

Advisory Commission for the Return of Cultural Property Seized as a Result of Nazi Persecution, especially Jewish Property.

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The recommendation of the Advisory Commission in the case of 'Behrens versus Düsseldorf'.

Berlin – 03.02.2015.

Under the chairmanship of Professor Dr. Limbach, the Advisory Commission for the Return of Cultural Property Seized as a Result of Nazi Persecution, especially Jewish Property, comments as follows.

The following facts underpin the case.

The painting *Pariser Wochentag (Weekday in Paris)* by Adolph von Menzel was completed in 1869, and was acquired not later than 1886 by Eduard Ludwig Behrens, the owner of the banking house L. Behrens & Sons, Hamburg. It was part of his painting collection, all of which appeared in a catalogue of 1891 ("The Collection of Eduard L. Behrens of Hamburg. A Catalogue by Prof. E. Heilbut"). After his death in 1895, his son Eduard Ludwig Behrens junior became the owner of the collection including *Pariser Wochentag (Weekday in Paris)*. When he died in 1925, the painting and the entire collection was passed to Eduard Ludwig Behrens junior's son, George Eduard Behrens (21.2. 1881 – 5.6.1956). It is a contentious point amongst the parties whether or not George, in accordance with the joint last will and testament of Eduard and his wife Franziska Behrens (née Gorissen), was only the administrator of the entire estate of Eduard, including the collection of paintings, as a joint property holder with his mother and his sister Elizabeth Emma Behrens, or if he could act as the sole owner.

George E. Behrens was the fifth generation of that family, to lead the banking house L. Behrens & Sons as the senior partner, and he concluded an agreement in 1925 in order to reduce inheritance tax. According to this agreement, a number of paintings from his grandfather's collection were lent to the Hamburger Kunsthalle for a period of 10 years. At the beginning of March 1935, he informed the Kunsthalle that as the agreement had expired on 6 February, he intended to sell a part of the paintings either in Germany or abroad. On 23 March, at the request of the gallery, he forwarded to them "a list of paintings in the gallery from the collection of Ed. Behrens estate [...], which I intend to sell". Of the 33 paintings on

this list, *Pariser Wochentag (Weekday in Paris)* was the only one which was withdrawn. If the gallery was interested in acquiring one or more of these pictures, George E. Behrens referred them to Professor Hermann Uhde-Bernays in Starnberg whom he had engaged for the sale.

Around the same time, or perhaps even earlier, the director of the City of Düsseldorf's art collection was given the task of acquiring a "major work by Menzel" for the city. On 24 July 1935, he advised the mayor that his "negotiations" in this affair had led to success because he had "just" received information that "one of Menzel's most important paintings" *Pariser Wochentag (Weekday in Paris)* had passed into the possession of the art dealer in Düsseldorf with whom I had entrusted the negotiations." On 31 July 1935, he informed the director of the art dealership Paffrath that the mayor had sanctioned the required 33,000 RM for the purchase of the painting. After the successful conclusion of the payment modalities, *Pariser Wochentag (Weekday in Paris)* was acquired for the City's art collection and since then has been exhibited in the Düsseldorf Kunstmuseum.

The owners of the banking house L. Behrens & Sons had been Protestants for several generations. However, according to the "Nuremberg Laws", George E. Behrens and his sister Elizabeth Emma were considered as "completely Jewish" and their mother as a "Mischling 1st grade". After the November pogroms of 1938, George E. Behrens was imprisoned, at first in the Hamburg police prison, and after that in the Sachsenhausen concentration camp until March 1939. The banking house L. Behrens & Sons had stopped its "operative activities" by 31 May 1938 and had to be liquidated by 31 December 1938. In April 1939, George E. Behrens emigrated to Cuba via Belgium and France, after paying the "Jewish property levy" and the "Reich flight tax". His sister emigrated in 1941. After the war, in 1950, both returned to Hamburg to stay. Their mother survived the Nazi period in Hamburg.

It is uncontentious that George E. Behrens was a victim of Nazi terror as he was persecuted because of his race, forced to emigrate and robbed financially. However, what is a question of controversy is whether or not at the time of the sale of *Pariser Wochentag (Weekday in Paris)* he was free to do what he wanted with his property, that is, the estate of Edouard Behrens that was administered by him, or if, because of the political situation he was forced to act differently than he would have done under other circumstances. In addition, what is

also at issue is if the selling of the painting was a forced sale caused by Nazi persecution, which would justify its restitution to the heirs of George E. Behrens, or if that was not the case.

The heirs of George E. Behrens are of the opinion that this was a forced sale. They explained that there existed as early as spring 1933 a “decline of the Jewish private banks” and “that the banking house” had suffered “a considerable loss in revenue and income” from 1933. In connection with this, they also referred to the fact that George E. Behrens “between 1933 and 1935” had lost “11 directorships in total”. He had also been “forced” in July 1934 to sell “the family estate at Harvestehuderweg 34” for which he was “relatively compensated” in 1952. From the autumn of 1935 onwards, he attempted to create a “new economic means of existence”, through the expansion of the Amsterdam branch “N. V. Behrens”. This was ultimately to no avail. The sale of *Pariser Wochentag (Weekday in Paris)* therefore took place under conditions forced by persecution.

With regard to the selling process, the heirs argued that George E. Behrens’ painting had been sold directly to the city art gallery. According to them, the art dealership Paffrath of Düsseldorf, which had been engaged by the art gallery’s director to look for a major work by Menzel, had only acted as an agent. In addition, the heirs argued that the purchase contract had been concluded at an indeterminate date, but in any case, after 15 September 1935, so after the enactment of the “Nuremberg Laws”.

The sale of the picture involved a loss as a result of persecution because the purchase price was not proportionate, and over and above that, it is not certain that George E Behrens ever received the money, or if he had, if he was free to dispose of it as he wished. An expert such as Uhde-Bernays had estimated the value of *Pariser Wochentag (Weekday in Paris)* at 50,000 RM, and in 1940/41, 48,000 RM and 70,000 RM respectively were paid for two other Menzel paintings. There is also no concrete proof that the seller ever received the money.

Taking into account the facts and the circumstances, the heirs of George E. Behrens demand the restitution of *Pariser Wochentag (Weekday in Paris)*.

However, the City of Düsseldorf contends that neither was it a forced sale as a result of persecution, nor was there a loss associated with it. They point out that in the first years of the Nazi regime, the business activities of the Jewish private banks were scarcely affected.

In the 1955 publication celebrating “175 years of L. Behrens & Sons”, it is written that the “economic recovery after 1933 [...] also” developed “advantageously for L. Behrens & Sons. Furthermore, up until 1937, the banking house still participated in the consortium issuing treasury bills on behalf of the German Reich and the German Railways. With regard to the sale of the estate at Harvestehuderweg to the City of Hamburg, there was absolutely no indication that this was a forced sale as a result of persecution. In view of the economic situation of the banking house in the spring and summer of 1935, it could-be excluded that the sale of *Pariser Wochentag (Weekday in Paris)* was an emergency sale.

In the opinion of the City of Düsseldorf, *Pariser Wochentag (Weekday in Paris)* was not sold by George E. Behrens to the city art collection, but was sold in July 1935 for 30,000 RM by Uhde-Bernays on behalf of Behrens to the art dealership Paffrath, which subsequently sold this in August or at the beginning of September to the city art collection for 33,000 RM. This was proven by the dealership’s paintings inward book and a legal declaration by the later longstanding director of the art dealership. It was also confirmed by the agreement over the payment modalities of the acquisition by the city’s art collection as this was not with Behrens or Uhde-Bernays but with the art dealership Paffrath. As a consequence of this agreement, half the purchase price was rendered in the form of eight paintings from the art collection’s inventory. The payment process was only completed in autumn 1937.

The City of Düsseldorf considers that the purchase price was appropriate because it was the highest price paid between 1928 and 1935 for “a work by Menzel of this quality. With regard to the estimate of 50,000 RM given 10 years earlier by Uhde-Bernays for *Pariser Wochentag (Weekday in Paris)*, this estimate also included three water colours or gouaches by Menzel to which a price of 20-30,000 RM was attributed. The City of Düsseldorf see no evidence that the purchase price was not paid to the seller George E. Behrens. It is of the opinion that at this point in time Behrens could have taken legal action against the buyer without a problem upon a refusal to pay. In addition, they point out that as late as 1938, Behrens sold a further Menzel painting (*Beati possidentes*) from the collection of Edouard L. Behrens to the Paffrath art dealership.

On these grounds, the City of Düsseldorf declines to restitute *Pariser Wochentag (Weekday in Paris)* to the heirs of George E. Behrens.

After the two parties were unable to reach an agreement, they agreed to put the case before the Advisory Commission and for the Commission's recommendation to decide the case.

The Commission has come to the conclusion after a thorough examination of the legal papers and documents presented to it that the sale in 1935 of the Menzel painting *Pariser Wochentag (Weekday in Paris)* from the estate of Edouard L. Behrens did not constitute a loss of assets as a result Nazi persecution. As a result, the surrender of the picture to the heirs of George E. Behrens cannot be recommended.

Of course, the Commission does not fail to recognise that George E. Behrens belonged to the category of Jews or "non-Aryans" who were collectively persecuted on racial grounds after the enactment of the "citizenship law" on 15 September 1935; that he was in a concentration camp from November 1938 until March 1939; that the banking house led by him had to be liquidated, and that he was forced to emigrate, losing a major part of his wealth. It is, however, of the opinion that the situation at the time of the sale of the Menzel painting both for the banking house and the family was different.

It is indisputable that from the spring of 1933 onwards, there was massive anti-Semitic agitation in Germany, even anti-Jewish riots, and an altered legal position with the introduction of the "Aryan Paragraphs" for employment in the civil service. However in historical research, it is unchallenged that in the first years of the "Third Reich" the Jewish private banks were not immediately affected. The Economics Ministry until towards the end of the "Schacht Era" was interested in the smoothest possible functioning of even the Jewish private banks and successfully deflected anti-Semitic advances in this area for several years. At first, the Jewish private banks even experienced an economic fillip with the abating of the world economic crisis. This is also recorded for the banking house L. Behrens and Sons.

There is no concrete evidence in the early years of Nazi rule for the "substantial loss of revenue and income" which in the opinion of the heirs the banking house L. Behrens and Sons suffered from 1933 onwards. The heirs also referred to the fact that George E. Behrens by 1935 had lost a total of 11 board memberships which he had held at the end of the Weimar Republic, and that the characterisation of the sale in July 1934 of the estate on the

Harvestehuder Weg (“the family home”) as because of persecution had been confirmed. A reparations claim for this in 1952 resulted in compensation being paid.

Neither arguments are valid. Contrary to what is maintained by the heirs, the majority of the board memberships, namely seven, were held until 1935, and general economic reasons are more probable than anti-Semitism for the loss of two seats in 1932-3 and a further two in 1933-35. Therefore for the period before the “Nuremberg Laws”, an economic predicament caused by persecution conditions cannot be deduced from the loss of the board memberships. The fact that the banking house continued until 1937 to belong to the consortium issuing treasury bills on behalf of the German Reich and the German Railways also supports this.

With regard to the land at Harvestehuder Weg, it was already regulated in section 11 of the last will and testament in 1922, upon which the disposition of the entire estate of Edouard L. Behrens was based, that “if my wife [for whom the right to live there was guaranteed as long as she lived] wishes to sell or sell after her death, its sale is to proceed.” That means that the administrator of the will was instructed to sell the land, which apparently was considered a burden on the estate, as soon as the widow of the testator no longer lived there. The city of Hamburg paid 200,000 RM for the land in July 1934. In view of the price paid, there is no indication there is no indication that the city attempted to exert pressure and force a sale below the market price as a result of anti-Semitism. What is correct though, is that George E. Behrens had applied for compensation, and in February 1952, in a settlement with the City of Hamburg was awarded 30,000 DM for this and a further piece of land on the Harvestehuderweg. The reasons for the settlement agreed before the Regional Court and the comparatively low amount of compensation (in 1950 George E. Behrens and his sister received 130,000 DM compensation for the company headquarters in Hermannstrasse which was sold in 1940 for 400,000 RM) are not known.

In connection with this, the heirs pointed out that in the “recommendation” written by an advisor in July 1959 regarding the ruling in the drawn out compensation proceedings of the heirs of George E. Behrens over the sale of 1934 (which in the recommendation is “only for the sake of completeness mentioned”), there is the remark that this sale “occurred for persecution reason as a result of the boycott measures against the banking house of the testator the retention of the property was placed in question”. Nothing has come to light

about the “boycott measures” against the banking house George E. Behrens & Sons for the period up to the summer of 1934. Such boycott measures do not fit the picture which has been compiled in the research about the political and economic situation of Jewish private banks in the early period of the “Third Reich”. It is therefore not recognised that George E. Behrens was forced to sell the property because of a situation of political persecution.

George E. Behrens was interested in selling in Germany or abroad, a large number of paintings from the total collection of Ed. Behrens lent to the Hamburg Kunsthalle, amongst which was the painting *Pariser Wochentag (Weekday in Paris)*, as soon as the situation in the money market appeared favourable to and as soon as the agreement with the Kunsthalle expired. This is verifiable (memorandum about a conversation with Behrens in the Hamburg Kunsthalle, 8 March 1935). *Pariser Wochentag (Weekday in Paris)* was already deleted from the list which Behrens sent on 28 March 1935 to the Hamburg Kunsthalle, so it is assumed that at this time there were serious negotiations with other interested parties.

The painting appeared in the entry book of the art dealership Paffrath in Düsseldorf with a quoted price of “30,000” in July 1935, and with the note of origin “G. Behrens Hamburg via Uhde Bernays”. Although the exact date of the purchase is not known, it is not disputed that the painting was subsequently acquired by the Düsseldorf Kunstmuseum by 31 July at the latest with the agreement of the major and the responsible department heads. Regarding the debatable question of whether the Paffrath gallery bought the painting or simply took it on commission, the anniversary booklet “100 years of the Paffrath Gallery” clearly speaks of a “purchase”, adding that the painting was subsequently bought by the Düsseldorf Kunstmuseum. It is also clear that the Paffrath gallery bought another Menzel painting from Behrens in 1938 and did not take it on commission.

To answer the question if the Paffrath gallery bought the painting from Behrens or only took it on commission, a crucial factor is that the payment method by the Düsseldorf Kunstmuseum for *Pariser Wochentag (Weekday in Paris)* was agreed with Paffrath and not with Behrens or Uhde-Bernays. In addition, in the provisions agreed, only 15,000 RM were paid in cash and the remaining 18,000 RM offset against pictures from the inventory of the Düsseldorf Kunstmuseum, a situation which only made sense for an art dealer and not a seller who was in the process of breaking up a collection. Therefore all the indicators are that Behrens, via Uhde-Bernays, sold the painting in July 1935 to the Paffrath gallery which

sold it on in the following weeks or months with a 10% mark up to the Düsseldorf Kunstmuseum. The time point of the sale by Behrens, to the extent that it is of importance, is without a doubt before 15 September 1935, and so, before the enactment of the “Nuremberg Laws”.

If one asserts, as the heirs do, that George E. Behrens was the victim of collective persecution, a loss as a result of Nazi persecution, and also a forced sale, then the fact that George E. Behrens received a fair price and free disposition over this refutes these arguments.

With regard to the purchase price for *Pariser Wochentag (Weekday in Paris)*, it is the conviction of the Commission that 30,000 RM was in line with the market at that time, and therefore, appropriate. What reinforces this, is that the sale proceeded quickly and the seller did not wait for a better price. The higher prices mentioned by the heirs for *Pariser Wochentag (Weekday in Paris)* and two further Menzel paintings do not contradict this assessment because the price of 50,000 RM was based on a previous estimate by Uhde-Bernays given ten years prior to 1935, in a stable phase of the Weimar Republic and under totally different market conditions; and because for Menzel paintings in 1940/ 41, when the war appeared to be won, better market conditions prevailed. A loss in connection with the sale of *Pariser Wochentag (Weekday in Paris)* is therefore not established.

The question remains whether Behrens received the purchase price and could he dispose of it freely. It is true that no receipts have survived. But there is no indication that the Paffrath gallery did not pay the money. In the summer of 1935, in its own interests, an art dealership could not have afforded not to have paid the price to the owner of such a large and publically known collection. And furthermore, at this point, George E. Behrens could have proceeded legally against a defaulting payer. If the Paffrath gallery had not paid the money, then without a doubt, the Düsseldorf Kunstmuseum also would not have paid the full price to the Paffrath gallery in the years that followed. There is no doubt that in 1935 George E. Behrens was still able to freely dispose of the money and that the purchase contract was correctly executed.

The overall result of the individual validation steps is therefore that the restitution request of the heirs cannot be agreed because the sale of *Pariser Wochentag (Weekday in Paris)* is not a case of a Nazi persecution-induced loss.

It is the task of the Commission to arbitrate between the present possessors and the former owners or their heirs when there are differences of opinion, if both sides want this. It can deliver an ethics based recommendation to solve the conflict. The following have agreed to work on an unpaid basis on the Commission: the former President of Germany Dr. Richard von Weizsäcker, the former president of the German Bundestag Professor Dr. Rita Süßmuth, the former president of the Constitutional Court Professor Dr. Limbach, the lawyer Dr. Hans Otto Bräutigam, the legal philosopher Professor Dr. Dr. Dietmar von der Pfordten, the historian Professor Dr. Reinhard Rürup, the art historian Professor Dr. Wolf Tegethoff and the philosopher Professor Dr. Ursula Wolf.

The Deutsche Zentrum Kulturgutverluste (German Centre for Cultural Property Losses) is the office of the Advisory Commission and the contact point for applicants.

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