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JUDGE ABRUPTLY CALLS RECESS RIGHT BEFORE ANN FREEDMAN'S TESTIMONY IN KNOEDLER TRIAL

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The fake Rothko painting at the center of the trial.

On Tuesday, after a lunch break at Domenico and Eleanore De Sole's trial against the Knoedler gallery in U.S. District Court in Manhattan, the room was packed with onlookers in preparation for the testimony of Michael Hammer, Knoedler's owner, and Ann Freedman, the gallery's former director. The De Soles allege that Knoedler and Freedman knowingly sold them a fake Mark Rothko painting—part of a group of forgeries brought to the gallery by the dealer Glafira Rosales and sold to unsuspecting collectors—for \$8.3 million in 2004. Freedman settled with the De Soles out of court on Sunday for an undisclosed sum. The suit against the gallery, and its holding company, 8-31, continued this week.

Once the room had filled, the lawyers all left together, only to return a few minutes later, with the presiding judge, Paul G. Gardephe, trailing them. The judge told the jury they were dismissed early for the day, “due to unexpected developments,” and that the court would reconvene in the morning. This led to a great deal of speculation among the lingering journalists about whether or not the De Soles were going to settle with Knoedler and 8-31.

Charles Schmerler, a lawyer for Knoedler, said the abrupt recess, right before the plaintiff's most high profile witnesses were to be called, was only a scheduling conflict. Luke Nikas, Freedman's lawyer, said he didn't know why the jury had been sent home for the day, but that Freedman was in the building, and had been prepared to testify around 4:30 p.m., after Hammer. Outside the courthouse, the De Soles declined to comment on the shortened day.

Earlier on Tuesday, Ruth Blankenschen, the chief financial officer for Knoedler and 8-31, appeared on the witness stand. She said that, at Freedman's request, she had personally paid Rosales \$9,000 in cash—tucked in an envelope—as part of her commission in the sale of a forged painting. (Rosales always wanted to be paid partly by wire, partly by check, and partly in cash, the latter in an amount less than \$10,000. Blankenschen admitted during her questioning by Aaron Crowell, a lawyer for the De Soles, that this was suspicious. “I don't think I would do that” today, she said.)

Much of her testimony involved explaining the flow of money among 8-31's LLCs. Blankenschen said that money would be taken from whatever subsidiary had it available to pay 8-31's expenses, and that there was no effort to track which business was paying what share.

These expenses, she testified, included Hammer's \$400,000 a year salary. (He also received 20 percent of the combined profits of the subsidiaries.) In addition, both he and his wife had American Express cards, paid for by 8-31's subsidiaries, including

Knoedler, to which they charged \$1.2 million between 2001 and 2012. With the card, Hammer and his wife, who was on the board of 8-31, took a trip to Paris, which cost about \$10,000. (“Are you aware of any board meetings that took place in Paris?” Crowell asked. “None that I’m aware of,” Blankenschen said.)

8-31 also purchased several cars for Hammer, one of them a \$482,000 Rolls Royce. The car was sold in 2008 for \$452,000, all of which Hammer kept for himself, claiming it on his W-2 as part of his salary. (8-31 put forth additional money toward the car so that he didn’t have to pay taxes on it.) In 2008, 8-31 bought Hammer a \$523,000 Mercedes.

Knoedler received a grand jury subpoena over the sale of forgeries in 2009, the same year Freedman resigned. Blankenschen said that when Knoedler shut down daily operations and sold its building in 2011, the company made a profit of about \$12 million from the property, after taxes. That money, she testified, was not set aside to pay back people who had bought fake works from the Rosales collection through Knoedler.

Later in his questioning, Crowell asked, “If Mr. Hammer wanted a Rolls Royce, he could take the money from Knoedler to pay for that, right?”

“From one of the LLCs,” Blankenschen clarified.]

“Including Knoedler?”

“Yes,” she said.