

Portrait of Notoriety

By THOMAS R. KLINE Wall Street Journal, July 27, 2010

In the decades following World War II, Rudolf Leopold was a larger-than-life figure on the Vienna art scene. He was known particularly for "dedication and ruthlessness" in building his art collection, as an obituary in London's Telegraph resonantly put it. Leopold died on June 29 at age 85 and, within less than a month, historic litigation concerning a painting from the Austrian museum bearing his name was settled, just as if the terms had been worked out in advance, awaiting only his departure from this earth.

Leopold collected with a ferocity matched only by his indifference to whether the art he acquired carried a hint of Nazi looting. In 1994, he sold his collection to the Austrian state for an enormous sum, and Austria promised to build a museum (where Leopold would become a director-for-life) to house the collection. Leopold craved Klimts and Schieles, the kind of modern, outré works admired and collected by Jews in pre-Anschluss Vienna. He started his serious collecting about 1947, so it should have come as no surprise when "Portrait of Wally" (1912) by Egon Schiele, along with another Leopold Museum Schiele, both of which had been lent to the Museum of Modern Art in New York, were claimed by Holocaust survivors or the victims' heirs.

Relying on a New York statute providing automatic immunity from seizure for works of art entering the state for exhibition, MoMA had failed to register the paintings with the U.S. government office that grants similar immunity at the federal level.

The first claim that the paintings had been looted by the Nazis arrived at MoMA in December 1997 and, Leopold being Leopold, these accusations led to litigation stretching to the horizon and beyond: First, Manhattan District Attorney Robert Morgenthau tried to subpoena the two Schiele works for an investigation. When Mr. Morgenthau's seizure was annulled by the New York State Court of Appeals, U.S. Customs (now the Department of Homeland Security) stepped in, via the U.S. Attorney for the Southern District of New York, with a federal forfeiture action to recover "Wally" as improperly imported into the country. That's the case—between the U.S. government and the estate of the theft victim, Lea Bondi Jaray, on the one hand, and the Leopold Museum on the other—that was settled July 20 shortly before trial. Under the settlement agreement, the Bondi estate agrees to drop all claims to "Wally" in return for the Leopold Museum's payment of \$19 million, its allowing temporary exhibition of the painting at the Museum of Jewish Heritage in New York, and its recognizing the family in signs accompanying the painting in future shows. (I was peripherally involved in arrangements concerning the case; I also handled an unrelated matter involving Leopold.)

The facts of the "Wally" case, as contested and contorted as any there could be, were also grim. According to Bondi, after the absorption of Austria into Nazi Germany, she sold her art business, Würthle Gallery, for a few thousand Reichsmarks to Friedrich Welz, who subsequently joined the Nazi party. Bondi claimed that Welz later came to her home and demanded that "Wally," which was hanging on her apartment wall, be included in the deal. "You know what he can do," Bondi quoted her husband as having warned her at the time, and she surrendered the painting. The museum argued that the transaction occurred before Germany's annexation of Austria, but the court found that Welz had stolen it after the Anschluss.

The press release from the Bondi estate's law firm, Herrick, Feinstein, announcing the settlement continues the tale—reciting U.S. forces' recovery of "Wally" after the war; their transfer of the painting to Austrian authorities who mistakenly restituted it to the representative of a different Jewish victim of Nazi art looting; and the work's sale by that victim's heirs to the Austrian National Gallery, which traded it to Leopold. These later twists and turns, along with the passage of time, created grist aplenty for the U.S. legal mill, but did not change the underlying truth that the painting had—in the first instance—been taken by a Nazi in the most unsavory manner.

By objective standards, if such standards exist, settlement of the "Wally" litigation is unsurprising: An interim decision by Judge Loretta Preska, itself measuring 110 pages, left the Leopold Museum limited grounds to stand on in litigating its right to possess the painting. Judge Preska, in addition to finding that Welz had stolen the work, also concluded that Leopold's largely diligence-free acquisition did not give him title under Austrian law. Only the question of whether Leopold knew the painting had been stolen stood between the museum and forfeiture of "Wally"; this was the sole issue Judge Preska set for trial.

Policy developments have also been moving against the museum's position. In 1998, Austria had—while the litigation was pending—passed legislation allowing Nazi-era claims to be made against government-owned museums without impediment due to the passage of time, but the legislation does not cover the Leopold Museum, a loophole now likely to be closed with Leopold's death.

This Austrian legislation—mirrored by similar approaches in Holland and elsewhere in Europe—marks key developments growing out of the 1998 Washington Conference Principles, voluntary guidelines for how museums handle claims of looting by the Nazis, and their more recent counterpart, the Terezin Declaration, in which signatory nations affected by the Nazi looting of art pledged to encourage collectors as well as museums to engage in dispassionate, fact-based review in attempting to resolve such claims.

The "Wally" case, however, having arrived before the 1998 Washington Conference, seemed locked in a time-warp, as did the Leopold Museum's exemption from Austrian law requiring other publicly owned museums to return Nazi-looted artworks. The case defied expectations; it featured a strong claim of ownership and theft facing a weak defense, and was pending during a time when public policy was moving toward conciliation of Nazi-looted art claims. All the elements present should have led to an early settlement; instead, they fueled protracted dispute. The heavyweight lineup of the Leopold Museum, MoMA, Austria and the U.S. government could not, until Leopold's death, broker a settlement in a case beginning with a poignant and painful Nazi theft.

Museums, collectors and art-market participants have been growing increasingly cognizant of the legacy of Nazi art looting, as well as of the current-day implications of thefts during other armed conflicts, unauthorized takings from archaeological sites, and questions concerning Native American sacred objects and human remains.

Debate rages today about whether museums have become too aggressive in bringing and defending litigation concerning allegations of Nazi art looting and whether collectors and the art market are too lax. Quietly, however, many cases are settled with little public notice. Museums and collectors struggle to find the resources to understand the scope of their problems. And anyone buying or selling art is well advised to upgrade his diligence efforts to avoid these issues.

This settlement, however, is both more and less than a cautionary tale. Artwork purchased in haste (without significant diligence) is returned at leisure (after many millions are spent in litigation and settlement). Other buyers had better beware.

Litigating a weak case literally to death costs multiples of what it would have taken to settle the case a decade earlier—no surprise there. The Leopold Museum is not the first party engaged in Nazi-looted-art litigation to pay for its obduracy. Until last week's settlement, the museum's decision-making in the "Wally" litigation closely resembled the conduct of the Republic of Austria and the Austrian Gallery in *Austria v. Altmann*, a well-remembered case fought tenaciously by the Austrian parties, who even pushed it to the U.S. Supreme Court. That case eventually led to the Austrian Gallery's forced return of five valuable paintings by Gustav Klimt to Austrian émigré Maria Altmann of California, who would undoubtedly have taken far less to settle early on in the litigation process.

Some will assert that loans for exhibitions have trailed off due to the "Wally" litigation and similar lawsuits, and that the settlement will accelerate that trend. Although intuitive, the point has been difficult to

establish. The better view is that museums are ramping up their diligence in connection with loans and new acquisitions.

This settlement returns an important painting to public exhibition after frighteningly expensive and largely unnecessary litigation and a high-priced settlement. It deserves muted applause for the courage that facilitated resolution by compromise on the eve of trial, if not for the constellation of attitudes that allowed the case to run on for so long.