

Beyond the Verdict: How LaSalle and Zaplin Won the \$51 Million Bouguereau Suit

by David Hewett

On Monday afternoon, January 9, a six-person jury returned to a courtroom in the Supreme Court of the State of New York building in Albany and delivered a verdict that surprised those who had been following the tale of two art dealers who were accused of scamming a group of nuns out of a multimillion-dollar painting for a fraction of that amount.

The dealers, Mark Zaplin and Mark LaSalle, had been charged with engaging in deceptive practices and colluding to defraud a religious group, the Daughters of Mary, Mother of Our Savior and St. Joseph's Chapel. The suit sought \$51 million in actual and punitive damages. The jury found them not guilty.

"Mark Zaplin and Mark LaSalle have been powerfully vindicated by this verdict," wrote Zaplin's attorney Thomas Chase in an e-mail to *M.A.D.*

Moreover, the jury declared that the group's spiritual leader, Bishop Clarence Kelly of the Society of St. Pius V, had defamed LaSalle in a television appearance taped at the Round Top, New York, chapel on February 4, 2008. They awarded LaSalle \$250,000 from Bishop Kelly. They also declared that another art dealer, Paul Dumont, had defamed LaSalle and Zaplin and awarded LaSalle \$250,000 and Zaplin \$75,000 from Dumont.



Notre Dame des Anges.

In a later interview, attorney Chase spoke about the speed with which the jury decided the case. "On Monday morning the judge read instructions, and they went into the jury room to deliberate about 11. Their ultimate verdict was read about 3:30. They'd been coming back with questions that indicated where they were in the decision process. They were moving through it pretty quickly."

It was a remarkable ending to the story that first appeared in our April 2009 issue ([p. 28-A](#)) and was updated in the September 2009 issue ([p. 12-A](#)).

To summarize the events, the battle centered around a very large (and very damaged and overpainted) 400-pound oil on canvas given to the religious group while they were located on Long Island, New York. It came along when they moved to the chapel in rural Round Top, where it was hung in a stairwell. To most of the 55 members it was just an attractive, albeit a bit murky, oversize depiction of Mary holding the infant Jesus, amidst no fewer than seven cherubs.

One sister who had some art knowledge studied the painting and raised the possibility that it could be an original work by 19th-century artist William Adolphe Bouguereau. When it was taken down from the wall and examined, they discovered a tag attached to the reverse noting that it had been exhibited at the 1893 World's Fair. They realized that they might have a genuine Bouguereau on their hands. Paintings by the famed French artist can be worth a lot of money.

In August 2004 the sisters and their bishop called in Albany art dealer Mark LaSalle to look at the painting and give them an opinion as to its worth. LaSalle recommended they invest some money in an extensive restoration; as it was (unrestored), LaSalle thought it worth somewhere between \$150,000 and \$250,000.

The sisters invested \$14,000 in a restoration performed in Williamstown, Massachusetts, and the results were nothing short of miraculous. What they had on their hands was an 1889 creation by Bouguereau, *Notre Dame des Anges*, a masterpiece presumed lost for over a century and last seen publicly at Chicago's World's Columbian Exhibition in 1893.

The sisters' problem was whether they should keep it or sell it and use the money to build an addition on the novitiate. At a press conference held in February 2008, Mother Superior Mary Bosco said that LaSalle told them that maybe they could get \$350,000 to \$450,000 for it after the restoration. The mother superior noted, "The bishop questioned that amount. He had found that some works by Bouguereau had sold for much more. Mark LaSalle told him that religion-themed paintings didn't bring as much."

Bishop Kelly said he had suggested selling it at auction, and LaSalle told him an auction house would take at least 20% of the sale price. "He pushed for a private sale," Bishop Kelly said.

By the time the restoration had been finished, LaSalle had found a potential buyer. Another area art dealer/picker, Paul Dumont, had been asked by LaSalle to scout out a potential buyer. Dumont came up with Mark Zaplin of Santa Fe, New Mexico. The decision to bring Dumont into the arrangement would come back to bite LaSalle and Zaplin severely.

Zaplin's offer was initially \$350,000, later bumped up to \$450,000. The sisters and the bishop held the check for months before deciding to complete the sale. Finally, on August 4, 2006, the sisters sold the painting to Zaplin for \$450,000.

After he took possession of the huge canvas, Zaplin invested another \$50,000 in further restoration and a proper frame. Zaplin then loaned the painting to the Dallas Museum of Art for several months, before receiving an offer for it. As far as the sisters and Bishop Kelly up at the novitiate in Round Top knew, their part in the Bouguereau story was over. It wasn't; it was just entering the next phase.

Zaplin in turn sold the painting to veteran Dallas, Texas, dealer Brian Roughton for about \$2.1 million in 2007. Roughton resold it for a figure widely reported to be around \$5 million. (On January 23, 2012, Heritage Auctions announced that Brian Roughton had joined Heritage's fine arts department as director of American and European art.)

LaSalle's cut from Zaplin's sale to Roughton came to \$750,000 (paid by Zaplin in two installments). Zaplin did pay a finder's fee to Dumont (the amount was not more than \$100,000, Zaplin told a reporter for the *Santa Fe New Mexican*), and that money went to the IRS to pay an outstanding balance due it. It didn't satisfy Dumont's demand for an additional \$150,000 that he felt should be his share.

In a deposition taken from Dumont on April 27, 2010, he talked about when in 2007 he learned that LaSalle and Zaplin considered his part in the business finished. "And sometime in March, you know, they both told me basically that they were going to screw me on the deal."

Dumont persisted that he was due more and called Roughton in Texas. "I said I needed to get paid...where is my money?" Roughton sent him a check for \$150,000. Dumont still thought it wasn't enough.

On November 11, 2007, Dumont sent an e-mail to Zaplin that read in part: "I'm going to make a brand new deal with Cardinal Egan at the Catholic Archdiocese of New York. I'm going to tell them how they can retrieve \$1.5 million that two art dealers swindled out of their monastery in Round Top. But I will only do it for 20%...They're going to be so far up your ass they'll be polishing the back of your teeth." It was signed, "Your friend, Paul."

In the April 27, 2010, deposition, Dumont was asked what he was going to do if he didn't get what he thought he was owed. He answered, "It would become public knowledge of what they did...that they had defrauded the Convent...."

Aided by fellow art picker Robert Boyle, Dumont used his story. Dumont signed an affidavit on December 22, 2008 (cited in an affirmation in opposition by attorney Bruce Goldstone to a motion to discharge the suit against LaSalle and Zaplin). In that affidavit Dumont stated: "Mr. LaSalle said we could 'screw' the Sisters and make a handsome profit by giving the Sisters a low appraisal value and present a buyer who would pay the amount of our deliberate and intentionally inaccurate appraisal," and "LaSalle had already confided in me that representatives from Sotheby's had valued the painting at between \$1,500,000 and \$1,800,000."

(If the language of the affidavit appears a bit stilted for an art picker/dealer, an explanation may be that, as

LaSalle said in a phone interview on October 18, 2011, "Dumont admitted in his depositions that Campisi, one of the [sisters'] attorneys, wrote the affidavit for him.")

The scenario described by Dumont happened. An e-mail message was sent to the Web site (www.daughtersofmary.net) on the afternoon of January 24, 2008; it clocked in at precisely 5:12 p.m. The sender's address showed as <benjamindoller@sothebys.com>. The message read, in part: "the painting you all sold by William Adolph [sic] Bouguereau was the subject of a crooked appraisal [sic] job by Mark LaSalle. When he told you it was worth \$400,000 to \$500,000 he was holding in his hands a Sothebys [sic] appraisal for \$1.8 to \$2.2 million...", and "the two just sold the painting through Brian Roughton for over \$2 million. Bishop Kelly was right the painting should have been sent to auction, then the nuns wouldn't have been defrauded by the LaSalle/Zaplin combo."

Benjamin Doller is Sotheby's modern British and European paintings specialist. Doller did not send that message, but it served its purpose. An alarmed mother superior and bishop talked it over, then called a lawyer in New York City.

On August 8, 2008, attorney Joseph Campisi of the firm Schwartz Goldstone & Campisi signed the original verified complaint attesting to the named charges against Mark LaSalle and Mark Zaplin. Attorney Bruce Goldstone handled the actions necessary to eventually bring the case to a jury. The defendants were charged with committing a variety of illegal acts that damaged the Daughters of Mary, and the suit asked for \$51 million in actual and punitive damages.

Bolstered by the affidavit from Dumont, attorney Goldstone decided to go public with their charges of the alleged deception by the two dealers and their windfall profit. Goldstone set up a press conference at the novitiate in Round Top for early in the afternoon of February 4, 2009. Channel 6 *Nightly News* anchor Liz Bishop was there with a camera crew. *Maine Antique Digest* received an envelope containing a copy of the e-mail and the suit filed against LaSalle and Zaplin. The name and address on the corner of the envelope was "P. Dumont, Staatsburgh, N.Y." We checked with attorney Goldstone and were invited to join the gathering.

The television crew photographed Bishop Kelly, resplendent in full clerical garb, in a small room crowded with several of the nuns and their mother superior, all dressed in immaculate black vestments and stiffly starched white accessories. Bishop Kelly was videotaped as he made his accusations to Liz Bishop. "Mark LaSalle was very good; he was the consummate con man," he said. "I'm not naïve, but when someone is an expert in that kind of deception...well, he was good."

Within a day the story led off the Channel 6 *Nightly News* slot in Albany and was repeated by Channel 2 in the city. Within a few days major news organizations had picked it up, and the story went viral nationwide.

LaSalle's first attorney, Daniel Sleasman, countered with, "Mark LaSalle has a reputation of the highest order. I am amazed at some of the allegations made about him that have damaged his reputation." On March 12, 2009, LaSalle filed suit against Bishop Kelly and art dealers/pickers Dumont and Boyle.

When we spoke with LaSalle in mid-2011, he claimed that attorney Goldstone and Bishop Kelly were well aware for at least two months before the press conference in Round Top that the damning e-mail didn't come from Benjamin Doller. In the phone interview, LaSalle said, "Goldstone went to Sotheby's on November 24, 2008, and met with Benjamin Doller, Polly Sartori, and Sotheby's counsel. They told him, 'We never sent an e-mail. It never originated with Benjamin Doller. Our IT person went through every computer. Benjamin Doller wasn't even at his desk that day.'

"Then in January they contacted the media and gave them a copy of Dumont's affidavit as well as a copy of the fraudulent e-mail, as though they were authentic.

"The other thing is, they said to him, 'We never appraised this painting for anybody. We looked at it on an informal basis for Patrick Orby, a guy in New Jersey who was perhaps interested in making an offer, but we never appraised the painting.'"

Sotheby's flatly denied to us that any of its employees had sent the e-mail. As for the claim that LaSalle was "holding in his hands a Sotheby's appraisal for \$1.8 to \$2.2 million," Sotheby's Diana Phillips denied it with a curt, "That is not correct."

The two suits were combined in one three-week-long trial that began in November 2011 and ended (with breaks for holidays) in January 2012. The jurors were asked to believe that Mark LaSalle knew he could sell the painting for over \$2 million even as he presented Mark Zaplin's \$450,000 offer. They were to decide if the offer was so out of line with market prices for Bouguereau works as to be a deliberate fraud on the sellers.

Was the information given to the nuns about a conspiracy accurate, and if not, was it a deliberate attempt

to damage the reputation of LaSalle and Zaplin? Did Bishop Kelly fail to investigate the e-mail's origin and veracity and in doing so blatantly damage the reputation of LaSalle with the comments made at the press conference? You know how the jury voted.

We wanted to know what convinced the jury members to choose their verdict. We asked Zaplin's attorney, Thomas Chase, and LaSalle's attorney, Daniel Centi, how they managed to emerge victorious. We also asked the attorney for the bishop and the sisters, Bruce Goldstone, for comments. We never heard back from Goldstone.

We told Chase that, on paper, it had looked darn bad for his client. Even the staff at this magazine's office in Waldoboro, Maine, thought LaSalle and Zaplin would lose. Chase laughed and admitted, "Everybody thought that the nuns would win."

"You go into a case like that, and the atmospherics sound pretty bad," Chase said. "When you sit down and strip away who they [the nuns] are, the allegation that they're unsophisticated and these guys were predators, when you take all that stuff and put it on the back burner and look at the facts—see what was done when, how long they had to consider the sale, who they talked to, what the prevailing prices for Bouguereau were at the time—it looked like a pretty clean deal at the time. And it was. We proved it.

"There were nine jurors, with three alternates because of the length of the trial. Six were chosen in the end. Equal sexes, good range of ages, maybe thirties through sixties."

Were the jurors asked about their religion? "You don't really sit them down and ask what church do you go to," Chase answered. "It's more about keeping an open mind—will you put all the witnesses on the same starting line, whether they're religious or not religious, whether they've devoted their lives to commerce or the spirit.

"In terms of going in, you wonder, 'Is my client going to start on an even footing or be playing catch-up through the whole thing? Will they be looking at his testimony through a prism?' You try to get people who say that they'll look at the facts and say they will in front of a bunch of other people.

"My experience with juries is they come in and they try to do their jobs. They try to do what they're instructed to do and try to be fair—to cut out a lot of the collateral stuff that's just noise.

"We were cautiously encouraged by the questions the jury asked while deliberating, but you never want to count your chickens before they hatch."

What about the fact that the jury heard that LaSalle got \$750,000 in the deal, when the nuns got only \$450,000? Chase answered, "That was a lot of money, and that was one thing we were concerned about. But it was clear that they had sold to him as the buyer with no strings attached, and the sale had been heavily negotiated."

We asked LaSalle's trial attorney, Centi, how he handled the money disparity. He answered, "I told the jury that was one of my other concerns during jury selection. I told them that my client made a lot of money from this painting for not, on the surface, doing much work. But they assured me that that alone would not determine what they would decide here, because it alone doesn't really mean anything. It is a lot of money. I also told them, in summation, when Bishop Kelly did the news broadcast, goes on CBS news in New York, was he thinking he was indestructible? Was he thinking a jury would tend to say, Mark LaSalle made a lot of money from this painting already, and therefore this is not a big deal for what later transpired?"

"It was a problem that he made a lot of money. It didn't mean he had done anything wrong," Centi emphasized.

Chase added, "I think the jury understood by the end of the trial that a painting like this, with the condition issues it had, that there was risk and reward with selling it or holding it. They knew about Bouguereau sales in the multimillion-dollar range; it wasn't that they didn't know who Bouguereau was. They knew about Sylvester Stallone's multimillion-dollar sale of a Bouguereau [Stallone sold a Bouguereau painting for \$2.6 million at Sotheby's in 1998]."

There was a crucial tool employed by the defense legal team that was only briefly noted in other daily accounts of the trial. Chase was able to show jurors real dollar amounts for other Bouguereau paintings offered at auction.

"We were able to get in [as evidence] the Artnet reports," Chase said. "One of my arguments in closing was that you can take a look at the Artnet reports, look at four or five Bouguereaus that sold or didn't sell when they were put up at auction for ranges of \$700,000 or \$800,000." (Artnet has a database of over four million works of art sold at auction going back to 1985.)

"They were big, bold, and beautiful, but there was no basis to tell why they didn't sell. We got an Artnet witness [Melanie Boyne] up there to give Artnet records they'd maintained for three to four years prior to the sale [from 2003-06]. So we were able to say, here's two big Bouguereaus that didn't sell. Here's one that sold for \$450,000, and you get back with auction commissions [deducted] maybe \$360,000 in the pocket of the seller.

"You look at the buy-in rates at auction, and they can run thirty to forty percent for Bouguereaus at different auction houses. That was the alternative way to sell the painting. It was tough getting the Artnet reports in; we had to fight for that."

LaSalle's attorney, Centi, spoke about how he treated the matter of the e-mail that was at the source of the suits. He said, in a January 25 interview, "One of the things I talked about in my summation was that the e-mail was obviously a fake. It had the artist's middle name misspelled. It had Sotheby's improperly punctuated. It misspelled the word appraisal. Anyone looking at it and studying it would come to the conclusion that it wasn't from Mr. Doller, who's the head of a nineteenth century art department.

"It was obviously from Paul Dumont or Boyle, is what I asserted. And I think it was pretty clear, because Mr. Dumont was the one who threatened to go to them and claim there was a swindle," Centi added.

What happened to Boyle, who was originally named as a member in the defamation suit? Centi replied, "At the end of our proof, Boyle made a motion to dismiss, which was granted. He had not actually defamed my client, according to the courts. He was always sort of in the background."

Attorney Chase said, "Dumont said numerous times there was a written appraisal by Sotheby's on this painting for \$2 million. That wasn't true; the jury heard from Sotheby's. They testified that they talked about auction ranges, and the ranges they discussed were around \$500,000 to \$700,000, maybe \$600,000 to \$800,000."

When Centi spoke about the \$5 million that Bouguereau's *Notre Dame des Anges* ultimately brought, he laughed and admitted, "This was an extremely unusual case, a fluke. I used that very word in my summation. No one on the planet thought this painting would bring as much, eight months later, as it did. Seemingly, someone overpaid for the painting, and that happens in the real world."

Endnote: Over the weekend of January 21 and 22, an agreement on punitive damages was reached with Bishop Kelly, attorney Centi said, and on the morning of January 24, a similar agreement was reached with Paul Dumont. "It was a substantial sum," he added.

"In the case of the bishop, the compensatory damage of \$250,000 was covered by insurance. In New York it is illegal to insure punitive damages by an insurance company, so that has to come directly from Bishop Kelly," Centi explained.

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