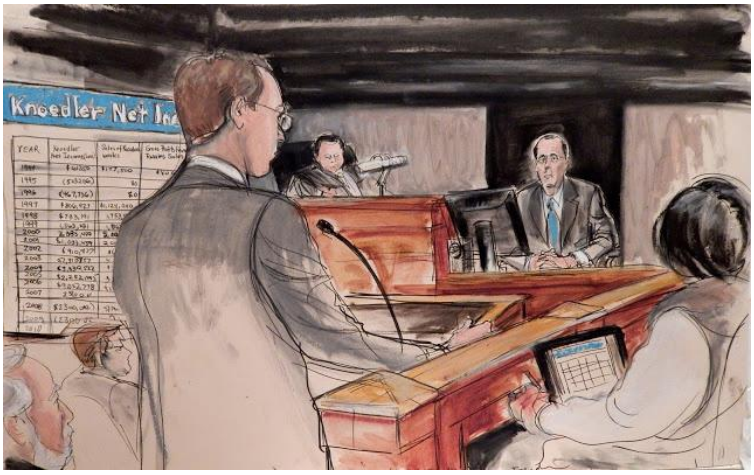
AiA Art News-service

The Knoedler Gallery Settlement Is the Biggest Missed Opportunity for Greater Art Market Transparency in 100 Years



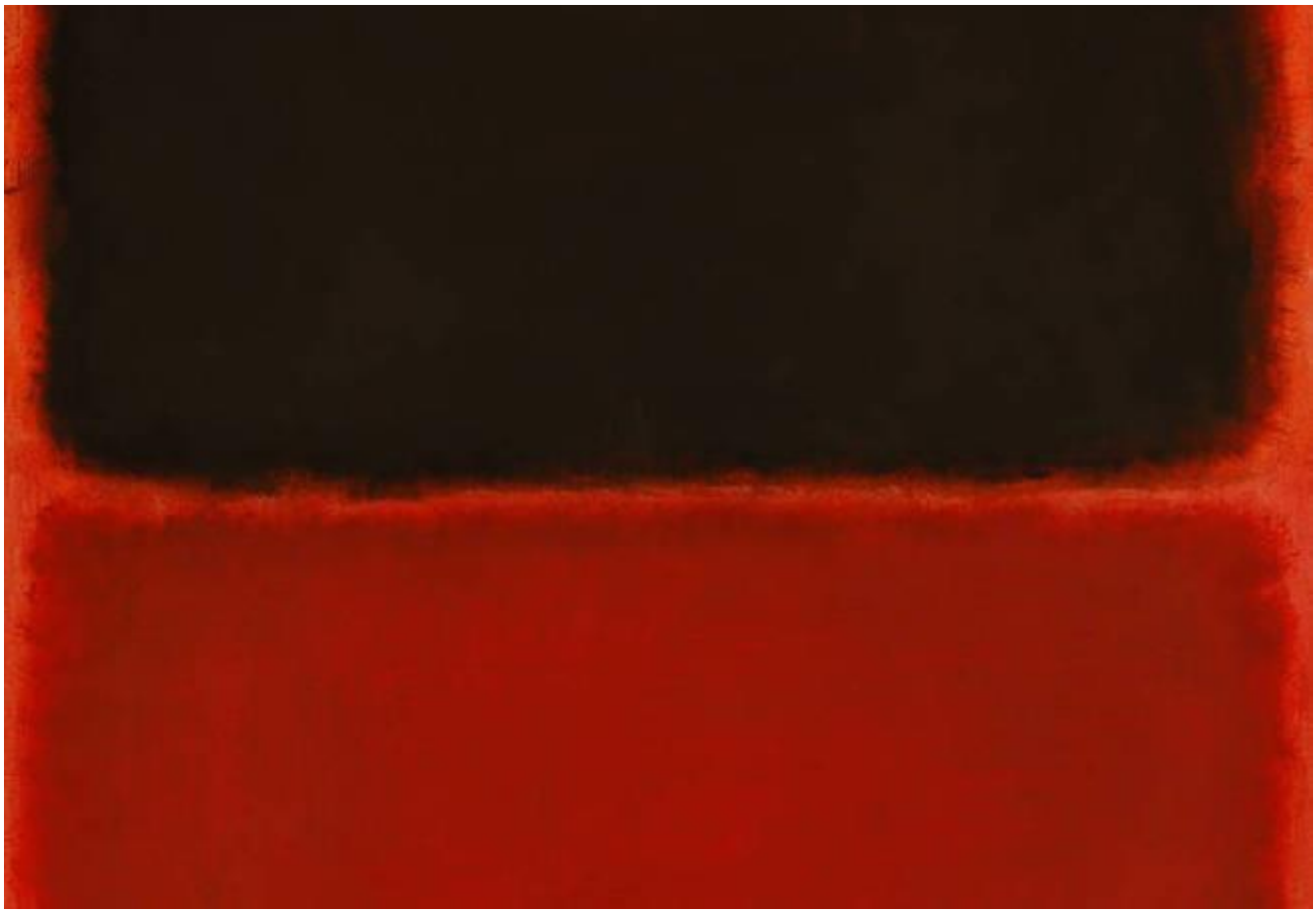
Forensic accountant Roger Siefert giving testimony on the profits Knoedler received from the sales of the Rosales Collection. Image courtesy of Elizabeth Williams of Illustrated Courtroom.

As an art lawyer, I was disappointed when De Sole et. al v. Knoedler Gallery, the high-profile case against the Knoedler Gallery and its director, Ann Freedman, ended in a settlement of undisclosed terms last week. It is exceedingly rare for forgery cases to go to trial. And most cases that do are certainly not at the level of complexity, value, and prestige represented in this case. With Wednesday's settlement of De Sole's claims against Knoedler, we missed an opportunity to examine the art market today and for Judge Gardephe to render an opinion commenting on this market's often opaque practices—an opinion which could have discredited practices leading to deep-seated problems in this industry, created more significant disincentives to selling forgeries, and fostered greater art market transparency in the future.

The case began in 2011, when the Knoedler & Company gallery was shuttered, amidst allegations that it sold upwards of $80 million in forged paintings. The forgeries were consigned or sold to Knoedler by Glafira Rosales, a woman representing the owner of an anonymous Swiss collector, "Mr. X" but were, in fact, the work of Pei-Shen Qian, a Chinese artist based in Queens who has since fled to China. The De Sole's case centered on a fake painting purported to be the work of Mark Rothko, which Domenico and Eleanore De Sole purchased from Knoedler in 2004 for $8.3 million. Ten cases, in total, were brought against Knoedler and its parent company, 8-31 Holdings, Inc., four of which remain pending. Due to Domenico De Sole's role as the Chairman of Sotheby's and the $25 million in damages sought in this suit, it was arguably the most significant matter brought to trial in relation to the Knoedler forgeries.

Perhaps the last art authentication litigation to receive such frenzied publicity in the U.S. was nearly a century ago, in 1929. The case, Hahn v. Duveen, examined whether a statement about a painting was defamatory, and the trial provided the public with insights into the operations of the art world. A primary reason that forgery matters do not reach trial stems from publicity concerns of all parties involved; galleries, dealers, and auction houses do not want to receive negative public attention stemming from the sale of forged works, and the current owners of those works do not want to destroy the value of artwork in their collections. In the instance that the court finds the

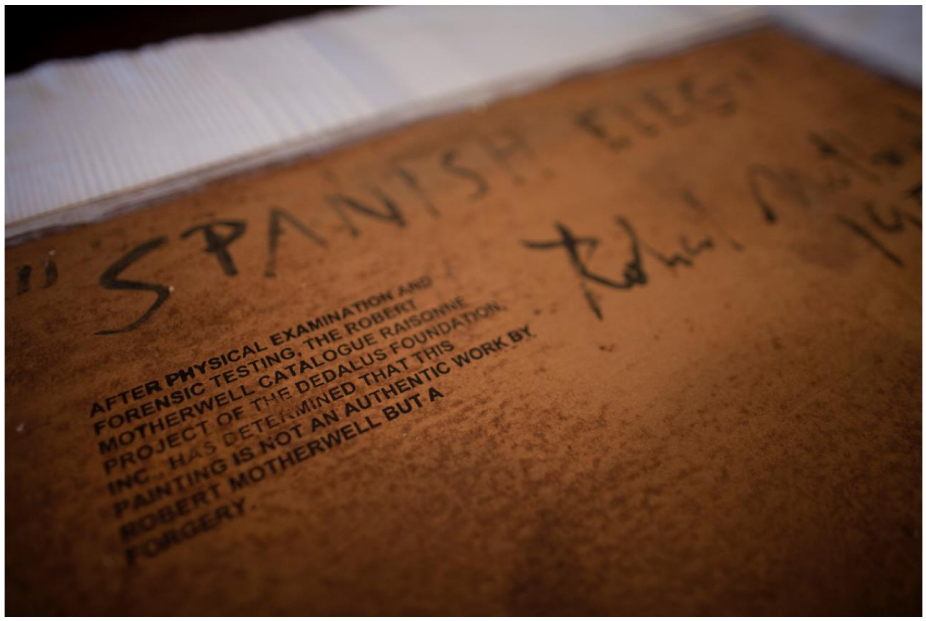
seller not liable, the current owner will then be left with a virtually worthless object or one that has a shadow of doubt cast on its authenticity.



The trial against the Knoedler Gallery was a particularly good opportunity for the court to delve more deeply into the art world because Judge Gardephe, the presiding judge (with whom I was lucky enough to speak on an authentication panel in November 2014), is deeply interested in the art market. His filings, in the lead up to the start of the trial were insightful. Throughout the litigation, Freedman (who separately settled just days before the entire matter came to a close) insisted that she believed the works passing through the gallery were authentic, claiming that she too was duped by the consignor. But Judge Gardephe did not accept this assertion. The judge rejected a motion to dismiss two lawsuits against Freedman and the Knoedler

Gallery, finding that the complaints against the defendants provided evidence which demonstrated that Freedman likely knew her statements were false, and that the case must be settled in court.

I hoped the trial would also tackle questions regarding the responsibilities of art merchants (persons claiming superior knowledge or skill in the art market) and so-called "sophisticated buyers." Freedman's attorneys have argued that red flags, which arose during their client's dealings with Rosales, do not establish recklessness or culpability on the part of the dealer. If the trial had moved forward, this would have been a chance for the court to comment on the role and responsibilities of dealers and whether they should be held to a heightened standard for arts transactions, particularly in instances where a gallery is so well-known and relies upon its reputation to deal in such high-value works. One might ask: As art market professionals, do dealers have an obligation to research works before sale, and is it not reasonable for buyers to rely upon a gallery's knowledge? In the case of the Knoedler Gallery, Ann Freedman was a leading gallerist in New York, at one of the nation's oldest galleries.



At the same time, Domenico De Sole testified, “I’m not a sophisticated art expert at all. My expertise is luxury goods.” De Sole did not assume his role as Chairman of Sotheby’s until last year, and that role is not one of an art expert, making reasonable his claims that he was not a “sophisticated buyer.” However, one might question what due diligence is required in making and protecting any multi-million dollar investment. Would it be reasonable to expect De Sole to have researched the multi-million dollar Rothko before deciding to make the purchase? Should art buyers be held to the same standard as those purchasing a business or even a home, where the solicitation of independent third party analysis prior to purchase is the norm? These are questions that remain unanswered due to this settlement.

The number of forgeries on the market is unknown, but some experts have opined that as much as half the market is comprised of forged art (others have questioned the accuracy of this number). With so much at stake, I would argue that collectors should, regardless of legal precedent, undertake due diligence measures to ensure the veracity of their potential purchase. Authentication has been likened to a three-legged stool, which relies on: forensics, the use of scientific testing to provide support to a given work’s authorship; provenance, which documents an object’s history of ownership; and connoisseurship, the stamp of an expert who understands the details and techniques of a given artist and who can serve as a critical judge of authenticity. Authentication is established by balancing these three prongs, often assisted by art lawyers and independent third-party art market professionals.

In addition to completing due diligence, buyers should also protect their purchases with contracts that clearly set forth warranties and rescissions. For example, if problems arise following purchase, some auction houses and galleries allow buyers to return works within a given period of time. Signing contracts with “as is” clauses should be avoided, as should warranties for short periods of time that do not provide buyers with ample opportunity to complete due diligence and thoroughly test a high-value work.

Although settlement may have been the best option for all parties involved in De Sole v. Knoedler Gallery, it deprives the art market of a clearer mandate around the dealer and collector responsibilities for authentication. Achieving that clarity would have benefited the art world, and so, for the industry at large, the De Sole v. Knoedler settlement represents a sorrily missed opportunity—and one we may not have a chance to rectify for another century.

—Leila Amineddoleh