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Turmoil at Cy Twombly Foundation

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When Cy Twombly died in 2011 he left behind not only a legacy as one of the 20th century's most important painters but also a vast estate, plump with paintings and other works and cash in the millions.

That wealth passed from a trust to a foundation that has been busy over the past two years protecting and promoting Twombly's reputation. But the Cy Twombly Foundation is now in turmoil amid accusations, detailed in a lawsuit filed on Wednesday in Delaware state court, that one of the four people who run it took more than $300,000 in unauthorized fees for investment services and was assisted in misappropriating the money by another foundation director, Ralph E. Lerner, a well-known art-world lawyer. The suit states that Mr. Lerner and Thomas H. Saliba, the director accused of taking the fees, worked together in 2012 to have Twombly's artwork in the trust appraised at a sharply inflated value of more than $1 billion.

Cy Twombly with his work in 2005, soon after establishing the foundation.

The two men administer the trust, which is registered in New York, and a higher valuation would pad the commissions they receive by law. "Lerner and Saliba have refused to provide a copy of the trust or disclose their trustee commissions, which makes it impossible to confirm the extent of their wrongdoing, but the facts currently known raise very serious questions about Lerner's and Saliba's conduct," says the lawsuit, filed in the Delaware Court of Chancery by the foundation's president, Nicola Del Roscio, who was Twombly's companion, and its vice president, Julie Sylvester, a curator and Twombly expert. (The foundation was incorporated in Delaware.)

A lawyer for Mr. Saliba, Thomas N. O'Connor, did not immediately respond to telephone and e-mail messages seeking comment. Mr. Lerner referred questions to his lawyer, Matt Neiderman, who did not respond to messages. Mr. Del Roscio and Ms. Sylvester declined to comment, referring questions to their lawyer, David R. Baum.

The legal battle echoes many that have erupted in the past two decades over estates and within authentication boards for highly regarded artists — Andy Warhol, Joseph Cornell, Jackson Pollock, Francis Bacon — as prices for artworks have skyrocketed and accusations have flown regarding ownership, valuations, authenticity and the fees and commissions that such work generates.

At his death Twombly, whose work befuddled many American collectors and critics in the 1960s and '70s with its graffitilike scribbles and enigmatic Classical references, was considered among the most significant post-Abstract-Expressionist painters, along with his friends Robert Rauschenberg and Jasper Johns. Twombly's work had also become highly sought at auction; in 2011 Christie's sold a painting completed in 1967 for $15.2 million.

But Mr. Del Roscio and Ms. Sylvester say in their suit that the value of the artwork Twombly left behind has been grossly overstated by Mr. Lerner and Mr. Saliba, a financial adviser based in New England who met Twombly about a decade before his death. Such overvaluation could leave the foundation in a precarious position by creating unrealistic expectations of its financial power, and it could destabilize the market for Twombly work by sowing confusion about its true value. The suit says an appraiser hired by Mr. Lerner and Mr. Saliba never physically inspected any of the Twombly works at his homes and studios in Italy. Instead, it says, the appraiser used a written inventory by an archivist hired by Mr. Lerner and Mr. Saliba.

Over Mr. Del Roscio's objections, the suit adds, the appraiser valued some unfinished paintings at as much as $5 million apiece. Numerous unfinished drawings were valued as high as $300,000 apiece. And a drawing that Twombly had inspected and declared to be not by his hand (he wrote "This is a fake drawing" on the back and signed his name) was valued at $350,000. (The suit states that Twombly and Mr. Del Roscio had worked diligently during the artist's last year to place his work in categories: finished, unfinished, unsatisfactory and to be destroyed, and fragments intended only for collages.)

In February Mr. Lerner filed a lawsuit in the same Delaware court asking a judge to intervene in the foundation's dispute, saying that it had become deadlocked. The complaint asked that Twombly's son, Alessandro, be asked to join the board to break the deadlock. The suit filed on Wednesday states that Mr. Lerner's request to the court was a ploy to outmaneuver Mr. Del Roscio and Ms. Sylvester.

"Lerner undoubtedly concluded that he would be outvoted in dealing with the man he had assisted in misappropriating the foundation's money by a 2-to-1 vote, so he used the 'deadlock' as a ruse," the lawsuit states, to help him "seek a custodian or fifth board member who, he presumably hopes, will vote with him to cover up Saliba's wrongdoing." Alessandro is the third trustee of Twombly's trust.

The suit asserts that at a foundation board meeting in August Mr. Saliba mentioned that the foundation had been paying fees to his investment company, Saliba Managed Funds. Ms. Sylvester said that the foundation had never approved any such fees, and that she and Mr. Del Roscio had been unaware of such payments. (Mr. Lerner, according to the new lawsuit, said he told the board about the fees in a 2011 e-mail; the suit calls his references to that e-mail "false and misleading.") After Mr. Saliba was confronted about the payments, the suit states, he informed the foundation through a lawyer that Saliba Managed Funds was not registered as an investment firm in New Hampshire, where his office is, or with the Securities and Exchange Commission.

"Such registration is required under the Investment Advisers Act of 1940 for paid investment advisers controlling assets between $25 million and $100 million," the suit states. "Because the foundation had over $60 million in cash and financial investment instruments throughout the time that Saliba paid himself fees, the payment of these fees would have been inappropriate and illegal even if they had been approved by the board."