



Art Brokers:

Let the Buyer Beware... Very Beware

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An art broker is a matchmaker, connecting art owners, be they artists, collectors, or investors, with art purchasers. Like real estate brokers, art brokers do frequently get up to their elbows in art investments, managing assets, liquidating estate holdings, and other related functions. This seems to be an inevitable side effect of working immersed in these fields. However, the primary function of art brokers, like real estate brokers, is to match sellers and purchasers to the mutual benefit of all involved.

Real estate brokers, however, are heavily regulated. Licensing, rates of commissions charged, and the truthfulness, transparency, and breadth of information which must be revealed in a real estate transaction are mandated by federal regulations and state laws. Even used car salesmen are subject to disclosure laws requiring, for example, an honest report of odometer readings on vehicles sold. Art brokers, on the other hand, are not subject to explicit legal oversight. Like antiques dealers and used furniture suppliers, only the basic civil contract laws apply: caveat emptor, let the buyer beware. And, if the matter gets extreme, it is possible that criminal laws regarding bank, mail, or consumer fraud may apply as well.

In general, art brokers do not offer stock from their own inventory as a gallery might do. However, like a gallery they may broker sales of items for which they are working on commission. Or, they may work on either a flat-fee or percentage basis, and this can be paid by the seller, the buyer, or both, depending on the arrangement the parties have entered into.

Art brokers are frequently referred to

as ‘agents.’ An ‘agent,’ legally speaking, is a person who is authorized to engage in another party’s business for that party’s benefit. The parties to an art sale should make sure they clearly understand the role of the broker in that transaction. If the broker is the ‘seller’s agent’ then they can not in any way be expected to look out for the interests of the purchaser. And no one can serve as a legal agent for both parties in a transaction – a broker can not be the ‘agent’ for both the buyer and seller.

A Healthy Dose of Skepticism

Purchasers should be extremely cautious about making sure that they understand who the broker is representing, and make sure they get independent advice regarding the authenticity, value, and condition of the item being purchased, as well as independent legal advice regarding the terms of any purchase agreement. Bluntly put, an art broker’s representation that an artwork is a valuable original piece by a famous artist should be treated with the same healthy skepticism as the used car dealer’s representation that a 1992 Caddy was only driven by a little old lady to church on Sunday, or a real estate broker’s representation that the condominium tower is only inhabited by upwardly mobile young couples with no children who only listen to classical music. In fact, given the lack of legal oversight and standards for art brokers, such representations should be treated with a double dose of that skepticism, at least until substantial personal references and positive dealings with the broker lead you to conclude that you have established a

legitimate relationship of trust and faith in their fair dealings.

There certainly are legitimate, knowledgeable brokers out there, and like the great used car dealer who really knows his stuff and works with you to get a solid vehicle with real value within your price range, they are usually easy to find based on fantastic word-of-mouth recommendations. A good broker can be a worthy partner to a collector interested in finding works in a particular genre, and can also be invaluable to an artist whose time is better spent in their creative endeavors than in the business of placing their works with, and shipping them to, collectors.

However, the unique nature of art and antiques simply makes it a field ripe for

exploitative shysterism. When each piece offered is either absolutely or relatively unique, there often are not enough pieces on the market to establish anything akin to a market price or ‘fair value.’ Real estate is somewhat similar in this regard; land, like art, is basically worth whatever someone will pay for it. Land has a long historical basis for valuation, related to land’s worth in providing food and shelter to its owner. Neighborhoods do shift in value, with suddenly ‘fashionable’ neighborhoods skyrocketing in price and run-down neighborhoods, or shifts in federal mortgage interest rates, leading to housing price declines. But real estate appraisers can generally find a list of similar property sales in the area over the course of a year or so, and use those averages to set a reasonable value for any given house or lot.

Art appraisers similarly look to art sales within a particular genre or class to provide an insurance valuation for art owners. But unlike real estate, this value is much more loosely associated with what someone will be willing to pay for the item. Art fulfills primarily an aesthetic function, and thus is worth only what someone is willing to pay to look at the thing. But art investors look to purchase not, or not solely, on the basis of aesthetics, but rather on the theory that art, like real estate, will always go up in value (a precept that the current housing bubble, like many real estate crashes which have happened before, remind us is a fiction which works, conveniently, to the benefit of the bankers and brokers involved in these transactions). To exploit this human desire to purchase something that will magically go up in value with no further work on the part of the purchaser, art and antiques brokers drive, stir, and churn the market,

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perpetually devising the ‘next hot thing’ that purchasers can be convinced will fund their retirement or their kids’ college education. As anyone trying to unload the last decade’s ‘hot collectibles’ today is well aware, the majority of these art and antiques style-trend bubbles are full of hot air. (Interestingly enough, the same phenomenon occurs in livestock: thousands of people across America are still trying to unload their Arabian horses, llamas, or emus that they bought and bred on the assurance of great reward only to find that since every other landholder within 100 miles had done the same, there was no longer a market.)

Creating a Market

Tod Volpe, one of a number of notorious art brokers, whose career ended in a prison term for fraud, paints a detailed picture of how art and antique dealers create and drive markets, in his autobiography *Framed* (ECW Publishers 2006). He nearly single-handedly created the Stickley/Mission Oak furniture craze a few years back, driving prices for these pieces, that everyone’s grandmother had in the basement, right through the roof.

While Volpe’s art brokerage empire ultimately fell on federal charges of fraud relative to assets he was managing – or rather, juggling – on behalf of a customer list of Hollywood’s rich and famous, his career path to the slammer hasn’t been received as a cautionary tale so much as a horrifying example of how far an art broker has to go before facing consequences for their slick dealings. Until the lies and losses reach into the millions, there really is little recourse for the unwary buyer or seller. A civil lawsuit after you’ve been duped is possible, but costly, and often the image that the buyer or seller had developed based on the art broker’s representations vanishes in the harsh light of litigation, and liability for fraud becomes difficult to pin down. For example, you might ask the broker if the item is ‘really a Renoir.’ The answer? “Oh, this is absolutely,

definitely, uniquely in Renoir’s style; in all my years in art I’ve never seen something so clearly attributable to the artist as this piece; remember that one with the girl and the kitten and the ball of yarn, well look, same yarn, same kitten. Of course, you’ll be so happy with this, I have never been so certain of anything.” Out comes the checkbook – but when you parse through it, in fact, there’s been no representation whatsoever as to authenticity.

What authenticity assurances are offered are often themselves rather dubious, often certifying only that the seller says the piece is a Renoir or whatever. Or else the sale contract terms say in small print that the art broker makes no explicit representations as to authenticity or origin, and then the art broker can pass the legal buck to the seller or the authenticator, who haven’t said a word. The broker is off the hook.

Tod Volpe’s art broker career has recently been resurrected from its deathbed by his involvement in a painting purchased at a thrift store by a California truck driver named Teri Horton. According to news reports, Horton contacted Volpe and specifically requested his representation in handling this painting after reading his autobiography which somewhat candidly discloses his life choices from stealing lunch money to shuffling client’s funds and artworks while supporting a cocaine habit. With no laws regulating the art broker business other than standard criminal and

contract laws, there are no provisions like a real estate broker’s license which preclude Volpe from going right back to work in the same business. Horton and Volpe, together with a Canadian self-proclaimed forensic art authenticator, have claimed Horton’s find as the work of the late Jackson Pollock, worth many tens of millions of dollars.

Recently, the Canadian, Paul Biro, also claims to have certified the authenticity of another Pollock which media reports indicate that David Bowie’s cousin bought at a tag sale. These matches purport to turn on fingerprint and other forensic evidence. Biro, Volpe, and Horton have not yet published publicly the reports of their forensic identification work – however, there is certainly no legal requirement that they do so. A wise buyer will ask to see the full reports and permit independent experts to review them – as should a public interested in the contribution that artworks make to our culture and history.

Whether either of these identifications is bona fide or not, they are certainly broad hints that we’re all about to be told that Pollocks, and perhaps modern American abstracts of the mid-20th century generally, are the next hot thing. This means some brokers, and, to be fair, some present owners, of abstract 1950’s art that they’ve had stuck in the basement, will make a fortune on what had been a fiscally worthless piece of

canvas with squiggles on it, and those brokers and present owners will likely consider that a good thing. The next set of owners who gets stuck once again with worthless squiggled canvases may not be so pleased about it. And unfortunately, it also means that today’s living artists, be they striving for perfection of their creative vision in some urban garret, sculpting in some rural barn, or carving and weaving in some indigenous village, will once again get the short end of the stick as art purchaser’s money goes to chase the next art-broker created trend instead of investing in today’s, and tomorrow’s, worthy artists.

Get it in Writing

As a purchaser or a seller working with an art broker, be absolutely certain to get the terms of your dealings in writing. That means both your agreement with the broker as to their representation, status as an agent, and terms of their payment, and the terms of the transaction regarding the art item, including what representations are being offered regarding its authenticity, origin, provenance, value, and quality. Have these terms reviewed by your own attorney as well as independent art and, if necessary, forensic experts. As a purchaser, have the item reviewed by an independent expert of your choice to ascertain the accuracy of the seller and broker’s representations regarding authenticity and value. If the seller or broker will not allow inspection by your independent authenticator or valuation expert, then skip the purchase – or at the very least, be extremely suspect of the representations, just as you would if the used car dealer didn’t let your own mechanic take a look at the car before you bought it, or if the real estate broker wouldn’t let your builder look at the site before purchase. Let the buyer and seller both beware, and demand disclosure, clarity, and transparency in their art dealings.

