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TEARS, SHOUTING MATCHES, AND A SLEW OF EXPERT WITNESSES AS KNOEDLER TRIAL HEADS INTO WEEK TWO

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A letter from Ann Freedman to the De Soles claimed that art historian Irving Sandler, above, was among 11 specialists who had authenticated the fake Rothko at the center of the case. Sandler and others testified that they had done no such thing.

COURTESY ALLENTOWN ART MUSEUM

Domenico and Eleanore De Sole, their art advisor James Kelly, and a number of expert witnesses, testified in U.S. District Court in Manhattan as the first week in the De Soles' case against the now-defunct Knoedler Gallery came to a close. The De Soles allege that Knoedler and its former president, Ann Freedman, knowingly sold the couple a fake Mark Rothko in 2004 for \$8.3 million.

The total sale price was, in fact, \$8.5 million, according to an invoice presented as evidence. Kelly, who purchased the painting on the De Soles' behalf, said on Thursday that he negotiated with Freedman a \$200,000 discount—and, as he told the jury, he kept \$100,000 of that discount for himself as his commission after telling the De Soles that Freedman only offered them a \$100,000 discount. “I could have kept the \$200,000,” he said.

That was awkward testimony, but the first truly tense moments of the trial came earlier on Thursday, during Domenico De Sole's cross-examination by Charles Schmerler, one of Knoedler's lawyers. De Sole and Schmerler interrupted and talked over each other continuously, much to the frustration of the presiding judge, Paul G. Gardephe. Their exchanges were combative. At one point, when Schmerler asked De Sole a question about his second amended complaint, the plaintiff, who in addition to being a fashion mogul also holds a law degree from Harvard, said, “I'm not a lawyer.”

“I thought you were a lawyer,” Schmerler said.

“I'm not a member of the bar.”

“So you're not a lawyer.”

“I sell handbags!” De Sole said. “Quite successfully. And real handbags, I might add.”

The defense attempted to suggest that De Sole had not done his due diligence in authenticating the work, having testified that the only steps he took toward doing so were relying on Knoedler's reputation as one of the most prominent galleries in the country. He also requested a warranty because, in his words, the painting cost “a lot of money.”

De Sole said that when he and his wife visited Knoedler in 2004 to inquire about buying a work by the artist Sean Scully,

Freedman ended up showing them the Rothko at the center of the trial. “She went on and on and on and on” about the painting, De Sole said, testifying that she called the Rothko “a masterpiece.” De Sole repeated, over and over again, that going into Knoedler carried the expectation that everything being offered for sale was real, so he and his wife did not do extensive research into the provenance of the painting beyond what Knoedler told them. The work turned out to be part of a trove of forgeries that the gallery, which shuttered in 2011, had obtained from the Long Island dealer Glafira Rosales over the course of 15 years. Rosales claimed that the paintings she was offering Knoedler came from the son of an anonymous Swiss collector, who insisted on maintaining the family’s privacy. Freedman’s lawyers say that she had been tricked by Rosales into believing in the forgeries herself. Schmerler presented a letter sent to the De Soles in 2004 by Ann Freedman stating that the Rothko had “been viewed by the following individuals with special expertise on the work of Mark Rothko,” going on to list eleven people including Laili Nasr, who was working on a supplement to the Mark Rothko catalogue raisonné, the artist’s son Christopher Rothko, and the art historian Irving Sandler, among others. The De Soles’ lawyers argue that this document implied that those eleven people had viewed the work and verified its authenticity. The defense has said that the letter does not use the word “authenticate,” and that De Sole—who had previously testified that he might have read the document, but couldn’t recall having looked at it because his wife predominantly dealt with matters regarding their art collection—ignored the letter anyway.

“Since you didn’t read the letter,” Schmerler began, to the objection of De Sole’s lawyers. Judge Gardephe shouted “sustained” so forcefully that a few members of the courtroom jumped in their seats. “Questions are not arguments!” Gardephe told Schmerler. “If you can’t ask a question without making an argument, you’ll sit down!”

A number of people listed in Freedman’s letter appeared in court last week. Among them was Dana Cranmer, the former

conservator for the Rothko Foundation, whose three-hour testimony included a great deal of technical details about stretchers, strainers, and paint film. But she also said that her relationship to art that is brought to her for her job is as a doctor to a patient, and that she is only interested in the “physical well-being” of a painting. She has never provided an opinion about the authenticity of an artwork, she said. “It is not what conservators do.” She said she had not been aware that her name had been used in the letter Freedman sent to the De Soles.

Sandler also appeared, and when asked if he has ever authenticated a work of art, he said, “I never have and I never will.” He recalls seeing a Rothko in Freedman’s office, which he glanced at for “5 to 20 seconds,” but couldn’t recall if it was the same Rothko the De Soles eventually bought. At one point, Aaron Crowell, one of the De Soles’ lawyers, asked Sandler to read the entry on himself aloud from the Freedman letter about experts who had viewed the Rothko. It described him as “one of the foremost authorities on Abstract Expressionism” and as a member of the board of the Rothko Foundation. The letter claimed “he would have been familiar with all of the more than one thousand works in the foundation.” Sandler said that was incorrect. Due to legal disputes between the foundation and Rothko’s children, the collection was in flux, and he was familiar with only “three or four” of the foundation’s paintings.

“One more slight error,” Sandler said. “It says, ‘One of the foremost authorities on Abstract Expressionism.’ That should be ‘the most.’” Everyone in the court—including the usually stone-faced judge—laughed, except for Sandler, who maintained the countenance of a man just stating the facts. (“No objection, your honor,” Crowell said.)

Also called to the stand was James Coddington, a conservator at the Museum of Modern Art in New York, whom Freedman had listed in a similar document prepared for potential buyers about specialists who had looked over a forged Jackson Pollock that the gallery had obtained from Rosales, and which Knoedler sold in 2002 to collector Jack Levy. Levy sent the painting to the

International Foundation for Art Research, which by the time of his purchase had essentially taken over authenticating Pollocks from the Pollock-Krasner Foundation. In the end, after showing the work to a number of anonymous specialists, IFAR's report did not attribute the work to Pollock. "Even those who liked the work were concerned about the lack of a certified provenance," according to the report, portions of which were read for the jury. (IFAR also stated that it "cannot prove that [the painting] is NOT by" Pollock.) Levy returned the Pollock to Knoedler, and his money was refunded.

But the gallery continued to try to sell the Pollock. (Knoedler and Freedman, along with the collector David Mirvish, all subsequently bought a stake in the painting.) An April 2007 letter to prospective collectors of the work listed numerous experts who had viewed the painting. The letter claimed that the Pollock in question "has been recognized by Pollock specialists, art historians, museum curators, and conservators," who deemed it of "the highest quality." Coddington's name appears on the list, spelled wrong. He noted this, and also told the jury, "I don't authenticate works of art."

The first week of the trial concluded with testimony from Eleanore De Sole. She burst into tears not long after taking the witness stand, while describing her early life. She said she used to work at IBM, like her parents. ("My parents are no longer with me," she said, after requesting tissue.) Her current job, in her words, is as "Domenico's unpaid secretary."

In their collecting, she said, the De Soles rely on galleries that the couple buys from to authenticate the work for them. She said that going to Knoedler and seeing a Rothko on canvas that was available for sale, "You couldn't not be curious."

Throughout the trial, the fake Rothko has been stored behind a large screen used to display evidence to the courtroom. The painting has been handled much in the way that one might deal with an empty pizza box, occasionally pulled out from behind the screen and roughly propped up on an easel next to the witness stand. "It was very expensive," De Sole recalled, "and it was not

something I wanted handled the way it was handled today.” She said that after purchasing the painting, the family had it shipped to their home in South Carolina where they encased it in expensive glass and set up an alarm system. The Rothko hung there until December 2011, when the De Soles discovered, via the *New York Times*, that Knoedler was in litigation with another collector over a painting that had the same provenance as their Rothko. When De Sole saw this article, she said she “went into a shaking frenzy. Probably cried, although—”she cut herself off, and paused.

“I cried,” she continued.