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IN COURT, EXPERTS SAY KNOEDLER IGNORED WARNINGS ABOUT FORGERIES

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Art dealer Glafira Rosales, who has admitted to bringing forged artworks to Knoedler.

More expert witnesses testified this week in the trial over a fake Mark Rothko painting in U.S. District Court in Manhattan. Domenico and Eleanore De Sole argue that the Knoedler gallery, and its president Ann Freedman, knowingly sold them

the forged painting at a price of \$8.3 million. The Rothko was part of a cache of counterfeit works—mostly by Abstract Expressionist artists, including Robert Motherwell, Barnett Newman, and Jackson Pollock—brought to the gallery at discount prices by Glafira Rosales, a Long Island dealer. Rosales said she was working on behalf of the heirs of one “Mr. X”—an anonymous collector with residencies in Switzerland and Mexico, whose name she declined to disclose to the gallery because, she claimed, the family wanted to remain private.

Jack Flam, the president of the Dedalus Foundation, which exists to support the legacy of Motherwell and in 2012 published the artist’s catalogue raisonné, appeared on the witness stand on Wednesday. He offered further details into the story of Mr. X that he claims Knoedler perpetuated. Mr. X allegedly obtained his collection directly from the artists’ studios, with the aid of David Herbert, an employee at both the Betty Parsons and Sidney Janis galleries, who had a documented relationship with Rothko and his contemporaries. Flam testified that he was told by Freedman that Herbert and Mr. X, a businessman said to have made a fortune in sugar, were in a homosexual relationship together. This, according to Flam, was the primary reason the gallery offered for keeping Mr. X’s identity secret. But the story eventually shifted so that the two men were “just acquaintances,” Flam said. Mr. X turned out to be the invention of Rosales, who, starting in 1994 and continuing for the next 15 years, brought Knoedler 40 fakes, all of which were painted by a Chinese immigrant living in Queens. Freedman resigned from Knoedler in 2009, and the gallery closed abruptly in 2011, after 165 years in business.

Flam saw one of Rosales’s fake Motherwells, which eventually sold to collector Jay Shidler, in Freedman’s office in 2006. Freedman told Flam that Motherwell had gone to Mexico as a guest of Mr. X in 1953, and that’s when he purchased the painting. Flam told Freedman that there was no evidence of Motherwell having been to Mexico that year. Late in 2007, the Dedalus Foundation looked at reproductions of four previously unknown Motherwells, obtained from Rosales and seemingly

from the collection of Mr. X, and concluded that “they were probably fakes.”

“The consistency of the signatures” on the paintings Flam said, “was such that it looked like [they] had been done with a template.”

There were other warning signs. “Stylistically, they did not hold water,” Flam told the jury. “We believed that they were not authentic Motherwells.” And yet, according to Flam, when he told Freedman this, she resisted the conclusion, calling the paintings’ supposed provenance with Herbert “impeccable.”

Throughout his testimony, Flam spoke with a professorial penchant for digressions, much to the ire of Charles Schmerler, a lawyer for Knoedler, who cut Flam off frequently. “Why don’t I just go ahead and object now?” Schmerler said at one point, interrupting Flam as he started to say, “I’ll speak slowly in case there’s an objection.” Even Gregory Clarick, one of the plaintiff’s lawyers, for whom Flam was called as a witness, joined in. On one of his tangents, Flam began, “I should say that my wife—”

“No, you shouldn’t,” Clarick said, effectively ending this train of thought.

During his cross-examination by Schmerler, Flam very nearly bordered on *A Few Good Men* territory as he responded to Knoedler’s defense team. When asked if, in 2006 (the year Flam first saw a Rosales Motherwell), he had a general ability to spot inconsistencies in Motherwell’s work, Flam wouldn’t give a yes or no answer, arguing that it depended from painting to painting. Schmerler, somewhat predictably, was unmoved. Flam asked, “Do you want an honest answer, or do you want a prefabricated answer of what you are expecting?”

“All I want is the truth,” Schmerler said.

“I’m trying to tell you the truth,” Flam responded. “You seem resistant to it.”

But Flam’s testimony was ultimately some of the most damning for Knoedler and Freedman so far during the trial. He said Freedman had provided him with reports that the gallery had commissioned about the Rosales works from art historians

Robert Hobbs and Stephen Polcari. Flam mocked these writings openly, characterizing them as hyperbolic. Hobbs's report called the fake Motherwells among the artist's "greatest works." Polcari went even further, Flam recalled. "I'm only exaggerating a little," he added. Portions of the reports by Polcari, who also testified this week, were read aloud to the court. Of the fake Motherwells, he said they "have obviously been chosen by a sharp eye[.]" In another report about a Rosales fake by a different artist, Clyfford Still, Polcari wrote, "In his mature work, the formal elements portray the emblematic struggle of mankind, nature, and inner strength and power. [The Rosales work] is an early statement of Still's fusion of these."

In 2008, Flam investigated two of the Motherwell paintings in-person—both purportedly from the artist's "Spanish Elegy" series, one from 1953, which Freedman owned, and another from 1955, which the gallery was trying to sell. Flam said the two works had the title of the series written—presumably by the artist—alongside the signature on the back of the canvas. In the 1950s, Flam said, Motherwell was only known to use the phrase "Spanish Elegy" in casual conversation about this work, and not as part of his signature. This set off another alarm bell. Another problem was the fact that the painting's support was warped, which should have caused cracks in the paint itself, but the paint appeared to be in perfect condition. "They looked more like the Elegies than the Elegies themselves," Flam said. "Even if they were real, they didn't fit into what Motherwell was doing in 1953 and 1955." Flam urged the gallery to submit the paintings to forensic testing. James Martin, the forensic analyst who examined the two Motherwells later in 2008, testified on Thursday. Isaac Zaur, a lawyer for the plaintiffs, spent close to an hour establishing Martin's credentials. His clients include the FBI and the U.S. Attorney's Office. He explained in detail, with the help of photographic displays, the functionality of the equipment he uses—blacklights, stereo microscopes, an x-ray fluorescence analyzer, a technique called fourier transform infrared spectroscopy, which—long story short—helps determine whether

or not certain materials are present in a painting. Martin's testimony came across much like an autobiography. The court learned that Martin used to enjoy skateboarding, that he's married and raising a family, that blacklight posters hung in his room as a child, that he hasn't published as much as he'd like, and that he calls his stereo microscope his "best friend."

Martin's report on the Motherwells found the anomalous presence of acrylic polymer emulsion paints. The paintings were from the 1950s, but, Martin said, according to a great deal of published evidence—books about the artist, for instance, and interviews with him—Motherwell did not begin using this kind of paint until the 1960s. He also found traces of paint—Red 170 and Red 188—that were not manufactured at the time the works were supposedly made. There was also evidence that an electric sander had been used on the paintings, something Motherwell was never known to use. (Flam testified that he had tried to track down an assistant from 1953 and 1955 who might have deployed such a tool, but found no evidence that one existed.) The report concluded that the analysis "is inconsistent with the understanding that the paintings were made and purchased in the 1950s."

In January of 2009, Martin sent the completed report to E.A. Carmean, a former curator at the National Gallery in Washington, D.C., who was at the time working for Knoedler as a consultant. Knoedler sent the report back to Martin, with various handwritten edits. These were presented on a large screen for the jury to see. Carmean cut Martin's phrase about the analysis being "inconsistent" with the alleged dates of the works. ("Too broad, negative[,] and some elements have changed," Carmean wrote.) He also wanted to remove the details about the presence of Red 170 and Red 188. Martin had written that his examination of the paintings "[suggested] they were not made by Motherwell." Carmean wanted this sentence cut, and replaced with: "At this point in the analysis and research, no conclusions can be drawn regarding these two works."

“My sense was he was asking me to completely change my findings,” Martin said. He went on to examine the De Soles’ Rothko, and came to the same conclusion as with the Motherwells: that the work was not by the artist it had been attributed to.

Earlier in the week, Martha Parrish, a gallery owner who helped draft the code of ethics for the Art Dealers Association of America, appeared as an expert witness on above-board business practices for art dealers. Emily Reisbaum, a lawyer for the De Soles, asked Parrish what, in her experience, a reputable dealer would do if faced with a collection like the one that Rosales was bringing to Freedman—in other words, a hoard of previously unknown works by famous artists, sourced from an anonymous collector, with no documented provenance and a below-market price.

“A reputable dealer would run like hell,” Parrish said. Freedman is scheduled to testify on Monday.