

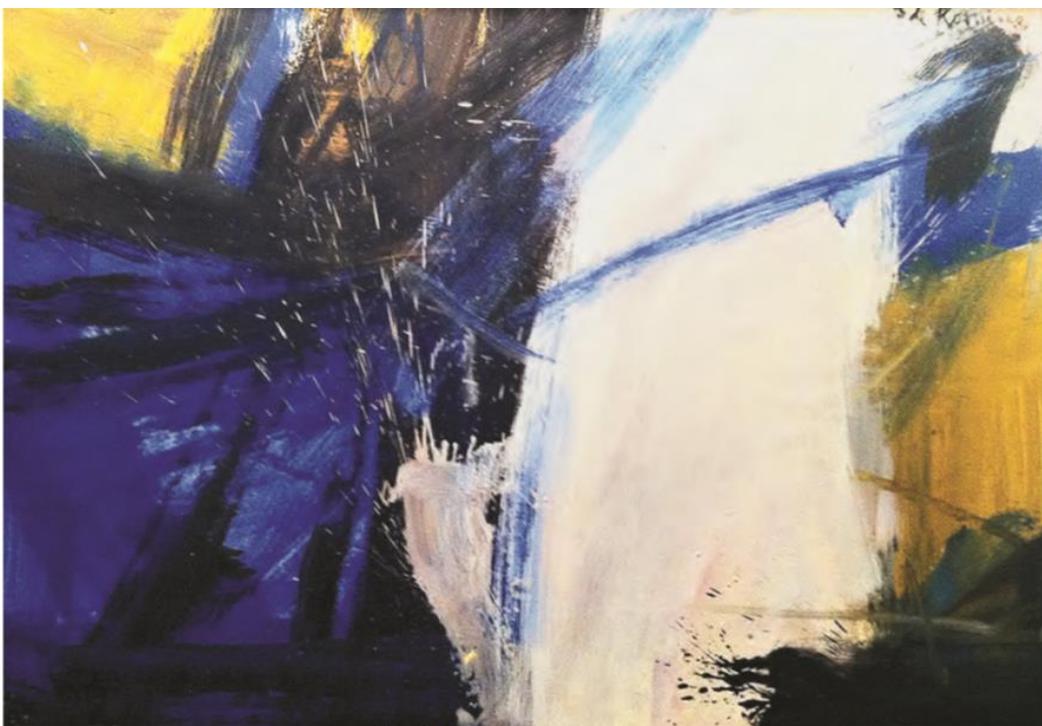
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The Forgeries

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(CAHILL PARTNERS LLP)

The front page of the *New York Times* that on December 2, 2011 revealed an ongoing fbi investigation into a possible modern-art forgery ring, naming

Knoedler Gallery as part of its investigation. The piece appeared on the very day of the vip opening of Art Basel Miami Beach.

“The adaa reacted immediately,” said Sheffer. “The first thing we did, we sat down and said, ‘How are we going to strengthen our guidelines so that we can address a situation with a work on display that comes under question?’” Though Sheffer didn’t specifically address the incident, it came out in court filings that a number of Rosales-supplied works had made their exhibition debut at the Knoedler stand during some of the adaa’s annual art shows at New York’s Seventh Regiment Armory. These included a painting attributed to Willem de Kooning that Knoedler sold to collector John Howard for \$4 million in 2007, having acquired it seven months earlier from Rosales for \$750,000. Howard’s case against the gallery was originally mated with the De Sole action, but Howard settled before the trial began, according to his lead attorney, John Cahill of Cahill Partners in New York.

“The works that were on view at the Knoedler booth had never come to our attention as being inauthentic,” said Sheffer, “but we decided, ‘How do we change this going forward?’ What we did was put into place a very firm agreement by which every exhibitor admitted to the fair signs a contract that states that the adaa has the right to order any work they have on view that does not meet the approval of the Art Show committee, or comes under question by anyone in a position of expertise, to be withdrawn from the fair. If they refuse to do that, then they are removed from consideration to participate in the fair the following year. We have never had that situation since that time.” There was no need for the adaa to take action against Knoedler for breaching the new guidelines, as the gallery abruptly closed shop a few days before the *Times* story came out. On November 30, 2011, the public relations firm Rubenstein Associates, which specializes in crisis management, issued a terse announcement: “It is with profound regret that the owners of Knoedler Gallery announce its closing, effective today.” The press release made no mention of the lawsuit filed the day before by hedge fund manager Pierre Lagrange over a \$15.3 million purported Jackson Pollock, *Untitled*, 1950, that the collector bought

from Knoedler through his art adviser Jaime Frankfurt and London's Timothy Taylor Gallery in November 2007.

It, too, turned out to be a Rosales-provided fake. The function of art advisers, who often acted as omnipotent middlemen between the gallery and the buyers during the Knoedler forgery-trading years, played a starring role in the trial, due partly to the testimony of Santa Fe adviser and dealer James Kelly. It was Kelly who represented the De Soles in the "Rothko" sale, for which he took a \$100,000 commission. As directed by his client, his role was strictly limited— as he testified in court with the De Soles looking on— to finding out if the asking price was realistic. Nothing more. "As far as the Association of Professional Art Advisors goes," said New York art adviser and apaa board member Todd Levin, "there's a fiduciary responsibility for all advisers to meet a certain minimal level in terms of looking after our clients' best interests, both from a legal perspective and an ethical perspective as well as a financial perspective. Clearly, the job that was done by whoever this person is," he added, referring to Kelly, "was not remotely up to what the minimal standards would be by apaa guidelines."

"If you ask me what needs to change," Levin said, "potential purchasers or collectors need to do a much better job picking their advisers." "The lack of a verdict in this case is deeply unsatisfying, and I think it just means the bar has to be raised for everybody involved in an art transaction, especially with acquisitions at a high level," said New York art adviser Kristy Bryce, who attended the trial. "The buyer doesn't want to take anything as a given. There are things I do for my clients to try to protect them from this kind of thing happening. I try to verify every single line of provenance, and I pull the old auction catalogues and exhibition catalogues...to make sure it was actually in that sale and actually on that page and in that exhibition." Ironically, Bryce is the former director of the New York/ London dealership Eykyn Maclean, which unknowingly acquired a Rothko forgery for one of its clients, the Las Vegas casino magnate and billionaire Frank J. Fertitta iii, when it was offered by Swiss art historian and former Fondation Beyeler curator Oliver Wick for \$7.2 million.

That Knoedler-sourced painting was featured in a Rothko exhibition at the Beyeler in 2008, the year the painting was sold to Fertitta. Wick received a \$300,000 commission on the sale from Knoedler and a second, of \$150,000, from Eykyn Maclean. Fertitta subsequently sold the painting, without knowing its status, to a collector, then repurchased it for \$8.5 million. Fertitta and Eykyn Maclean are suing Wick in U.S. District Court in Manhattan, and the case is expected to go to trial soon, according to attorney Cahill, who has so far settled three cases involving Rosales-minted fakes. The suit alleges Wick knowingly engaged in the fraud, “either intentionally or with willful blindness or reckless disregard for the truth.” Though Rothko’s *Untitled*, 1959, an oil on paper laid down on board, failed to sell as lot 32 at Christie’s New York in May 2009, stalling well shy of its \$3–4 million estimate, the painting was subsequently sold privately by Christie’s. A catalogue note informed prospective buyers that the work was being considered for possible inclusion in the forthcoming Rothko catalogue raisonné for works on paper compiled by the nga. The provenance published in the catalogue stated the now familiar chain of purported ownership, starting with “Acquired from the artist,” then “David Herbert, New York,” and then “Private Collection, Mexico.” Anyone who has read about the case knows that this ownership chain was fictitious, but at the time of the bogus catalogue entry, who knew, apart from the Freedman/Hammer circle? Christie’s refunded the buyer’s purchase price and now has possession of the worthless painting, according to knowledgeable sources. Looking back at the tsunami of litigation against Knoedler and Freedman that has blasted through the courts since the fakes were first exposed nearly five years ago, one might wonder how Freedman has managed to pay the colossal legal bills pouring in from her protracted defense by the elite Boies, Schiller & Flexner, in light of the fact that she voluntarily returned a large chunk of the \$10 million in commissions relating to the sale of the Rosales hoard of fakes.

One indication of Freedman’s remaining resources would be the number of works she has sold anonymously at auction, sans property title but always bearing a Knoedler provenance. Two of these were easy to spot in sales this past May: Adolph Gottlieb’s appropriately titled *Omens of Spring*, 1950, which sold for \$2,405,000 (est. \$2–3 million) at the postwar and contemporary evening

sale at Christie's New York; and Lee Bontecou's petite *Untitled*, 1993, a unique work in welded steel, porcelain, and wire that sold for \$245,000 (est. \$150–200,000) in the firm's day sale that week. Back at the same house in May 2014, another Freedman holding, Alexander Calder's standing mobile *Untitled*, 1957, executed in painted sheet metal, sold for \$1,685,000 (est. \$900,000–1.2 million). As Freedman's astute liquidations at auction indicate, she is a seasoned and sharp player in the art market, despite her self-characterization as “the perfect mark” in an Artnet interview after the De Sole settlement. “Who should be concerned about a gallery like Knoedler?” asks John Cahill, who has handled and settled more of the tainted Knoedlersold artwork cases than any other lawyer.

“I would say nobody should be; that's not the art market we want. We want people to go into a good gallery like that and rely on its reputation and rely on its basic, solid representation—which is also a legal warranty that if you're buying a Pollock and we say it's a Pollock, we're telling you the truth.” If you're not so trusting, you might want to submit your sevenfigure- or-higher Ab-Ex painting that lacks a cast-iron provenance to a conservator and scientist like James Martin, head of Orion Analytical, a materials analysis lab in Williamstown, Massachusetts. Martin tested a number of the Rosales fakes and determined their inauthenticity. “What would happen if buyers asked to do that for every dead artist?” De Sole's attorney Clarick wondered. “It's wildly impractical.” It seems the old saw *caveat emptor* remains in play. But another Latin phrase, more consumer-friendly, is gaining popularity in the art market, and that is *caveat venditor*: Let the seller beware.