

Who will be the recipient of Margret Kainer's millions?

BY ALEXIS FAVRE

In 2005, the Vaud Canton, the commune of Pully and a foundation shared an unclaimed fortune. New heirs have come forward and have sought legal intervention

They live in Australia, South America and the United States. Perhaps they do not know one another, or speak the same language. They do, however, have one thing in common: they are jointly claiming the recovery of Margret Kainer's inheritance. Margret Kainer was a Jewish German who fled from Germany in 1932, and passed away in 1968 after thirty-five years of exile. Her administrative residence was in Pully (VD). The worth of her once modest heritage is now estimated at more than 50 million dollars by Mondex Corp, a Canadian company specializing in the recovery of unclaimed assets, who located roughly ten potential heirs and now represents them in this matter.

Why so much money? Because Margret's nest egg made babies since she passed, and because over the years, the Swiss foundation that claims to be the heir of her father – Norbert Levy, a business man from Berlin who passed away in 1928 – has recovered works of art once looted from the family by the Nazi regime, as well as significant compensation.

The ending to this saga is currently being played out before the Justice of Vaud, where the resurgent heirs have filed legal proceedings against the Canton of Vaud, the commune of Pully and the Norbert Stiftung Foundation, claiming their right to inheritance.

According to her Death Certificate, Margret Kainer passed away in Neuilly-sur-Seine, and was a resident of Pully. She had no known heirs and left no will. In 1969, the Justice of Peace of Vaud opened the inheritance and published a call for heirs in the official notices of the Swiss Gazette. An estate administrator was simultaneously appointed. However, a document of the commune of Pully points out that "for some unexplained reason, the file was sent to the Archives by mistake".

The Justice of Peace of Vaud reopened this case only in 1992, "on the initiative of the Secretary-General of the Finance Department of the time, and for an unknown reason", specifies Jean-Luc Schwaar, the head of Legal and Legislative Services of Vaud. Between 1996 and 2000, a new search for heirs was launched. "Le Justice then caught wind of the existence of a document which had been sent by a bank, in 1967 if I am not mistaken, testifying of the existence of two potential heirs," he adds. "One path led to Scotland and produced no results. The second led to Australia,

where little efforts were necessary for the person to be located: the lady in question had passed away a few years earlier.” In 2002, as research had not been successful, the court ruled that in the absence of legal heirs, the inheritance would be granted to the State of Vaud and the commune.

That is when the Norbert Stiftung entered onto the playing field. This non-profit foundation was created in 1971, is domiciled in Coire, and claims to be the continuity of the Norbert Levy Stiftung, the first foundation, of private-law, created by Norbert Levy in 1927 to support his family after his death. According to the articles of the Norbert Levy Stiftung, it was to shut down automatically on the day of Margret Kainer’s death, if she were to pass after her husband and with no descendents. As the case may be, according to the provisions of Norbert Levy’s will – said trustees – three quarters of the heritage left to his daughter were to be used to create a second foundation which would also be destined to support family members in need. With these provisions and a certificate of inheritance for the estate of Norbert Levy, issued by German authorities, the Norbert Stiftung filed a claim before the Justice for the entire estate. “The Certificate of Inheritance presented by the Norbert Stiftung made its request credible, but some uncertainties remained”, resumes Jean-Luc Schwaar. At the end of this legal battle, the parties reached a compromise in 2005: of the 17.5 million francs value of Margret Kainer’s inheritance at that time, 5 million would be paid to the Norbert Stiftung, and the State of Vaud and the commune of Pully would keep roughly 6.3 million each.

At that point, everyone considered the case to be closed, and that the Pully and the Canton had hit the jackpot. The reason for this: over more than 30 years following the death of Margret Kainer, her fortune had climbed from 1.7 to nearly 18 million francs.

Nine years later, Canadian, James Palmer, President of Mondex Corp, threw everything back into question. He discovered this case while reading through a list of families who had been victims of spoliation during the war. During his research, he came across a notice from the Municipality of Pully, dated 2005, in which they asked that the Common Council accept their share of the Kainer inheritance.

Noticing that the case had a number of grey areas, James Palmer carried out “thorough genealogical research” in order to find any potential heirs of Margret Kainer. He found roughly ten of them throughout the world, and a Certificate of Inheritance was issued to each one in 2012 by a Parisian notary who considered the final residence of Margret Kainer to have been in Paris. In order to assert the rights of these presumed heirs, James Palmer mandated lawyers in several countries. To him, everything seemed clear: the Norbert Stiftung was illegitimate and the “new” heirs were entitled to Margret Kainer’s heritage, as well as the assets of the foundation, made up of artistic masterpieces, money from the sale of other works of art recovered by the foundation, and compensation paid by the German government in relation to spoliations suffered by the family.

A money claim was filed before the Chamber of Heritage of the Canton of Vaud in January 2014, against the Norbert Stiftung, the Canton and the commune of Pully. The purpose of the proceeding was to confirm the capacity of the new potential heirs

to obtain the recovery of all assets belonging to the inheritance and to contest Margret Kainer's Swiss domicile. This matter remains unsolved: during the war, Margret Kainer, and her husband, Ludwig, became stateless and she long resided in France following her exile to Switzerland. According to James Palmer's team, Margret Kainer had no true country of residence, and her address in Pully was used solely for the purpose of renewing residence permits for France on a regular basis. This bit of information is no way unimportant: "French law is more generous than Swiss law in regards to limitation," resumes Jean-Luc Schwaar. In other words: if Swiss law is applied, the request is limited and the chances of the new heirs are slim. Their chances are better if French law is applied.

In any event, according to James Palmer, the Norbert Stiftung cannot be Margret Kainer's heir, nor that of her father. In particular, because the substitution of trustee instituted by Norbert Levy, for the benefit of a foundation that was to be created on his behalf upon the death of Margret, became obsolete after 30 years, according to German law. Furthermore and also according to German law, the foundation should have been created in Germany, as the Norbert Stiftung had been created in Switzerland.

James Palmer goes even further: to him, the Norbert Stiftung was "created and controlled by the same circle of people who managed Margret Kainer's money", UBS bankers. "The bank earned service fees for 30 years, and ended up wanting the capital," stated Canadian Palmer. "The only way to recover it was to use the Norbert Stiftung. However, firstly, UBS knew as early as 1967 that Margret Kainer did presumably have heirs and, secondly, the Norbert Stiftung cannot be the continuity of the family foundation instituted by Norbert Levy, which shut down during the war for lack of resources."

According to James Palmer, Vaud and Pully ceded all of its claims on assets to be recovered in the future to the Norbert Stiftung, who then had full freedom of action in the recovery of numerous works of art or at least the products of their sales. Following this logic, a complaint was also lodged in New York, against the Norbert Stiftung and UBS, for the recovery of roughly 10 million dollars corresponding to the sale of *les Danseuses*, a work by Degas, at Christie's in 2009.

Before the Justice of Vaud, the presumed heirs now claim the entire sum that was shared by Vaud and Pully, 10 million francs from Norbert Stiftung, and an additional sum that will be determined once the assets of the foundation are known.

The lawyer for the Norbert Stiftung, Mr. Christian Girod, was contacted and states that his client "rejects all of the allegations and arguments raised before the courts of Lausanne and New York by the claimants, particularly those relating to this validity, its capacity as an heir of Norbert Levy [...] and its rights to the assets in its possession. As the dispute between the parties is currently the topic of legal proceedings, the Norbert Stiftung shall reserve its detailed response to the allegations and arguments of the claimants for the courts of Lausanne and New York, as well as the presentation of its own allegations and arguments in respect to the rejection of all claims made by the claimants."

As for Vaud and Pully, they have now joined forces. To Jean-Luc Schwaar, “we were attracted by Swiss law in this matter, despite ourselves. Thus, we do not have an offensive stance. We would like for the truth to be known, if only to avoid a precedent. We will subject ourselves to the decision of the justice, whatever it may be.” And they conclude that “taking into account the complexity of this case, the proceedings may take time. We are not yet out of the woods...”

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