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Elise Viebeck, a native of Pleasanton, California, is currently a senior at Claremont McKenna College and served as the Editor-in-Chief of the *Claremont Independent*, the conservative campus news magazine. The piece that won Elise the Eric Breindel Award, looked at a CMC professor's missteps in the world of Nazi art restitution, and garnered a citation in the *Los Angeles Times*. Elise chose a summer internship in 2009 at the *New York Post* where she researched stories and assisted the editorial page staff.

CMC Professor Involved in Art Restitution Controversy; Firm clears Petropoulos of legal wrongdoing; ethical questions remain

By: Elise Viebeck

Claremont McKenna College's administration first learned of the Pissarro affair in early August 2007 when Dean of Faculty Gregory Hess and John V. Croul Professor of History Jonathan Petropoulos met for coffee at Starbucks.

The situation, which has received significant mention in the European press, involves Petropoulos in a controversial effort to restitute a Nazi-looted painting to its rightful owner, in which his associate, a Munich art dealer, has been investigated for blackmail.

"He had told me something, that there was some controversy," said Hess in a recent interview with the *Claremont Independent*. Petropoulos, also the director of CMC's Center for the Study of the Holocaust, Genocide and Human Rights, did not provide Hess with details or articles.

A law firm retained by CMC has since exonerated Petropoulos of legal wrongdoing in the case.

After his first meeting with Petropoulos, Hess did not take any action. "My understanding is some of this material may have appeared in French and other foreign languages," said Hess. "My French is not great. I don't usually trawl French newspapers for things... I don't think that's a very effective way of uncovering and understanding the situation."

An internet mechanism at CMC Public Affairs alerts the college of daily press coverage related to faculty. Highlights are conveyed to senior administration officials, but it is unclear if the system faltered in this case. Hess said he did not know who else among the administration may have known about the affair at the time. Evie Lazzarino, the Director of Public Affairs and Communications at CMC, could not be reached for comment.

The story of the Pissarro begins with Zurich resident Gisela Fischer, 78, who is of Jewish descent. She and her family fled Vienna in 1938 two days after the Nazi Anschluss. The Gestapo looted their home, and among the stolen items was a painting by impressionist Camille Pissarro, *Le Quai Malaquais, Printemps*.

After the war, Fischer's father successfully located and reclaimed many of his family's stolen assets. After her father's death in 1995, Fischer concentrated her efforts on the Pissarro which had remained elusive. In early 2001, she registered the painting with the Art Loss Register (ALR), a London-based for-profit company involved in stolen art recovery.

The ALR began to research the painting's provenance, or history of ownership, in the hope of ascertaining its location. There was no initial financial arrangement, as at that time the ALR did not charge for Holocaust and World War II art claims.

"When she first registered the painting, we were doing it pro-bono," confirms ALR chairman Julian Radcliffe of the research and recovery effort. Professor Petropoulos, an expert in Nazi-looted art, was involved as a consultant from an early stage.

On January 8, 2007, at a meeting in Munich, a representative of the ALR gave Fischer a message from Petropoulos. He wrote in a letter dated December 7, 2006 that he had located the painting in Switzerland and was communicating with an unnamed contact of its owner. The owner was a "foundation created by the heirs of the person who purchased [the painting] in 1957."

The foundation, he wrote, wished to remain anonymous.

Two days after the meeting in Munich, Radcliffe also sent Fischer a letter, this time to request a finder's fee for the organization's success in finding the Pissarro in Switzerland. Despite its earlier commitment not to charge Holocaust claimants, the company had changed its charging policy for Holocaust art claims, telling claimants that the company could complete restitution "at far less cost and often more efficiently" than the expensive lawyers who took some cases. The meeting with the ALR in January 2007 was the first Fischer knew of the ALR's changed policy.

For the Pissarro case, Radcliffe proposed an elaborate compensation scheme, including 20 percent of the first \$1 million, 15 percent of the second million and 10 percent of any additional value of the painting. Included in his price was a stipend for Professor Petropoulos, who had requested \$100,000 from the ALR for his services.

In a letter dated January 23, Fischer's lawyer, Dr. Norbert Kückelmann, rejected the ALR's proposal. Three days later Petropoulos met with Fischer at the Hotel St. Gotthart in Zurich to try a new arrangement.

Radcliffe and Sarah Jackson of the Art Loss Register also went to Zurich, only to find themselves excluded from the dealings. "We went expecting to be included in the meetings with Ms. Fischer only to discover that they had already had meetings without us. We realized we had been cut out," Radcliffe told the CI.

At the hotel, Petropoulos and Peter Griebert, a Munich art dealer, showed her digital photos of the Pissarro, claiming to have taken them that morning. According to an account published in ARTNews magazine, they did not give further details about its location or the identity of its owners at that time.

Professor Petropoulos and Griebert then asked her for 18 percent of the painting's market value as a finder's fee. The percentage was to be divided between the two. Experts estimate the worth of the painting to be \$2 to 3 million at minimum, meaning that based on the split, it is likely that each man would earn at least \$200,000.

In a letter on January 29, Griebert asked Fischer for an affirmation of this agreement in writing.

Fischer rejected his request in a letter on February 1. "I decline the terms you have repeated: that a separate contract for a 'finder's fee' of 18 percent is warranted by you and Jonathan Petropoulos before you actively establish contact between me and the current holders or their lawyers," she wrote. "To me this constitutes a threat: if I don't obey your demands, the Pissarro will disappear again as it did in 1938."

On April 2, with no progress in sight, Kückelmann filed charges against Griebert in Munich. He based his complaint on § 253 of the German Criminal Code which defines Erpressung, rendered in English as "demanding with menaces," or blackmail. Munich Chief Prosecutor Christian Schmidt-Sommerfeld told ARTNews in summer 2007 that the investigation did not include Petropoulos because he is an American and his alleged crimes would have taken place outside Germany.

In a March 11, 2008 email to the CI Professor Petropoulos defended his actions. "I always endeavored to return the painting in question by Camille Pissarro to the person whom I believed was the rightful heir," he said.

Emails from Petropoulos to Griebert following the Zurich meeting, obtained through a source close to the investigation, paint a different picture.

"If Frau Fischer and Dr. Kueckelmann choose not to engage us, then we cannot say what will happen to the painting," Petropoulos wrote on February 6, 2007. "It would be difficult to give her the names and locations without any compensation. That just won't happen."

"[H]er response is so irrational, it is hard to make sense of it all," he added in an email the next day. "She simply cannot recover the painting without us. At least, I don't know if she would discover on her own the identity of the holders and their current location. We need to keep that in mind. She needs us."

Petropoulos insisted, further, on their original demand for 18 percent. "As we have stressed, we had a deal with Frau Fischer for this amount (and we also hold all the cards right now)," he wrote on February 15.

Protocol and compensation are divisive issues in the world of looted art restitution. Some organizations, like the Art Loss Register, charge fees up front or on recovery for their services. Others, including charitable and non-profit bodies like the Commission for Art Recovery, the Commission for Looted Art in Europe and the Holocaust Art Restitution Project, will pursue claims on a pro-bono basis.

Ori Z. Soltes is a co-founder of the Holocaust Art Restitution Project (HARP), former director of the National Jewish Museum, and a professor of theology at Georgetown University. In a recent phone conversation with the CI, he explained the fine line between ethical and unethical practices in art restitution: “Someone comes to you and says ‘Could you do research to help me find this?’ and you do so for a fee because that is how you make a living. You agree to a rate for your work. That’s different from going to someone and saying ‘I’ll get it for you once you agree to give me a percentage.’”

Professor Petropoulos told ARTNews in the summer that he had consulted with three lawyers who he said assured him that he was “following accepted practices” with regard to the Pissarro. In his March 11 email, he responded to those who have called for all restitution services for Holocaust victim claimants to be pro bono. “The American Bar Association’s definition of ‘pro bono,’” he said, “is not that one works for free, but that one reduces one’s fees.”

In response to recent questions, he also directed the CI to an article in Forbes magazine recounting one of the most famous and lucrative instances of art restitution in American history: the so-called “Klimt case.”

In 1998, Los Angeles resident and heiress Maria Altmann hired lawyer E. Randal Schoenberg explicitly to litigate for the restitution of several pieces of her family’s art collection that were looted during the Nazi Anschluss. One portrait by Gustav Klimt later sold for \$135 million.

Sources close to CMC faculty say that Petropoulos often compares his work with Schoenberg’s, now a partner at Burris & Schoenberg, LLP, in Los Angeles. In the unprecedented suit of Altmann vs. Republic of Austria, Schoenberg argued successfully for Ms. Altmann’s ability to sue Austria for the restitution of her assets. He then arbitrated the proceedings. It is reported that he received 40 percent of the value of the recovered assets.

The difference between academics and lawyers participating in commercial art restitution is evident to experts.

“Maria Altmann has the resources to engage a lawyer for whatever she needs—in this case, the Klimt,” said Ori Soltes of HARP in a recent phone conversation. “Schoenberg was engaged by the family as a lawyer as they would have engaged a lawyer for anything. A finder’s fee [for recovering looted art] is nuanced differently.”

Marc Masurovsky and Willi Korte, co-founders of HARP with Soltes, concur. “The people who are most likely to collect fees are the attorneys. There is a coterie of researchers and historians who are working with NGOs and policymakers and claimants. None of them have ever engaged in this kind of behavior,” says Masurovsky.

The Art Loss Register has created its own good practice guidelines called the “Public Policy Implications of Paying for Information or Return of Stolen Property.” They set out terms for negotiation and restitution where criminal connection is possible.

If an owner wishes to remain anonymous, as Petropoulos and Griebert told Fischer was the case for their contact, payment for restitution will “probably be out of the question” even if there are no indications of a criminal connection. The protocol states that there are no circumstances in which anonymity in relation to theft is justified, primarily because anonymity could lead to a withholding of information from the police, increase costs for the victim, and support future crime.

The ALR’s Sarah Jackson believes that charging a finder’s fee is acceptable when “time and expertise have been invested to solve a case.” Fees, however, “should not be passed to any party...who were involved in knowingly handling stolen goods,” she says.

The identity of the true owner of the Pissarro throws into question Griebert’s and Petropoulos’ intentions and account of the painting. In a May 2007 raid of a private safe at the Zurich Cantonal Bank, Swiss investigators discovered the painting in a vault registered to Schönart Anstalt, a trust in Liechtenstein. The trust, in turn, belonged to Bruno Lohse, an art dealer, former Nazi looter, and major subject of Petropoulos’ scholarship.

Lohse was born in Berlin in 1911, and joined the Nazi Party in 1937. From 1941 to 1944, he worked with the Einsatzstab Reichsleiter Rosenberg, a Nazi art looting organization in France, and as a personal art purchasing agent and consultant to Hermann Göring. He died in Munich in March 2007.

Legal documents show that Griebert, Petropoulos’ associate, had been Lohse’s aid and connected to Schönart Anstalt since 1988, and had entered the vault over 20 times.

Petropoulos claimed in ARTNews never to have known of Griebert and Lohse’s mutual connection to Schönart Anstalt or their mutual enterprises. He has, however, admitted to meeting Lohse “dozens of times,” though in a recent email exchange refused to say how he met Griebert. A source close to the investigation says that it is very likely that as Lohse’s aid, Griebert would have been present for Lohse’s first meeting with Petropoulos, and that the two were familiar over the succeeding years. In the acknowledgments portion of *The Faustian Bargain*, Petropoulos’ second book, Petropoulos thanks Lohse and Griebert along with many others for sharing “knowledge of the figures in this study.”

Petropoulos’ next book, rumored to be titled *Bruno and Me*, will focus on Lohse. Lohse was “a very problematic figure who trafficked in looted artworks and stashed some of them in Switzerland,” Petropoulos said in an October 18 press release on the CMC website.

The book—“part memoir, part archival-based monograph, part philosophical reflection”—will recount Petropoulos’ attempts to understand Lohse and “untangle his web of lies.” It will build

on 25 years of research in “Bavaria and Austria most every summer [to] track down the hands-on plunderers,” said Petropoulos.

According to sources in the art restitution world, there is a widespread feeling of dismay at the closeness of the relationship between Petropoulos and Lohse and its impact on the credibility of his academic work, especially in light of Petropoulos’ role in the Pissarro affair. A historian of the Holocaust, many believe, has a special duty to ensure that there are no conflicts of interest - real or perceived - between his responsibilities as a scholar and his commercial interests.

The statement of “Standards of Professional Conduct” for the American Historical Association directs members to avoid situations in which personal interest “could compromise (or appear to compromise)” their professionalism. Financial arrangements that “benefit or appear to benefit” historians at the cost of their professional charge are also to be avoided.

To Marc Masurovsky of HARP, the Pissarro situation is emblematic of the “dark side” of the art restitution world. “[Petropoulos] behavior is not becoming of a scholar. I’ve known Holocaust experts to interview ex-Nazis, but never to engage in long-standing relationships with them,” he said in a recent phone conversation.

In his March 11 email, Petropoulos responded to questions of ethics. “I have thought a great deal about ethics,” he wrote. “In this particular instance, [I] discussed the matter at length with long-time CMC Professor John Roth, a world-renown expert on the ethical implications of the Holocaust.”

In the fall, members of the CMC faculty who had seen the news approached Dean Hess about the affair.

“Faculty members contacted me about some articles in a foreign language. That was probably about the first I’d come across it,” says Hess. “You know, we have other things going on at the college.”

The college contracted with O’Melveny and Myers, LLP, a top Los Angeles law firm, to begin an investigation “sometime in November or December,” according to Hess.

Its goal was to look at two areas: the possibility of “violations of law” and “violations of contractual agreements” in both Europe and America, says Jerome Garris, Vice President for Special Projects at CMC. He did not specify which contractual agreements.

The investigation concluded in late February. According to Garris, no contractual obligations or legal issues with respect to contracts were violated. Hess stressed the difficult logistics of an international probe.

Petropoulos stands by the firm's conclusions, which Hess says will not be released. "As you well know, the College conducted an inquiry and explicitly cleared me of any legal or contractual wrongdoing," says Petropoulos. "I feel completely vindicated by this inquiry."

When asked whether the report dealt with matters of ethics and judgment, as opposed to merely strict legality, both Hess and Garris said that matters of judgment are subjective.

"The college is not in a position of making a value judgment," says Garris. "There is not necessarily a common view enshrined in statutory regulations about what is or isn't ethical, or what is good and what is bad." As administrators, he added, "we're not in a position frankly to apply our personal opinions to this matter."

"They had something. They were getting together on something. In the end, they didn't get together on something. I'm not going to judge it," says Hess.

The board of the CMC Holocaust Center was alerted at an Executive Session in mid-February. Most members had not heard about or read details of the affair.

When the CI spoke with Hess last week on March 6, he said that there had been no communication with faculty on the topic. On March 7, a statement was issued electronically to Trustees and physically placed in the boxes of CMC faculty. It said that in response to the reports of allegations, "the College undertook a thorough review and retained an outside law firm to assist in the four-month investigation." Based on evidence "examined here and abroad, the College has concluded that Professor Petropoulos adhered to applicable contractual and legal obligations in attempting to arrange return of the painting."

"Professor Petropoulos' account of his actions was accurate," the statement added.

Later praising Petropoulos for his professionalism, the statement did not specify which contractual or legal obligations were relevant to the case, nor that ethical implications had been considered.

The administration's statement did not satisfy some. "The attitude of the college with regard to [Petropoulos'] behavior is, at the very least, troubling," says Masurovsky.

He added, "His judgment is one that I would question."

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