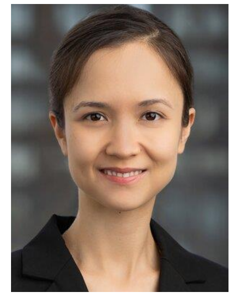
Art Fraud Cases Highlight Importance Of Due Diligence

By **Sahrula Kubie and Marcus Asner** (January 30, 2025)



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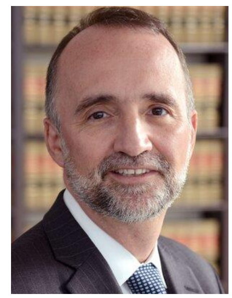

Marcus Asner

The art market at times may seem like a curious world where mind-boggling amounts of money trade hands with little governmental oversight.

In 2020, the U.S. Senate described the market as the "largest, legal unregulated industry in the United States."[1]

While the U.S. Securities and Exchange Commission is tasked with fighting fraud in the securities markets and the U.S. Commodity Futures Trading Commission serves a similar role in the commodities futures markets, there is no corresponding central agency in the U.S. tasked with regulating the world of buying and selling art.

But just because there's no centralized regulator doesn't mean that anything goes in the art market. Art transactions, just like most commercial transactions, remain governed by a whole slew of generally applicable laws and norms, ranging from contract law; to tort law; to the various criminal laws barring fraud, and money laundering and trade sanctions violations.

And, as several recent cases make clear, the government, especially the U.S. Attorney's Office for the Southern District of New York, has shown an increased interest in exposing and charging art fraud, specifically fraud conducted on clients by once-trusted dealers and brokers.

Alleged victims also increasingly have stepped up the private policing of art transactions, as shown by a number of recent high-profile civil suits. These recent cases provide helpful reminders to all players in the art market about the kinds of fraud that may arise in high-stakes transactions, and what to watch out for when implementing their own due diligence practices.

Lisa Schiff

The Oct. 17 **guilty plea** in the Lisa Schiff art fraud case, U.S. v. Schiff in the U.S. District Court for the Southern District of New York, involved charges that Schiff defrauded her clients.[2]

Until about mid-May 2023, Schiff had been a high-profile, well-respected art advisor. She was known for her prestigious roster of clients, including Leonardo DiCaprio.[3] She gave interviews to the New York Times and maintained a storefront in Tribeca.[4]

But that all changed when a former client and close friend, Candace Barasch, filed two civil suits in quick succession, alleging that Schiff took money that Barasch had given her for purchases of artworks, and instead of buying art, used the money to "fund Schiff's lavish lifestyle, cover debts ... owed to other clients, or to consummate art purchases for other clients."[5]

Barasch's complaint alleged that she and Schiff had been close friends since roughly 2004.

Because of their friendship, Schiff worked for Barasch on a continuing oral agreement, and the Barasches "generally did not communicate directly with the artists and galleries (unless/until Candace visited them to see particular works), and would not know if something was amiss."

But according to Barasch's complaint, one morning in May 2023, Schiff called Barasch and confessed that

> the monies ... wired to [Schiff] for the purchase of artworks was gone; that [Schiff] had dug [herself] into a large financial hole that [she] could not get out of; that this had been going on for many years; and that Schiff had considered filing for bankruptcy prior to the start of the COVID-19 pandemic, but did not do so because she was afraid of a criminal investigation.

The Barasches alleged they had given Schiff a total of $6.6 million, but that they often did not receive the artwork they had purchased through Schiff, and that Schiff still owed them around $1.8 million from the sale of a painting on their behalf.

Schiff's business quickly imploded. In January 2024, Schiff filed for bankruptcy, disclosing around $7 million in debt owed by her consultancy business and herself.[6] Ultimately, at least 50 creditors filed claims to Schiff's assets, saying that she owed them for works she had brokered.

In October, the world learned that Schiff also was facing criminal charges. In a criminal information published alongside Schiff's plea agreement, the U.S. Attorney's Office for the Southern District of New York charged Schiff with one count of wire fraud, for two separate schemes.

In one scheme, Schiff kept the money from art sales she had brokered without telling clients that their art had sold.[7] In the second scheme, Schiff would take money from clients to buy art, but did not actually buy the art, and instead kept the money to pay her own debts.

In her guilty plea, Schiff agreed to forfeit $6.4 million. She will be sentenced on March 19 and is facing a potential sentence term of up to 20 years.

Inigo Philbrick

Schiff's case follows the prosecution of Inigo Philbrick, the art dealer who also pled guilty in the Southern District of New York to one count of wire fraud.[8]

Rather than individual collectors like in Barasch's case, Philbrick's story involves a different segment of the art market: what has been referred to as the financialization of art, where art is bought for investment rather than pleasure and kept in storage facilities, often never seen by the purchaser, who are frequently offshore corporate entities.

Because of the nature of the business, Philbrick was able to sell and resell paintings owned by his clients without his clients' knowledge or consent, often selling the same work to multiple clients. Philbrick also used the artwork that had been consigned to him by his clients. and which he did not own, as collateral for loans, and then defaulted on those loans.

As laid out in court filings, Philbrick operated through offshore entities, which allowed him to work at a further remove from the scrutiny of U.S. regulators. Philbrick often provided investors with oral or written assurances about the whereabouts or title of a particular artwork, but rarely backed up those assurances with supporting evidence. Toward the end, when partners became concerned and started pressing for documentation, Philbrick provided them with unsigned or forged contracts and valuations.

Ultimately, prosecutors charged Philbrick in U.S. v. Philbrick with operating a scheme worth $86 million.[9] Philbrick was **sentenced** in May 2022 to seven years in prison, but was released in March 2024 after serving four years.[10] U.S. Attorney Damian Williams said that the Philbrick sentence was meant to "send[ ] a message to anyone who facilitates fraud in the art market that they will face serious consequences."[11]

Yves Bouvier

Although not a criminal prosecution, Accent Delight v. Sotheby's, a recent case in the Southern District of New York brought by Dmitry Rybolovlev against Sotheby's involved Rybolovlev's claims that his one-time art dealer, Yves Bouvier, had defrauded him of tens of millions of dollars in transactions worth over $2 billion.

Although no court found in favor of Rybolovlev in the claims he pursued against Bouvier in litigation around the world, and Sotheby's **was cleared** of all claims in January 2024,[12] Rybolovlev's case provides a good example of the kinds of practices a diligent buyer should watch out for.

Rybolovlev claimed that Bouvier was not just a dealer; rather, Rybolovlev asserted that, sometime in the early 2000s, he and Bouvier had entered into an oral agreement whereby Bouvier agreed to act as Rybolovlev's agent, receiving a 2% commission to source and buy art on Rybolovlev's behalf.

Although initially using written contracts to cement the deals, Rybolovlev increasingly trusted Bouvier to conduct the purchases and sales of artwork without putting his agreements with Bouvier in writing.

Although Rybolovlev later would decry the lack of transparency in the art market, Rybolovlev and Bouvier had set up an intricate corporate structure for these deals, in which Bouvier would first buy the art himself, then sell it on to one of Rybolovlev's offshore shell companies. Much of the art would be stored in one of Bouvier's warehouses.

In late 2014, Rybolovlev uncovered that Bouvier was buying the art at much lower prices than he had represented to Rybolovlev.[13] Bouvier would sell the art to Rybolovlev at marked-up prices, and tell Rybolovlev fabricated stories about hard-fought negotiations with the original sellers that supposedly drove up the prices.

Rybolovlev **sued** Bouvier in multiple international courts, but Bouvier was never found to have breached a fiduciary duty or committed fraud against Rybolovlev. Rybolovlev finally settled his cases with Bouvier last year on confidential terms.[14]

Takeaways

The government, especially the Southern District of New York, seems increasingly interested in exposing and charging art fraud.

When confronted with a client who suspects they may be the victim of art fraud, white collar defense lawyers can take note of the demonstrated governmental interest in prosecuting these cases, and perhaps draw on that interest to help go after the fraudsters.

But as always, in the art world and beyond, an ounce of prevention is worth a pound of cure. The old adage "trust but verify" is worth keeping front of mind. In the absence of oversight and regulation, clients who are interested in dipping into the world of art investing can impose their own extensive due diligence practices to help expose potential fraudsters before engaging in high-stakes transactions with them.

For lawyers with clients interested in engaging in art market investments, it would be wise to use these cases in advising those clients and designing their art compliance programs. Clients can learn from the mistakes made in these cases and consider the following steps.

Understand the various types of potential fraud.

There are various ways that lawyers can help their prospective art clients protect themselves against fraud in the art market.

Apart from verifying that the artwork is authentic, i.e., that the DaVinci you are buying is in fact a DaVinci, clients interested in purchasing art need to make sure that the underlying transaction is all that they understand it to be — for example, that the negotiations with the sellers were accurately conveyed to them, and that there are no money laundering or trade sanctions issues related to the original sellers or buyers, so that there will not be a cloud on the title or the purchase money.

Lawyers of course can do much of this due diligence themselves, but may also be wise to draw on art market consultants or investigative firms to help with doing the work necessary to understand the legitimacy of their counterparties.

Get second opinions.

Rather than relying on the guidance of one broker or adviser, it may be wise to advise clients to get different opinions on the value of a piece of art. Both potential purchasers and sellers should take opportunities to reach out to trusted experts, such as institutional auction houses, to get second opinions on value estimates.

Rely on written, not oral, agreements.

A recurring theme in these cases involves an oral agreement between a client and a trusted broker purportedly acting on the client's behalf. Attorneys can help their clients avoid becoming victims of fraud by insisting that relevant agreements are committed to writing.

As a practical matter, oral agreements may be difficult to enforce in court. Instead of relying on the good faith of their art dealer or adviser, attorneys should obtain and carefully review all signed papers and contracts for any transaction undertaken by a dealer on their client's behalf.

Conduct regular check-ins.

Attorneys would also be wise to advise their clients to set reminders about regularly checking on the status of any money remitted to advisers, or do the checking themselves on the client's behalf. Similarly, attorneys advising sellers should regularly check on and ideally lay eyes on art consigned to brokers and stored in warehouses.

Conclusion

The art market is not the Wild West, and it has its own norms of diligence and verification. Increasingly, there is an appetite to enforce those norms in court after the fraud has occurred. But these recent, high-profile cases also provide a good reminder that a healthy skepticism can prevent prospective buyers from ending up as a victim in the next big case.

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Disclosure: Kubie and Asner were on the legal team representing Sotheby's in Accent Delight v. Sotheby's.

[1] https://www.govinfo.gov/content/pkg/GOVPUB-Y4_G74_9-PURL-gpo142344/pdf/GOVPUB-Y4_G74_9-PURL-gpo142344.pdf.

[2] https://www.justice.gov/usao-sdny/pr/art-advisor-lisa-schiff-pleads-guilty-defrauding-clients.

[3] https://www.nytimes.com/2024/10/17/arts/design/art-adviser-wire-fraud-lisa-schiff.html.

[4] https://www.nytimes.com/2022/05/17/arts/design/lisa-schiff-art-consultant.html.

[5] https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=dZ1wNdJi1VGCjLSmLU1IfA==&system=prod.

[6] https://www.artnews.com/art-news/news/lisa-schiff-files-bankruptcy-chapter-7-1234692233/.

[7] https://www.law360.com/articles/1891248/attachments/0.

[8] https://www.justice.gov/usao-sdny/pr/former-art-dealer-sentenced-7-years-86-million-fraud-scheme.

[9] https://www.justice.gov/usao-sdny/pr/former-art-dealer-sentenced-7-years-86-million-fraud-scheme.

[10] https://www.artnews.com/art-news/news/inigo-philbrick-art-dealer-released-prison-1234701364/.

[11] https://www.justice.gov/usao-sdny/pr/business-partner-convicted-art-dealer-inigo-philbrick-sentenced-20-months-prison.

[12] https://www.nytimes.com/2024/01/30/arts/sothebys-art-fraud-trial.html.

[13] https://www.newyorker.com/magazine/2016/02/08/the-bouvier-affair.

[14] https://news.artnet.com/art-world/yves-bouvier-rybolovlev-dispute-settled-2406832.