



RETURN TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS  
DATED 19 NOVEMBER 2014 FOR THE

**REPORT OF THE SPOLIATION ADVISORY PANEL IN  
RESPECT OF FOUR NYMPHENBURG PORCELAIN  
FIGURES IN THE POSSESSION OF THE CECIL HIGGINS  
ART GALLERY, BEDFORD**

*The Honourable Sir Donnell Deeny*

*Ordered by the House of Commons  
to be printed 19 November 2014*



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# **REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF FOUR NYMPHENBURG PORCELAIN FIGURES IN THE POSSESSION OF THE CECIL HIGGINS ART GALLERY, BEDFORD**

## **INTRODUCTION**

1. On 21 September 2011, lawyers acting for the Estate of the late Emma Ranette Budge (the Estate) commenced one of a series of claims on behalf of the Estate for works of art currently in the possession of museums and galleries established for the public benefit in the United Kingdom. A number of issues arising from these claims are common to all of them.
2. The claim has been brought by Rosbach, Fremy, Felsberg, Rechtsanwaelte (lawyers) of Berlin and Mel Urbach, attorney of New York on behalf of Michael Rosenblat. Mr Rosenblat was, by Order of the Amtsgericht Hamburg of 28 December 2007, appointed executor of the Estate of Emma Ranette Budge, née Lazarus. The Order records that she was born on 17 February 1852 in Hamburg and died there on 14 February 1937. A Certificate of the Court of 23 September 2008 lists the original heirs to the Estate. Copies of these documents and a Notarised Acknowledgment from Michael Rosenblat are to be found in Appendix 1.
3. The works sought by the Claimant Estate and dealt with in this Report are in the Cecil Higgins Art Gallery, Bedford (the Gallery). In its Statement of Case the Gallery takes its description of the art-works from a catalogue of the Cecil Higgins Collection, from which these pieces come, which was prepared by Sotheby's in 1941, apparently for estate duty purposes. Items 681 a-d were described as follows. "A set of four Nymphenburg busts of the Four Seasons by Franz Anton Bustelli, painted in colours and each with its appropriate emblem, supported on circular socles, moulded in relief with cartouches containing the impressed shield mark, 5¾ inches, circa 1760." They were acquired by Cecil Higgins at a date unknown prior to 1941 and left by him as part of his collection to trustees for what is now the Gallery.

## **THE PANEL'S TASK**

4. The task of the Spoliation Advisory Panel (the Panel) is to consider claims from anyone, or their heirs, who lost possession of a cultural object during the Nazi era (1933 –1945) where such an object is now in the possession of a UK museum or gallery established for the public benefit, such as the Gallery; and to advise the claimant, the institution and, where it considers it appropriate, the Secretary of State for Culture, Media and Sport on what action should be taken in relation to the claim (see our Constitution and Terms of Reference, Appendix 2). The Panel's paramount purpose is to achieve a solution which is fair and just to both parties.

5. In making this Report the Panel has considered the submissions and the evidence submitted on behalf of the Claimant and the Gallery in order to establish whether the Estate of Mrs Budge was deprived of these items as a result of spoliation and if so, and assuming the Estate does not have legal title to the same, to assess the moral strength of the Claimant's case and whether any moral obligation rests on the institution. In reaching any conclusion of fact the Panel will do so on the balance of probability recognising the difficulties of proof in all the circumstances including the lapse of time since the Claimant lost possession of the objects.

### **THE CLAIMANT'S STANDING**

6. Emma Budge was born in Hamburg but she and her husband Henry resided in the United States for many years in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Henry Budge there accumulated great wealth through his involvement in banking and the expansion of the railways, inter alia. He returned to Germany and bought and rebuilt a villa on the Alster Lake in the middle of Hamburg. It was known as the Budge Palais. He and his wife were art collectors. They had no children. Henry Budge died on 28 October 1928 at the age of 88.
7. Emma Budge had obtained American citizenship while resident in the United States of America. However, it does not appear that probate of her Estate has been taken out by any person in the United States; see, for example, the Order of Edward R. Korman, U.S. District Judge of February 28<sup>th</sup> 2012. On the other hand there is an Order of what appears to be the appropriate German Court. Mrs Budge was resident in Germany at the time of her death where her Will and the Codicils to her Will were made in her lifetime. Her property, including, on the contention of the Claimant, the works of art in question, was in Germany at the time of the dispositions and at the time of her death. The Panel concludes, therefore, that the executor duly appointed by the German Court is entitled to represent the Estate. The number of original heirs, fifteen, would render it impracticable, in all likelihood, for a particular heir now to receive a particular work of art. However the duty of distributing the Estate, by way of realising its assets as appropriate, and distributing the same to the present day heirs, presumably under the supervision of the German Court and in accordance with German law, falls to Mr Rosenblat.

### **WILLS AND CODICILS OF EMMA BUDGE**

8. Initially Mrs Budge was not significantly affected by the coming to power of the Nazis in 1933 despite being Jewish. It is believed that this was due in part to her American citizenship. Indeed, she felt able to refuse an offer of 800,000 Reichsmarks from the National Socialist Party in Hamburg to purchase the Budge Palais saying she would not sell it even for 3 million marks. However, she made a Will on 5 October 1933, revoking earlier wills and stipulations, which reflected "the economic and political situation within Germany which make it illogical for me to continue to uphold a stipulation I made in favour of the city of Hamburg" (clause 1). All or most of the relatives of the Budges were Jewish. The Executors were to be professing Jews. In clause 6 of that Will she bequeathed her art collections and art objects in her house at

Harvestehuder Weg 12 (Budge Palais) to the executors and instructed them “to distribute these collections and objects among suitable museums or similar institutions in Germany or the United States of America or other countries...” In the same clause she made an express bequest of textiles to the Metropolitan Museum in New York.

9. However, in a Codicil of 11 June 1934 at part B she revoked that section of her Will of 5 October 1933 and replaced it with the following:

“With regard to the recipients of some or all of the art objects, I intend to give more detailed instructions in due course. If these instructions are not forthcoming, the executors shall be entitled, at their own discretion and in consultation with Mr Albert Rothbart, New York, to donate individual items to museums or similar institutions, for instance to the Metropolitan Museum in New York, on condition that these institutions are willing to put the said items on display”.

The executors are then given a discretion to sell the remaining art at auctions at their own discretion with the proceeds from the sale of those and of any household articles to “be added to the Estate, which is to be disposed of in accordance with sections IV, VII, VIII and IX of the Will”.

10. Mrs Budge made a further Codicil on 21 November 1935. Paragraph E is of key importance here and reads as follows:

“I will be giving more detailed instructions in due course on what is to happen with the contents of my house and my art and other valuables. If these instructions are not forthcoming, the executors shall take decisions based on previous stipulations. When it comes to realising the value of my collections, I advise them to consult not only Rosenbaum, now with offices only in Amsterdam, regarding the porcelain but also Mr Börner in Leipzig, especially regarding the paintings and engravings. The sale of all these objects within the borders of the German Reich is unlikely to be advisable.”

11. One should read both Codicils and the Will together. In the event the executors did not distribute any works of art to the institutions in Germany or the United States or other countries or certainly not to any significant extent. The sections of the Will referred to in the codicil of 11 June 1934 can be summarised as follows:

Section IV deals with debts owed by the Estate and the cost of administration;

Section VII deals with specific bequests which are to be made to a series of employees and others of sums of money “from the residue”;

Section VIII distributes percentages of the remaining residue to a series of individuals, largely the nephews and nieces of Mrs Budge and of her late

husband. There is an express provision at VIII (12) for the offspring of these persons to “receive in equal shares per stirpes, but not per capita, that sum that the deceased person in the above list would have received had he or she survived me”;

Section IX of the Will provides that only when those other bequests have been dealt with should gifts be made to charitable organisations or institutions in New York City and to the Emma and Henry Budge Foundations in three German cities.

12. The Panel therefore concludes that if works of art are to be transferred from collections in the United Kingdom it is likely that they would be sold, subject to what we say below, because of the number of heirs, and the proceeds of sale would form part of the residue of the Estate. Subject to the executor exercising his discretion “to donate individual items to museums or similar institutions ..... on condition that these institutions are willing to put the said items on display”, the proceeds would then go to the descendants of persons expressly named as beneficiaries by the late Emma Budge, all or most of whom are the collateral descendants of herself and her late husband.

### **THE 1937 SALES**

13. Following the death of Emma Budge on 14<sup>th</sup> February 1937 the heirs were either already abroad or preparing to leave Germany in the face of persecution.
14. Given the insuperable problems of transferring property belonging to Jews out of Nazi Germany in 1937 the executors sent the collection in five furniture vans to Berlin for auction. This was conducted by the Aryanised Jewish auction house of Paul Graupe on 4-6 October and 6-7 December 1937. Despite the absence of reserve prices, a million Reichsmarks were netted in the sales. This sum was paid into a blocked account in M.M. Warburg, a formerly Jewish bank by then controlled by Nazi supporters and the heirs had no access to it.
15. The Jewish executors were pushed aside in favour of Emma Budge’s former tax adviser, Gottfried Francke, who was not Jewish and was acceptable to the regime. Given that Emma Budge had advised against selling in Germany and given the imposition of Mr Francke as a non-Jewish executor the Panel concludes that this can be regarded as a forced sale.
16. The prices of some of the items sold were below market value. While in the first year or so of the Nazi regime fair market prices may have been achievable this is much less likely to have been true by the time of this sale. Lot 964, with which we will deal in detail below, was sold to “Bibergeit” for 1,000 Reichsmarks. This appears to be the only lot this buyer purchased. The Claimant does not allege this price was of itself below market value although it may have been.

17. As stated above, the proceeds of the sale were paid into an account in a Nazi controlled former Jewish bank, M.M. Warburg. There is no evidence that the executor effectively in control attempted to pay, let alone succeeded in paying, any of the proceeds to the heirs. By then, as Jews, they were subject to expropriatory taxes. The Panel concludes that none of the proceeds of the sale went to the heirs of Mrs Budge.
18. In assessing the strength of the Claimant's moral claim it is right to consider whether the heirs have otherwise been compensated for the loss of the cultural objects. The Panel has communicated with the German authorities as to whether compensation was paid following the conclusion of the Second World War under either the Federal Compensation Act or under the Federal Restitution Act. The Panel also enquired from the Claimant about compensation from the City of Hamburg and received, in confidence, a copy of the Agreement of 21 April 2011 between the City and Michael Rosenblat. Having considered the responses, the Panel has concluded that the Estate has not been otherwise compensated for these works of art.
19. An additional factor which has to be taken into account here is that Emma Budge had substantial sums of money in a Swiss bank account at the time of her death. One possibility the Panel has to consider is that the proceeds of the auction sale in Hamburg went into that account but there is no evidence in favour of such a conclusion and the evidence that does exist would point firmly against the likelihood of that happening.
20. On the contrary, it is believed that the Nazi authorities learnt of the Swiss bank account. They arrested two of the heirs who were still in Germany and imprisoned them in Buchenwald concentration camp to force the other heirs to transfer to the German authorities what is believed to be two-thirds of the value of the money in the Swiss bank account in order to obtain the release of the co-heirs.
21. The Panel has seen Orders of the US District Court in New York dealing with a claim brought by the heirs of one of Mrs Budge's heirs, Professor Siegfried Budge. In response to a direct question from the Panel, Mr Urbach has disclosed that the heirs of Siegfried received an award in seven figures representing their 11% percentage share of the value of the account; the other heirs missed the deadline and were not eligible to join the claim. However, consistent with the view the Panel has formed that the Claimant is the executor of the Estate, the fact that some of the heirs have made a recovery in respect of part of an unrelated asset of the Estate does not appear to the Panel to be a reason to defeat this claim.

#### **ARE THE HIGGINS BUSTS FROM THE BUDGE COLLECTION?**

22. Mr Mel Urbach, attorney for the Claimant Estate, set out material pointing to the origins of these four figures in the Budge Collection. Item 964 of the 1937 auction catalogue (which has been scanned online by Heidelberg University) describes "Die Vier Jahreszeiten Als Büsten...". The four busts are stated to be of a height consistent with the height of the four figures in question.



Furthermore, they are described as: "Nymphenburg, um 1760-65. Modelle Von Franz Anton Bustelli." The items are illustrated at table 146 and it is not disputed by the Gallery that from that limited black and white illustration they could be the ones in its possession. Indeed from the illustration it appears that the male figure of Winter is somewhat smaller than the three female figures. This is a feature of the four Higgins busts pointed out in the Cecil Higgins Art Gallery Inventory number C.962-965 (George Savage, 1958, table 80).

23. The Gallery is of the view that it is only a coincidence that the Budge lot number 964 is one of the four numbers (C.962-965) given to the items in the accession register of the Cecil Higgins Collection.
24. In a work on Franz Anton Bustelli and his Nymphenburg porcelain figures by Renate Eikermann and others of the Bavarian National Museum at Munich published in 2004 it is suggested that these figures in the Gallery were in fact those from the Budge Collection.
25. Mr Urbach raised the possibility that the figures, which he has not seen, bore on their base the label "Sammlung H.E.B.". This means Collection Henry Emma Budge and is a label to be found on all or most of the items which the Estate has recovered. The Museum says those labels are not to be found on these figures but candidly states that "there is possible trace evidence of labels being present in the past that have subsequently been removed".
26. Cecil Higgins, a wealthy Bedford brewer and art collector, acquired the pieces, which subsequently formed part of the bequest leading to the creation of the Gallery in his name. It can be seen from the reference above to the Sotheby's catalogue that the figures were in the possession of Mr Higgins by 1941, the year of his death. The Gallery acknowledges that while it does have original receipts for some of his purchases through dealers, including German dealers, it does not have an original receipt in this case and indeed has no further information on the provenance of the objects.
27. As stated above the purchaser was said to be "Bibergeit" for Lot 964. With its limited resources the Gallery has been unable to investigate that or other issues further, with one exception. In 2013, on the recommendation of a curator at the Victoria and Albert Museum, the Higgins Gallery consulted Dr Alfred Ziffer, of Munich, an expert on German porcelain. His views have been furnished to the Panel. He is firmly of the opinion that the Higgins busts are the same as those sold as lot 964 out of the Budge Collection. He states that decoration in Nymphenburg pieces in the 18<sup>th</sup> Century was not repeated. "Even if the dress of a figure looks similar, there are differences in the shoes, jewellery, colour of the hair etc. The description of the Budge catalogue is so clear that it had to be your figurines decorated in the mentioned colours. The photos complete and proof (sic) this decision."
28. In the light of all this evidence the Panel is satisfied that these four items were the items sold as Lot 964 in the 1937 Budge Sales.



## **LEGAL TITLE**

29. The Panel's Terms of Reference require it to consider the original title of the Claimant to the object and the current title of the respondent institution but not to determine legal rights; paragraphs 8 and 15(a), (d) and (f).
30. The Panel has not had the benefit of detailed argument on the issue of legal title. The Panel accepts that the Estate had legal ownership of the figures before their consignment to the 1937 sales. However, the Panel has concluded, on the balance of probability, that the 1937 sales, despite the circumstances in which they were conducted, conferred a good title on the acquirer, which title thereafter passed to Cecil Higgins, either directly or through one or more intermediate acquirers. In the alternative, even if the 1937 sale was not effective to pass title to the acquirer, the Panel concludes, on the balance of probabilities, that the acquisition of the four figures before 1941, by Cecil Higgins, was, in effect, an unlawful conversion of those figures, which triggered the six-year limitation period imposed by section 2 of the Limitation Act 1939 meaning that the Estate's original legal title was statute-barred many years ago. In due course title passed to the Trustees of the Cecil Higgins Art Gallery, Bedford. The Trustees have good legal title.
31. Given the amount of detail known about the figures at the time of the Budge sales in 1937 it seems likely that Mr Higgins would have been made aware of their provenance when he purchased them, as such precise attribution would have increased their value at that time to "Bibergeit" or any further person who sold them on to Mr Higgins. While he would thus have been aware to some degree of the circumstances of their sale, he may well not have been aware that the proceeds of the sale did not go to the heirs of the Budge Estate. The Gallery points to its own small size and very limited curatorial resources to excuse any subsequent lack of research and publicity by it thereafter but this does not relieve it of its moral obligation to the heirs of Emma Budge.

## **THE PANEL'S CONCLUSIONS**

32. The sales of 1937 and the diversion of the sale proceeds deprived the Estate of Emma Budge of these works of art without receiving fair or any value for them then or since as a result of antisemitic intervention in the administration of the Estate at the time of the sales. The Estate has a strong moral claim for restitution which the Gallery does not seek to gainsay. The recommendation of the Panel is that the Museum should return the four figures to the Estate of Emma Budge, given the circumstances of their loss to that Estate in Nazi Germany in 1937 as set out above.

19 November 2014

The Honourable Sir Donnell Deeny – Chairman  
Professor Sir Richard J Evans – Deputy Chairman  
Sir Terry Heiser  
Professor Peter Jones  
Martin Levy  
Peter Oppenheimer  
Professor Norman Palmer  
Anna Southall  
Professor Liba Taub  
Baroness Warnock

**Appendix 1:** Order of the Amtsgericht Hamburg of 28 December 2007, Court Certificate of 23 September 2008 and Notarised Acknowledgment from Michael Rosenblat.

**Appendix 2:** Constitution and Terms of Reference

Certificate for the execution of Emma R. Budge's will



### Amtsgericht Hamburg

Geschäfts - Nr.: 74 VI 556/37

Hamburg, 28. Dezember 2007

### Testamentsvollstreckerzeugnis

Herr Michael Rosenblat, geb. am 3. August 1954 in Düsseldorf,

ist zum Testamentsvollstrecker über den Nachlass der

am 14. Februar 1937 in Hamburg  
verstorbenen, zuletzt in Hamburg  
wohnhaft gewesenen

Emma Ranette Budge, geb. Lazarus,

geboren am 17. Februar 1852 in Hamburg,

ernannt worden.

Die Erblasserin hat angeordnet, dass der Testamentsvollstrecker, soweit zulässig, von allen gesetzlichen Beschränkungen befreit sein soll.

Willamowius  
Richterin

Vorsteherin - 1 - Ausfertigung  
wird dem Testamentsvollstrecker zugeht.  
Hamburg, den 07.01.2008.  
Junge, Justizsekretär  
als Urkundsbefehlshaber der Geschäftsstelle



The German inheritance certificate regarding the estate of Emma R. Budge, nee Lazarus was issued on September 23, 2008:

German inheritance certificate for the estate  
of Emma Budge



## Amtsgericht Hamburg

Geschäfts - Nr.: 74 VI 556/37

Hamburg, 23. September 2008

### Gemeinschaftlicher Erbschein

Die am 14. Februar 1932 in Hamburg geborene,  
zuletzt in Hamburg wohnhaft gewesene

**Emma Ranette Budge**  
geb. Lazarus

ist am 14. Februar 1937 in Hamburg verstorben  
und beerbt worden von

1. den Kindern von Alfred Lascar und Maria Lascar
  - a) Gretha Marie Louise Lascar,  
geb. am 17. August 1900 in Hamburg,  
nachverstorben am 11. Juli 1980 in Hamburg
  - b) Edgar Walter Lascar,  
geb. am 17. September 1895 in Hamburg,  
nachverstorben am 22. Februar 1963
  - c) Gertrud Margareth Lascar,  
geb. am 23. April 1894 in Hamburg

zu je 2/94

2. Ludwig Bernstein,  
geb. 1878 in Hamburg,  
verstorben am 3. Juli 1942 in Taunton, GB

zu 11/94

3. Herbert Julius Kronheimer,  
geb. 5. Juni 1910 in Hamburg,  
verstorben am 11. Juli 1984 in Delémont, Schweiz

zu 11/94

- |   |          |
|---|----------|
| Robert Rothbart,<br>geb. 8. Dezember 1874 in Frankfurt/Main,<br>verstorben am 21. Oktober 1965 in New York, USA                   | zu 12/94 |
| 5. Dr. Siegfried Budge,<br>geb. am 18. Juni 1869 in Frankfurt/Main,<br>verstorben am 1. September 1941 in Hamburg                 | zu 11/94 |
| 6. Rudolf Hermann Ganz,<br>geb. am 9. April 1901 in Frankfurt/Main,<br>verstorben am 7. Januar 1965 in Chicago, USA               | zu 8/94  |
| 7. Frieda Felsenberger, geb. Rothbart,<br>geb. am 3. Oktober 1870 in Frankfurt/Main,<br>verstorben am 8. Mai 1968 in Detroit, USA | zu 7/94  |
| 8. Marie Adler, geb. Felsenberger,<br>geb. am 1. Juli 1895,<br>verstorben am 6. September 1990 in New York                        | zu 2/94  |
| 9. Jenny Reichenbach, geb. Rothbart,<br>geb. am 29. Januar 1868 in Frankfurt/Main,<br>verstorben am 12. Dezember 1945 in London   | zu 7/94  |
| 10. Martha Ganz, geb. Ganz,<br>geb. am 27. August 1866 in Mainz,<br>verstorben am 24. Juni 1942                                   | zu 6/94  |
| 11. Henry und Emma Budge-Stiftung Hamburg<br>Uhlenhorster 7-11, 22085 Hamburg   | zu 5/94  |
| 12. Emma Budge-Stiftung Hamburg<br>Uhlenhorster Weg 7-11, 22085 Hamburg   | zu 5/94  |
| 13. Henry und Emma Budge-Stiftung Frankfurt/Main<br>Wilhelmshöher Straße 279, 60389 Frankfurt/Main                                | zu 5/94  |

Testamentsvollstreckung ist angeordnet.

Bremer  
Richter am Amtsgericht

Vorstandende, Ausfertigung  
wird den Erben erteilt  
Hamburg, den 26.09.2008

Jung, Justizhauptsekretär  
als Amtsgewalt der Geschäftsstelle



**Amtsgericht Hamburg**

Dammtorwall 13, 20354 Hamburg  
Postanschrift: Postfach 30 51 21, 20348 Hamburg  
Geschäftszeit: Mo, Di, Do und Fr von 9 bis 13 Uhr  
Mittwochs keine Sprechzeiten  
Fernsprecher (040) 42828 - 9 (Vermittlung)  
Telefax (040) 42843-3073

Geschäfts-Nr. (bei alten Schritten angeben) + Abteilung	Zimmer d. Gesch. Stelle	Fernsprecher (Durchwahl)	Datum
74 VI 556/37	72-76	3 008	42843 - 4042
			18.02.2011

**Beschluss**

In der Nachlasssache der am 14.02.1937 in Hamburg verstorbenen

**Emma Ranette Budge, geb. Lazarus**

beschließt das Amtsgericht Hamburg, Abl. 72-76,  
durch den Richter am Amtsgericht Bremer:

Der Erbschein des Gerichts vom 23. September 2008 wird hinsichtlich des Geburtsdatums  
der Erblasserin dahin berichtigt, dass diese am 17. Februar 1852 geboren ist.

Bremer  
Richter am Amtsgericht

ausgefertigt  
  
Heinsen, Justizsekretärin  
als Urundschein der Geschäftsstelle

### Acknowledgement

Germany

Free and -Hanseatic City of Hamburg

Adress: Rathausmarkt 10/Mönckebergstr. 22, 20095 Hamburg

13. November 2013

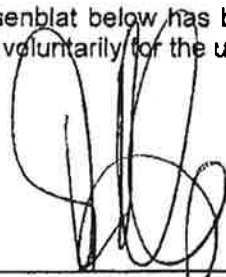
I, Dr. Gerd H. Langhein,  
Notary Public

in and for the Free and Hanseatic City of Hamburg, Germany

duly appointed, commissioned and sworn as notary for said City and said state do hereby certify that today

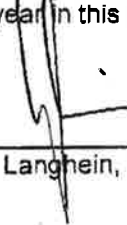
1. There appeared before me in person Michael Rosenblat, known to me, proving furthermore his identity by identity-card, a certified copy of which is attached hereto as ANNEX 1.
2. He produced to me the order of the Amtsgericht Hamburg of 28 December 2007, a copy of which is attached hereto as ANNEX 2. Furthermore I certify that according to this order he is the sole administrator of the estate of the deceased Emma Ranette Budge born Lazarus, named in ANNEX 2 and as such entitled to represent the estate.
3. That he has authorised the attorneys at law Lothar Fremy, Jörg Rosbach and Mel Urbach to represent him in all matters relating to the afford mentioned estate, according to the power of attorney, attached hereto as ANNEX 3.
4. That Mr. Rosenblat solemnly declared that in the event of him receiving from the Département for Culture Media & Sport either art objects or monetary payment in respect of any of the claims that he will distribute it in accordance of the wills and codicils of the late Emma Bude, as required by German law and subject supervision, where appropriate of the Amtsgericht Hamburg.
5. That the signature of Mr. Rosenblat below has been signed in my presence and the he executed the same freely and voluntarily for the uses, purposes and considerations herein expressed.

Signature:



(Michael Rosenblat)

In witness whereof I have hereunto set my hand and affixed my official seal at my office in the City of Hamburg, the day and year in this certificate first above written.

(Dr. Gerd H. Langhein, Notary Public)

- my commission expires with life.





## **SPOILIATION ADVISORY PANEL CONSTITUTION AND TERMS OF REFERENCE<sup>1</sup>**

### **Designation of the Panel**

1. The Secretary of State has established a group of expert advisers, to be convened as a Panel from time to time, to consider claims from anyone (or from any one or more of their heirs), who lost possession of a cultural object ("the object") during the Nazi era (1933 -1945), where such an object is now in the possession of a UK national collection or in the possession of another UK museum or gallery established for the public benefit ("the institution").
2. The Secretary of State has designated the expert advisers referred to above, to be known as the Spoliation Advisory Panel ("the Panel"), to consider the claim            received            from            .....on ..... for            ..... in the collection of .....("the claim").
3. The Secretary of State has designated .....as Chairman of the Panel.
4. The Secretary of State has designated the Panel as the Advisory Panel for the purposes of the Holocaust (Return of Cultural Objects) Act 2009.

### **Resources for the Panel**

5. The Secretary of State will make available such resources as he considers necessary to enable the Panel to carry out its functions, including administrative support provided by a Secretariat ("the Secretariat").

### **Functions of the Panel**

6. The Panel shall advise the claimant and the institution on what would be appropriate action to take in response to the claim. The Panel shall also be available to advise about any claim for an item in a private collection at the joint request of the claimant and the owner.
7. In any case where the Panel considers it appropriate, it may also advise the Secretary of State
  - (a) on what action should be taken in relation to general issues raised by the claim, and/or

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<sup>1</sup> Revised following enactment of the *Holocaust (Return of Cultural Objects) Act 2009*

- (b) where it considers that the circumstances of the particular claim warrant it, on what action should be taken in relation to that claim.
- 8. In exercising its functions, while the Panel will consider legal issues relating to title to the object (see paragraph 15(d) and (f)), it will not be the function of the Panel to determine legal rights, for example as to title;
- 9. The Panel's proceedings are an alternative to litigation, not a process of litigation. The Panel will therefore take into account non-legal obligations, such as the moral strength of the claimant's case (paragraph 15(e)) and whether any moral obligation rests on the institution (paragraph 15(g));
- 10. Any recommendation made by the Panel is not intended to be legally binding on the claimant, the institution or the Secretary of State;
- 11. If the claimant accepts the recommendation of the Panel and that recommendation is implemented, the claimant is expected to accept the implementation in full and final settlement of his claim.

#### **Performance of the Panel's functions**

- 12. The Panel will perform its functions and conduct its proceedings in strictest confidence. The Panel's "proceedings" include all its dealings in respect of a claim, whether written, such as in correspondence, or oral, such as at meetings and/or hearings.
- 13. Subject to the leave of the Chairman, the Panel shall treat all information relating to the claim as strictly confidential and safeguard it accordingly save that (a) such information which is submitted to the Panel by a party/parties to the proceedings shall normally be provided to the other party/parties to the proceedings in question; and (b) such information may, in appropriate circumstances, including having obtained a confidentiality undertaking if necessary, be communicated to third parties. "Information relating to the claim" includes, but is not limited to: the existence of the claim; all oral and written submissions; oral evidence and transcriptions of hearings relating to the claim.
- 14. In performing the functions set out in paragraphs 1, 6 and 7, the Panel's paramount purpose shall be to achieve a solution which is fair and just both to the claimant and to the institution.
- 15. For this purpose the Panel shall:
  - (a) make such factual and legal inquiries, (including the seeking of advice about legal matters, about cultural objects and about valuation of such objects) as the Panel consider appropriate to assess the claim as comprehensively as possible;

- (b) assess all information and material submitted by or on behalf of the claimant and the institution or any other person, or otherwise provided or known to the Panel;
- (c) examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise;
- (d) evaluate, on the balance of probability, the validity of the claimant's original title to the object, recognising the difficulties of proving such title after the destruction of the Second World War and the Holocaust and the duration of the period which has elapsed since the claimant lost possession of the object;
- (e) give due weight to the moral strength of the claimant's case;
- (f) evaluate, on the balance of probability, the validity of the institution's title to the object;
- (g) consider whether any moral obligation rests on the institution taking into account in particular the circumstances of its acquisition of the object, and its knowledge at that juncture of the object's provenance;
- (h) take account of any relevant statutory provisions, including stipulations as to the institution's objectives, and any restrictions on its power of disposal;
- (i) take account of the terms of any trust instrument regulating the powers and duties of the trustees of the institution, and give appropriate weight to their fiduciary duties;
- (j) where appropriate assess the current market value of the object, or its value at any other appropriate time, and shall also take into account any other relevant circumstance affecting compensation, including the value of any potential claim by the institution against a third party;
- (k) formulate and submit to the claimant and to the institution its advice in a written report, giving reasons, and supply a copy of the report to the Secretary of State, and
- (l) formulate and submit to the Secretary of State any advice pursuant to paragraph 7 in a written report, giving reasons, and supply a copy of the report to the claimant and the institution.

### **Scope of Advice**

16. If the Panel upholds the claim in principle, it may recommend either:

- (a) the return of the object to the claimant, or

- (b) the payment of compensation to the claimant, the amount being in the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value, or
  - (c) an ex gratia payment to the claimant, or
  - (d) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein; and
  - (e) that negotiations should be conducted with the successful claimant in order to implement such a recommendation as expeditiously as possible.
17. When advising the Secretary of State under paragraph 7(a) and/or (b), the Panel shall be free to recommend any action which they consider appropriate, and in particular may under paragraph 4(b), recommend to the Secretary of State the transfer of the object from one of the bodies named in the Holocaust (Return of Cultural Objects) Act 2009.

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