

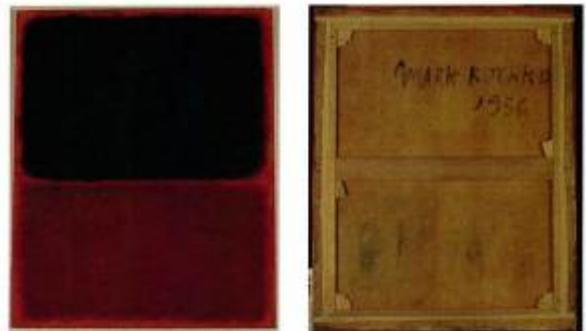
THE ART NEWSPAPER 

## Art expert contradicts Knoedler gallery

*Jack Flam, president of Dedalus Foundation, doesn't remember seeing a painting by Rothko that Knoedler says was viewed by him*

By Laura Gilbert. Web only  
Published online: 15 November 2012

Jack Flam, the president of the Dedalus Foundation, which oversees Robert Motherwell's estate, said he reacted with "astonishment" at the news that the now-defunct Knoedler gallery listed him as a Mark Rothko expert who had viewed a painting at issue in a high-profile court case. In a lawsuit filed in March 2012, Eleanor and Domenico De Sole (who is the chairman of Tom Ford International) say that the gallery Knoedler & Co, its former president Ann Freedman and others conspired to fraudulently sell them a counterfeit Rothko, *Untitled 1956*, in 2004 for \$8.3m. The gallery bought the painting for \$950,000 in 2003 from the dealer Glafira Rosales, who is now under federal investigation.



Mark Rothko's *Untitled 1956*

Flam is one of ten experts listed in an attachment to a letter dated 10 December 2004 and sent from Freedman to the De Soles' daughter under the heading "The Painting Has Been Viewed by the Following Individuals with Special Expertise on the Work of Mark Rothko". The letter was written in response to the collectors' request for assurances of authenticity and provenance, the De Soles say in an amended court complaint filed in September. The letter refers to experts who "viewed" the painting and concludes: "In summery [sic], Knoedler warrants the authenticity and good title of the painting..."

The De Soles characterise the letter as part of a sales pitch that, "while convincing, was a scam". According to the amended complaint, "Knoedler and Freedman previously had informed the De Soles [that these experts] had authenticated the Work", when in fact, "none of these experts actually had examined the Work for the purpose of providing an expert opinion, and many had seen the Work, at most, only briefly".

"I'm not a Rothko expert, and I don't remember seeing the painting," Flam said at an annual art law conference organised by the Appraisers Association at New York University on 9 November. Flam is a Robert Motherwell expert and wrote the artist's catalogue raisonné. He added: "If I did see it, it was probably behind someone's desk" and if he said anything about the painting, it was something along the lines of: "How lucky you are to have it."

The letter is also being used as the lynchpin in Knoedler and Freedman's motion to dismiss the case, now under consideration in Manhattan's Federal District Court. They argue that the De Soles' claim is barred because the statute of limitations had expired, that they had adequate notice that the painting might not be authentic, and that the collectors had a duty to inquire into its authenticity themselves.

According to Knoedler and Freedman's motion to dismiss: "In the end, [the] plaintiffs seek to blame Knoedler and Freedman when it was plaintiffs and their art advisor... who acted recklessly: they



purchased a multimillion dollar painting without asking a single expert for an opinion considering its authenticity (including any of the experts Knoedler and Freedman said had 'viewed' the work), [and] without seeing a single document reflecting the provenance (which they knew could not be entirely and indisputably verified by Knoedler)... ”

The De Soles argue they could not have known the facts of a fraud until they learned that the London hedgefunder Pierre Lagrange sued Knoedler and Freedman in December 2011, alleging that the gallery sold him a fake Jackson Pollock. The De Soles then hired a forensic expert to examine their painting who concluded that the “materials and techniques... are inconsistent and irreconcilable with the claims that Untitled was painted by Mark Rothko.”

The Knoedler gallery and Freedman deny any wrongdoing.

Gregory Clarick, the De Soles' attorney, says he was “not surprised at all” by Flam's remarks. Freedman's attorney, Nicholas Gravante of Boies, Schiller & Flexner LLP, quipped: “He can't remember [seeing the painting]? That's convenient.” A statement attributed to Knoedler's lawyer, Charles Schmerler, reads in part: “Knoedler's internal records are quite clear that Mr Flam viewed the work.”

Knoedler & Co was established in 1846 but closed at the end of November 2011, just a day before Lagrange filed his suit. (The gallery maintains the two events are unrelated.) The Lagrange suit settled on undisclosed terms in October. Freedman left Knoedler in 2009 and set up her own shop.