

COMMENTS ON THE ART MARKET

VOLUME 17

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The Art Consultant

We hear this phrase used many times in the gallery – “Hi, I am an art consultant and my client.....”, but what is an art consultant? What should you expect from one? And, do you really need one?

In our opinion, a real ‘art consultant’ is an individual who has in-depth knowledge in a particular school of art, years of experience in the art world and can offer their clients an educated, independent, and unbiased, opinion of the works they are considering. If you decide you want, or need, the advice of a consultant it is extremely important that you find one who specializes in the period of art you are interested in – there is no point in hiring someone knowledgeable in Contemporary art if you are looking to acquire 19th century art; or an expert in 19th century art if you want to buy Old Master paintings. This mismatch can, and usually does, lead to big trouble (as you will see shortly).

Along with an understanding of the period, you want to be sure that the consultant has a good working relationship with all the dealers who specialize in the period. You need to be confident that they will show you ‘everything’ that is available and once you have narrowed down your choices, will be able to guide you to the right works for your collection.

The right consultant will source works from many galleries. If you find that your consultant consistently works with just one or two, you may want to do a little more checking on your own to be sure you are seeing everything that is available. Look, you are paying for an independent and unbiased opinion, so make sure that is what you are getting.

And while speaking about paying, it is important that the financial arrangements are worked out before you begin your journey. Consultants work in a variety of ways – the most common are a project fee, hourly rate, or commission basis. The project and hourly fees are fairly self explanatory; and while the commission basis should also be easy to understand, what you need to have a clear understanding about is who pays the commission? The commission based consultant will typically work on a percentage over cost basis – meaning that their commission is added to the final cost of the painting and paid by the buyer. So, if your consultant gets a 15% commission, then a \$10,000 work will end up costing you \$11,500. However, there are consultants who, unbeknownst to their client, will also look to obtain a commission from the gallery – what we in the trade call ‘double dipping’. Now, if your financial agreement stipulates that the consultant will receive a commission from both the buyer and seller, that is fine, but typically the seller never knows this is happening. As I am sure you can see this will create a huge conflict of interest. Some galleries are not set-up for outside consultant commissions, while other have varying percentages built in– and those who are willing to give them the most, are more likely to get the business; and that does not always mean that you will get the right work of art.

Now comes the big question... do you really need a consultant? This all depends on your situation. With the creation of the Internet, it is becoming much easier for individuals to find the dealers and galleries who specialize in the period or styles of art they are interested in. If you have the time, I would suggest that you surf the Net and look for these galleries – today you can cover a lot of ground from your home. Just type in the names of the artists, styles, or periods that interest you and see what comes up... I think you will be surprised at how much information you can collect in a short time. You may just find that with some weekend surfing on your part, you do not need the services of an ‘art consultant’.

However, if you are the type of individual who cannot make a decision, or you just do not have the time to find the art that might interest you, then a consultant may be just what the doctor ordered. But I still recommend that you do a little legwork... it is nice to come armed with some suggestions as to the

galleries or dealers who are of interest and you should have a general understanding of the artists whose works you will be looking at and their price ranges.

Finding the Wrong Consultant!

The following case was reported on in a number of recent issues of the London based Antiques Trade Gazette (ATG). It is interesting to note that while the case generated a bit of news in the United Kingdom, there was little mention of it here in the United States. It will not only beautifully illustrate why one needs to be careful when looking for a consultant, but also give you a glimpse into the Old Master world. My comments are in bold – everything else is as reported:

On February 9th ATG reported that: *Mayfair art dealers Agnew's are hotly contesting claims for a £1.5m refund over an Old Master which is at the center of a dispute over who painted it.*

The buyer, Texan millionaire Mr. D. [(we will not use the individual's name as he is also a client and friend of ours)], does not dispute that Agnew's told the agent negotiating his purchase that expert opinion was divided as to whether the painting – a half-length portrait of James Stuart, Duke of Lennox and Richmond – was by Anthony Van Dyck. But he claims that, vitally, the art dealers played down the importance of the opinion of leading expert Sir Oliver Millar, the Surveyor Emeritus of the Queen's Pictures, who had told Agnew's that while he thought the picture had been painted in Van Dyck's studio, he did not believe that Van Dyck had touched it himself. Sir Oliver also refused to include it in his catalogue raisonne on Van Dyck.

The painting in question was sold by Sotheby's in its sale of the contents of Ickworth, the Marquess of Bristol's Suffolk estate in 1996 and had been catalogued as 'After Anthony Van Dyck'. Before the sale, Julian Agnew (Thomas Agnew & Sons director) viewed the work and felt that Sotheby's had made a mistake and that the work was in fact by Van Dyck. They acquired the painting at the sale for £36,000.

ATG goes on to report that: *In June 1998 Agnew's sold the picture to Mr. D. having negotiated the deal with New Orleans based art agent Mr. S.C. Although Mr. S.C., an expert in 19th century art but not Old Masters, was told of Sir Oliver's opinion, he claimed in the witness box that Mr. Agnew played down its importance.*

"I was told that Sir Oliver was an expert and was writing a book (on Van Dyck) and this painting wouldn't be included." said Mr. S.C. "But a book is a book and I was never informed of the importance of Sir Oliver. (I was told) he was one of many experts and he was wrong."

Among the points that Agnew's attorney Charles Flint QC argued was: *that even if it could be proven that the painting were not by Van Dyck, the case should be dismissed, adding: "Any attribution of an Old Master painting can only ever reasonably be understood as a statement of opinion, genuinely held and for which Agnew's had more than reasonable grounds."*

Now hold on - "a book is just a book"! Sir Oliver was writing the definitive 'book' (a catalogue raisonne) on the artist and any professional in the art world would know that this was important information – wouldn't they? Sorry for digressing...

In its February 23rd issue ATG continued its coverage noting that: *Mr. D's counsel, Joe Smouha, has now withdrawn one of the central planks of their claim – that Agnew's misrepresented expert views on the painting. However, he insists that the description on the invoice for the painting that it was "by Van Dyck" means that the dealers had a contract to guarantee the authorship of the work, showing that Van Dyck himself had painted the hands, legs and face of the portrait. Unless Agnew's could convince the judge of this, Mr. Smouha argued, Mr. Justice Buckley must rule that the painting was not by Van Dyck....*

A further point of dispute in the case is whether or not the art agent who negotiated the deal on behalf of Mr. D, Mr. S.C., disclosed all the facts he had discovered to Mr. D at the time.

Mr. Flint claimed that Mr. S.C.'s account of not having access to sales records showing that Agnew's had bought the painting at auction of £36,000 was "simply not correct". Accusing the art agent of dishonesty,

he alleged that Mr. S.C. must have decided not to fully disclose the facts to Mr. D. as it would make the deal “too dangerous”.

The court’s decision was reported on in the March 16th edition of ATG – the headline read: High Court ruling defends conventions of attribution. *THE conventions of attribution for paintings are safe after a High Court judge ruled in favor of Mayfair dealers Agnew’s ... Although Mr. Justice Buckley ruled that the painting ... was not by Sir Anthony Van Dyck, he said all the dealers had done was to express an opinion that it was, and he dismissed Mr. D’s claim for a £1.5m refund.*

The judge ruled that Mr. D. was really a victim of art agent Mr. S.C.... Mr. S.C. had concealed vital facts from Mr. D. because they might have threatened his commission on the purchase, the parties were told. And it was revealed that Agnew’s, who had no idea of the buyer’s identity, had written a letter to Mr. D. via the agent when they became concerned that Mr. S.C. did not appear to be making all the independent inquiries about the painting. Mr. S.C. never passed on the letter.

The judge said that Mr. S.C. had doctored the copy of the Agnew’s brochure he sent Mr. D to give the impression that the work... was being bought from a country house collection. *The brochure accurately stated that the painting had been in the Marquess of Bristol’s collection from before 1819 until 1996, but Mr. S.C. had blanked out the words “until 1996”. This covered up the later provenance, showing that Agnew’s paid £30,000 for the painting at auction.... Mr. S.C. had argued that he had not been aware of the auction purchase or price, a claim exposed as incredible by Agnew’s council.*

Agnew’s still holds to their opinion that the work is a genuine Van Dyck, even though Sir Oliver Millar, a world-renowned expert on the artist, disagrees with them. ATG went on to note that: *The dealers had indicated Sir Oliver’s objection to the attribution during the sale and although the judge preferred Sir Oliver’s opinion, deeming that the work was not by Van Dyck and worth only £275,000, he exonerated the dealers of any wrongdoing.*

Mr. D. had tried to argue that the attribution “by Van Dyck” meant that Agnew’s had to prove beyond doubt that the artist had painted the bulk of the work. *The judge disagreed, however, upholding the conventions of attribution and noting that the sale contract did not include a term that the painting was by Van Dyck. He said.... All Agnew’s had done was to express their honestly held opinion that the work was by Van Dyck. “There was never a guarantee” that that was the case, he added, and the dealers had made no promise to take the painting back if there was a problem.*

I feel very bad for Mr. D. and believe that he would have had a better understanding of what he was buying if he dealt directly with Agnew’s or through an agent who was an expert in Old Master paintings. Knowing this individual, he probably would have passed on the work if he had all the information to begin with.

It is important that you carefully chose the people you are going to deal with and always keep the following in mind ... buy your works from people who are experts in the field of art that interests you.

Howard L. Rehs

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Gallery Updates: We will be exhibiting at the Lake Forest Antiques Show, Lake Forest, IL from June 13 to June 16. If you are in the area, please stop by.

Virtual Exhibitions: We have added important works by both the British artist William Mark Fisher and the French artist Jules Dupré to – *Rehs Galleries: A Visual Survey.*

Daniel Ridgway Knight’s *Waiting for the Ferryman* and Louis Aston Knight’s *Summer, Beaumont-le-Roger* have been added to their exhibits. A number of works have been added to Sally Swatland’s exhibit, including: *June on the Barrier Islands* and *Quiet Afternoon at Binney Park*. Edouard Cortes’ *Pont-Neuf* and *Place de la Concorde* have been added to his exhibit and 7 sold works, including *Place de la Madeleine, Hiver*; *Theatre du Vaudeville*; *Place de l’Opera*; *Rue Royale, Madeleine* and *Boulevard de la Madeleine* have been added to the Blanchard exhibit.

Next Month: I’m still thinking!