

[unofficial translation]

In accordance with Section 3 of the Federal Act on the Restitution of Art Objects from Austrian Federal Museums and Collections, Federal Law Gazette (BGBl) I, No. 181/1998, at its meeting on 11 September 2009, the Art Restitution Advisory Board unanimously adopted the following:

DECISION

The Federal Minister for Education, Art and Culture is recommended to transfer the painting described in the enclosed dossier entitled "Art dealership E. and A. Silbermann"

Franz Anton Maulpertsch:

"Allegory in Galicia and Lodomeria" or "Apotheosis of Poland" IN 3402

from the Austrian Gallery Belvedere to the legal successors *causa mortis* of Elkan and Abraham Silbermann.

GROUND

The Advisory Board has received the aforementioned dossier from the Commission for Provenance Research and an addendum to it. The Advisory Board assumes the accuracy and completeness of these documents, which essentially contain the following facts:

The art and antique dealers Elkan and Abraham Silbermann were persecuted as Jews by the Nazi regime. As a general partnership, they ran the art dealership "E. & A. Silbermann" at Seilerstätte 16 in Vienna's 1st district, which had been under temporary administration since 30 August 1938.

As early as 21 October 1938, Dr. Vita Künstler, who headed the Neue Galerie in Vienna after Otto Kallir fled, approached Friese as "temporary administrator of E. A. Silbermann" and thanked him for his willingness to lend a "*Maulpertsch painting*" (*not specified here*) for the exhibition "Barock in the Ostmark". The list of exhibits at the exhibition includes the "Apotheosis of Poland".

On 1 December 1938, Dr. Künstler informed Friese (again referred to as "temporary administrator of E. A. Silbermann") that she had found an interested buyer for the Maulpertsch and requested that the net price be reduced to RM 3,000 so that she could receive a commission.

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On 12 December 1938, Vita Künstler wrote to Frieze: *"I hereby confirm my agreement to take over the Maulbertsch painting, 'Apotheosis of Poland', for the amount of Mk 2,700. My prospective buyer has promised to pay the amount in December of this year."* This letter apparently crossed paths with a letter of the same date from Frieze (again referred to as temporary administrator) to Dr. Künstler, stating that he could transfer ownership of the painting *"MAULPERT (sic!), which you received from me on loan for an exhibition, to you for the price of RM 3,333"*.

On 4 January 1939, the Austrian Gallery transferred RM 3,550 to Dr. Künstler for Maulbertsch's "Apotheosis of Poland".

An audit report from the Property Transaction Office from August 1939 on the art dealership E. and A. Silbermann listed the goods and supplies as of 8 August 1939, a Maulbertsch painting was not included. However, the audit report noted a "commission to Maulbertsch RM 200" in a list of fees, expenses and commissions paid to Egon Peter Frieze dated 20 January 1939.

The art shop was subsequently liquidated, and its holdings were auctioned off in 1940.

The advisory board considered the following:

The status of the art dealership of Elkan and Abraham Silbermann under temporary administration in accordance with the Law on the Appointment of Temporary Administrators and Temporary Supervisors, GBl. No. 80/1938, and the resulting sales carried out by the temporary administrator, who was authorised to perform all legal acts in accordance with Section 2 leg.cit., are to be considered null and void legal acts or null and void legal transactions in accordance with Section 1 of the Nullity Act 1946, Federal Law Gazette (BGBl.) No. 106/1946.

It is apparent from the present dossier that the art dealership E. and A. Silbermann was placed under temporary administration. It is also apparent from the dossier that the Austrian Gallery acquired the painting Franz Anton Maulbertsch, "Apotheosis of Poland", from Dr. Vita Künstler in December 1938 or January 1939. The present correspondence between Dr. Vita Künstler and Egon Peter Frieze proves that a sale of the painting had previously taken place between them, with particular reference to the letter from Dr. Vita Künstler to Egon Peter Frieze dated 12 December 1938, in which the painting is clearly identified by the name of the painter and the title. Finally, it follows from this correspondence that Egon Peter Frieze always acted as temporary administrator of the art dealership E. and A. Silbermann in relation to the painting,

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and the audit report of the Property Transaction Office from August 1939 also shows a “*commission Maulpertsch RM 200*” dated 20 January 1939, which obviously referred to the aforementioned transaction.

The advisory board therefore concludes that Egon Peter Friese, as temporary administrator of the art dealership E. and A. Silbermann, had sold the painting to Dr. Vita Künstler, from whom it was in turn acquired by the Austrian Gallery.

Since – as has already been stated – the art dealership’s status as being under temporary administration and the resulting sale are null and void legal acts or null and void legal transactions in accordance with Section 1 of the Nullity Act 1946, Federal Law Gazette (BGBl) No. 106/1946, and the painting is now owned by the federal government, the conditions of Section 1, Paragraph 2 Art Restitution Act, Federal Law Gazette (BGBl.) I No. 181/1998, are fulfilled. The Federal Minister for Education, Art and Culture was therefore recommended to transfer the ownership to the legal successors *causa mortis* of Elkan and Abraham Silbermann.

Vienna, 11 September 2009

Chairman: Univ. Prof. Dr. Dr.h.c. Clemens JABLONER

Members:

Substitute members:

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Ministerial Council (retired) Dr. Peter Parenzan

Univ. Lect. Dr. Bertrand Perz

Advocate General Dr. Peter Zetter

Univ. Prof. Dr. Artur Rosenauer

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