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## Experts Say Ann Freedman Likely Settled Due to Surprisingly Damning Evidence

Eileen Kinsella and Sarah Cascone, Tuesday, February 9, 2016



Defendant Ann Freedman.

Image: Elizabeth Williams, courtesy ILLUSTRATED COURTROOM.

Anyone who has [followed the trial](#) over the past two weeks in the lawsuit brought by Domenico and Eleanore De Sole against Knoedler & Company and its former director

Ann Freedman knows that the steady parade of high-profile art world experts who have testified as witnesses for the plaintiffs have painted an extremely damning portrait of what played out at the gallery over the course of more than a decade.

The De Soles sued Freedman and the gallery in 2012 for selling them a fake [Mark Rothko](#) painting for \$8.3 million (the sale happened in 2004). Freedman claimed that she was misled by Long Island dealer [Glafira Rosales](#), who pleaded guilty to fraud in 2013 and is currently awaiting sentencing. Several other lawsuits against Freedman and Knoedler, involving the sale of other fraudulent artworks purportedly by other notable Abstract Expressionist artists including [Jackson Pollock](#) and [Willem de Kooning](#), have already been settled out of court and several more are pending.

In the current trial, in US District Court in Manhattan, esteemed experts including MoMA chief curator emeritus John Elderfield, [Richard Diebenkorn](#)'s daughter Gretchen Diebenkorn Grant, Motherwell foundation head Jack Flam, and forensic paint analyst James Martin were just a few of the witnesses who detailed how their warnings about paintings that didn't look right or had serious paint anomalies were ignored.

***Related: Conservator Found Painting in Knoedler Trial to Be A 'Deliberate Fake.'***



Former Knoedler Gallery president and director Ann Freedman has always maintained her innocence.

Photo: Patrick McMullen

Further, pointed questions to gallery staff—from both attorneys and Judge Paul Gardephe—revealed that research never uncovered a single piece of paper or other firm evidence confirming that David Herbert had advised a supposed Swiss/Mexican

mystery collector known as "Mr. X," which is the invented story that was shared by the gallery with buyers of the fake works.

Asked about the timing of the Freedman settlement, Freedman's attorney Luke Nikas told artnet News via e-mail: "From the moment Glafira Rosales' crimes came to light, Ann never wanted to keep a penny of the commissions she made on the works. The timing of this settlement was carefully planned and is part of our continuing efforts to resolve these cases."

Some experts we spoke to suggested that the strength of the case presented by attorneys Gregory Clarick and Emily Reisbaum for their clients the De Soles, surprised even Freedman and her attorneys. Their numerous attempts to prove on cross examination that various experts had authenticated the paintings often fell flat. Several observers told artnet News that the clarity of the plaintiffs' presentation may have prompted Freedman and her attorneys to increase a settlement offer to the De Soles. The De Soles opted to move ahead with the trial in their case after the lawsuit with investor and collector John Howard settled.

"The De Soles are extremely pleased and not surprised that Ms. Freedman settled after two weeks of trial evidence showing that, for 15 years, Knoedler ignored the most eminent experts, buried unhelpful research, made up stories about where works came from, earned profit margins that virtually announced the fraud, hid the truth, and lied to collectors, like the De Soles, to sell fakes and make millions," Reisbaum told artnet News over email. "The De Soles will continue to prove the case against Knoedler and its owners."

Nicholas O'Donnell, an art law expert who has been following the case but is not involved in it, told artnet News, "You always make an assessment of what you think your odds are before trial based on the outlines of what you expect witnesses to say and documents to show. But even when they cover the same topics you expect, you never know how the evidence will come across until it is presented. Sometimes witnesses who have important information are unpersuasive, sometimes witnesses you expect to be insignificant play a major role. You would expect that after two weeks of testimony, whatever led the two sides to be willing to go to trial had shifted enough based on what they saw that they concluded it was worth striking a deal."

Art adviser [Jay Grimm](#) shared his insight on his [blog](#), information that was also highlighted on the [Art Law Blog](#). "Freedman has claimed for years now that she too was a victim and that she was delighted that this case is going to trial so as to clear

her name," he wrote. "Settling at this juncture does the exact opposite. From my perspective, then, the only logical way of interpreting the settlement is that Ann Freedman caved in because the trial was not going well for her."

Still others believed the De Soles, who are seeking \$25 million in the case, perhaps thought it best to focus their efforts on the gallery and its parent company, 831 Holdings.

"I don't think that Ann Freedman was ever the deep pocket in the case," [Amelia K. Brankov](#), counsel to the litigation and art law group at New York's Frankfurt Kurnit Klein & Selz, told artnet News in a phone conversation.

The settlement came after Freedman was notably absent from the courtroom on both Thursday and Friday this past week. "I don't know if they were secretly talking for awhile or not," said Brankov.

Freedman will still testify, and possibly today, since, as Judge Gardephe told jurors yesterday (2/8), her "state of mind" and "intent" over the years that she sold the fake works is key to determining the fraud questions raised by the lawsuit.

It is unclear how Freedman's settlement will impact the other pending suits over sales of forged paintings brought to the gallery by Glafira Rosales. Other experts say the outcome of the trial could possibly influence the US Justice Department's criminal investigation. Rosales is the only person to have pleaded guilty to date.