by 1935 the company was under a new, more sinister management.

The Nazi leadership forced the appointment of Dr. Edmund Veesenmayer to the company's board. A talented economist, he was also an SS member trusted by the German leadership with establishing local Nazi groups in Vienna before the 1938 *Anschluss*. (Hence Mr. Dowd's claim that Schenker helped plan the German annexation of Austria.) Veesenmayer later went on to greater infamy in the Foreign Service. In 1941, he moved to Zagreb and played a major

role in the deportation of Serbian Jews. In 1944, he oversaw the deportation of Hungarian Jews to concentration camps.

“He was a behind-the-scenes man,” said Efraim Zuroff, a war-crimes expert with the Simon Wiesenthal Center.

Throughout much of his notorious career, Veessenmayer kept his job on Schenker’s governing board. In the meantime, all the company’s Jewish workers were purged, and Schenker began storing and shipping art looted by Nazis.

“Essentially, they were a transport company, and the Nazis used them to transport the stolen art,” said Hector Feliciano, author of *The Lost Museum: The Nazi Conspiracy to Steal the World’s Greatest Works of Art*. “There was no way that they didn’t know.”

Schenker is not a new name to historians of art pilfered during the Holocaust.

According to Sarah Jackson, the historic-claims director at the Art Loss Register, a London-based group that tracks lost or stolen works of art, the name Schenker on the back of a picture is a “red flag” for a collector to question its provenance.

“We have certainly heard their name before in relation to works of art put into storage with intended shipment by Jewish families to get out of Austria,” Ms. Jackson said. “A number of the shipping companies worked with the Gestapo—a unit called the Vugesta—to make sure that the works were impounded in Austria and never got to their intended destination.”

Greg Bradsher, a senior archivist with the National Archives and Records Administration, who oversaw the agency’s Holocaust-assets project, said that he’s long considered Schenker the “Mayflower Movers” of the Nazi regime.

FOR MR. BAKALAR’S LAWYERS, the entire mystery surrounding Schenker amounts to a fanciful distraction.

Jim Janowitz, a partner at Pryor, Cashman, Sherman & Flynn, argues that the Schenker receipt upon which Mr. Dowd has based his accusations never specifically identifies the Schiele drawing in question.

“The work of art never fell into the hands of Schenker,” said Mr. Janowitz, pointing out that the receipt only lists the works in broad categories such as oil paintings, drawings or prints. “You can’t assume that our work of art was included in that group, and there is every reason to think that it was not.”

Mr. Janowitz asserted that, despite Mr. Dowd’s “smokescreen,” the provenance is readily

apparent.

After the appraisal and disappearance of Fritz Grünbaum's collection in 1938, the drawing next appeared in 1956 in Switzerland, in a gallery owned by Eberhard Kornfeld. Mr. Kornfeld has said he bought the drawing, along with many other Schiele works, from a Brussels-based woman named Mathilde Lukacs. Only decades later, he has said, did he discover that Lukacs was the older sister of Grünbaum's wife, Lilly, whose name appears on the Schenker receipt.

Mr. Dowd says that Mr. Kornfeld is a deceitful profiteer of plundered Jewish art who attempted to invent a provenance by forging signatures and otherwise falsifying records, including the purported correspondence with Lukacs. For the first time, Mr. Kornfeld, who is now in his 80's, is prepared to give a deposition for the New York court. Mr. Janowitz expects him to testify as early as April and thinks that the case could be decided within the year.

"Here in Switzerland, a deposition will be made, and the originals will be put on the table," said Mr. Kornfeld's lawyer, Dr. Peter Bratschi. "It is said that the drawing has not been handed over by Mathilde Lukacs. And Mr. Kornfeld says that it is wrong, that the paintings *were* given to him by this person."

In 1956, Mr. Kornfeld sold the drawing to the New York collector Otto Kallir. Like Grünbaum, Kallir was an active collector of Schiele who founded, in 1923, Vienna's Neue Galerie (after which Mr. Lauder's New York museum is named). Kallir fled Vienna in 1938 and became one of the many Jewish refugees to set up shop in New York, eventually opening the Galerie St. Etienne in 1939 and mounting the country's first major Schiele exhibits.

"It was like being in Vienna," said Jane Kallir, remembering her grandfather's apartments. "You were surrounded by Austrian furniture and art."

Ms. Kallir inherited much of it, as well as the gallery and a library of sensitive information. Mr. Dowd accuses her of withholding the present whereabouts of Schieles connected to the Grünbaum collection. He also alleges that Ms. Kallir's grandfather knew Grünbaum well enough to recognize the pieces from his collection when they came up for sale in the 1950's.

"He knew him, but not well," said Ms. Kallir, who literally wrote the book on Schiele, a 719-page *catalogue raisonné* published in 1990. "To know someone and to remember exactly what they owned decades later is a different thing."

Her gallery, on 57th street off Fifth Avenue, is just a few blocks from Mr. Lauder's office atop the General Motors building. It is a bright and roomy space showing etchings by Picasso and Kiki Smith and lithographs by Chagall and Kokoschka on display.

But it is Austrian art, and Schiele in particular, for which the gallery is best known. And Mr. Dowd's case has made a committed adversary out of Ms. Kallir, its influential and widely

esteemed owner.

On Thursday, Feb. 8, Ms. Kallir, a petite, gray-haired woman dressed in an orange sweater, charcoal skirt and gold-and-pearl necklace, sat in her office in the back of the gallery, surrounded by pencil drawings and bookcases crammed with volumes on Austrian art.

Ms. Kallir said that she had spent about \$100,000 in legal fees in the 10 years since people started questioning the provenance of Schiele works owned and sold by her gallery—a fact that frustrates her, because of what she said was the role she’s played in helping to restore looted paintings to their rightful Jewish owners. She is the expert witness for the government in the case involving the *Portrait of Wally*, a Schiele painting that was on loan to MoMA and then seized in 1998 by District Attorney Robert Morgenthau’s office, after a claim arose from a Jewish family.

“I’m the farthest thing from an art looter that you can find,” said Ms. Kallir, opening a beaten-up copy of her catalog, bound in orange leather, and pointing to drawing No. 1974: the headless female figure dressed in bloomers and clasping a folded leg.

Talking about the present case over this drawing, she added: “We are crossing a line now between just restitution and coercion.”

She sees Mr. Dowd’s attempt to incriminate Schenker & Co. A.G. as both desperate and dangerous, considering how many collectors and institutions possess works that were once potentially stored with or shipped by the company.

“That’s just way too broad a statement to make,” she said. “And it’s never going to be provable.”

That very same conclusion seemed to be nagging at Mr. Dowd after his setback in court on Friday afternoon. He couldn’t help but wonder whether his clients would have the necessary patience—and if even he could sustain the necessary indignation—to go after a multinational corporation of Schenker’s size and scope.

“We have to see if we have the will and the resolve and the resources to pursue Schenker,” he said, adding: “There is a little bit of the tilting at windmills going on.”

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