

The Wall Street Journal

Courtroom Brawl Begins in Dallas Over Secrecy of a Rothko Sale

The prior owner of 'Red Rothko' says her privacy was violated when Sotheby's sold the painting for \$31.4 million

By

Mark Maremont

Updated Dec. 8, 2013 1:16 p.m. ET



GOING, GOING: Sotheby's auctioneer Tobias Meyer sells the 'Red Rothko' for \$31.4 million in 2010. The prior owner says a confidentiality agreement was broken by the auction. Xinhua/Zuma Press

When Marguerite Hoffman, a wealthy Dallas widow, decided to sell a major painting by Mark Rothko in 2007, she insisted the transaction be kept hush-hush. Mrs. Hoffman's husband, soft-drinks bottling magnate Robert K. Hoffman, had died the year before, and she needed to quietly raise some cash from a discreet buyer.

But according to a lawsuit set to go to trial in Dallas next week, the private transaction came to light three years later when the Rothko's buyer turned around and sold the painting in a highly publicized

auction at Sotheby's—where it fetched \$31.4 million and indirectly revealed the Hoffmans' prior ownership in marketing materials.

In court papers, Mrs. Hoffman is alleging two major New York art dealers and a Mexican-born billionaire art collector named David Martinez broke an agreement to keep her 2007 transaction private. Tobias Meyer, the high-profile former head of contemporary art and principal auctioneer of Sotheby's, is scheduled to testify via videotaped deposition about his role in the sale. A judge has ruled that Mrs. Hoffman's claims against Mr. Meyer and Sotheby's in the case weren't justified and have been dismissed.

The defendants in the case, in U.S. District Court in Dallas, deny the allegations, saying they didn't breach any agreements.

Major transactions in the art world often involve secrecy, and confidentiality clauses of differing stripes have become common in recent years. As prices of artworks soar into the tens of millions, many wealthy buyers want to protect their privacy. If the defendants are found liable, some legal experts say, it could have broad implications for the art world by threatening to turn such confidentiality agreements into restrictions or even prohibitions of resales.

The Rothko case also reveals some of the behind-the-scenes jockeying that goes into preparing major works of art for auction and the commissions taken by various parties.

The painting at issue, a 1961 untitled work known as the "Red Rothko," had been part of an extensive contemporary art collection owned by Mrs. Hoffman and her late husband, who had earlier co-founded National Lampoon. The Hoffmans had made an irrevocable bequest of their collection to the Dallas Museum of Art, which would get the art after their deaths. But they reserved the right to change the collection, and Mrs. Hoffman decided to sell the Red Rothko after her husband's death, according to the complaint.



RED ROTHKO: Robert and Marguerite Hoffman's contemporary art collection included the 'Red Rothko,' which Mrs. Hoffman decided to sell privately for \$17.6 million after her husband's death. She says the confidentiality of the private transaction was violated. European Pressphoto Agency

The 2007 sale, which fetched Mrs. Hoffman \$17.6 million, was arranged through Robert Mnuchin, a former [Goldman Sachs GS +0.28%](#) executive who has become one of New York's foremost art dealers, and Dominique Lévy, then his business partner. According to her court complaint, Mrs. Hoffman stressed that she wanted the sale to the unknown buyer kept quiet to avoid speculation about her financial situation and embarrassment to the Dallas museum over the work, which at the time of the negotiations was hanging in the museum as part of a show.

In a deposition, Mrs. Hoffman said she was assured that the buyer was an individual and "this picture would disappear into his private collection in Europe." The sale involved a letter agreement that "all parties agree to make maximum effort to keep all aspects of this transaction confidential indefinitely," and that the buyer wouldn't display the work for six months, according to court records.

Mr. Martinez, who splits his time between New York and London, made his fortune investing in distressed debt through a firm named Fintech Advisory Inc. He is a major art collector, but in the case of the Red Rothko he bought the painting on behalf of a Belize-registered company named Studio Capital, according to court documents. Details about the company and the extent of Mr. Martinez's control of it remain obscured by court-ordered confidentiality strictures, but the documents suggest Mr. Martinez is the major party behind the company.

Three years after buying the Red Rothko, Mr. Martinez and Studio Capital decided to sell it at a Sotheby's auction. According to court documents, the Sotheby's catalog and website didn't name Mrs. Hoffman as a prior owner but noted that the painting had featured in the 2007 Dallas museum show. It pointed readers to the Dallas show's catalog page with a photo of the Hoffmans standing in front of the work. That and other publicity surrounding the auction, Mrs. Hoffman claims, outed her as a previous seller and breached the confidentiality agreement.

Mrs. Hoffman is seeking damages, claiming that she could have auctioned the painting in 2007 and received a significantly higher price than \$17.6 million, had she not been so concerned about publicity. One of her expert witnesses estimated that an auction at that time could have yielded a price of \$30 million to \$40 million.

The defendants, who include Mr. Martinez, Studio Capital and L&M Arts, the gallery formerly owned by Mr. Mnuchin and Ms. Levy, say the confidentiality clause wasn't breached, pointing in part to the lack of an explicit prohibition on reselling the painting at auction. The defendants also argue that a true resale restriction, if Mrs. Hoffman really intended that, would have considerably lowered the value of the Rothko. But instead Mrs. Hoffman was paid full price for the painting—at that point the second highest price ever paid for the artist.



Robert and Marguerite Hoffman in 2005 Dallas Morning News/Associated Press

Lawyers for Mr. Martinez and Studio Capital say they abided by terms of the contract, agreeing not to display or exhibit the painting anywhere until 12 months after the sale, including a six-month period where they left it at Mrs. Hoffman's home. They also say there are no damages and they intend to prove that at trial.

One wrinkle in the case is that when L&M Arts sold the Rothko to Mr. Martinez and Studio Capital, it didn't include the original confidentiality agreement. Instead, the invoice stated "[a]ll parties are committed to keeping the terms of this transaction strictly confidential." Mrs. Hoffman's lawyers have focused on this discrepancy, but the legal significance is in dispute.

Mrs. Hoffman's legal complaint is replete with allegations of behind-the-scenes dealings. Mr. Mnuchin's gallery obtained an extra \$250,000 commission in the initial 2007 sale, paid by the buyer, that was hidden from the seller, her complaint says. When the painting was later consigned to Sotheby's for auction, Mr. Mnuchin broke the news to the Hoffman camp, allegedly saying he felt "simply terrible" but had been powerless to stop the sale. He didn't tell Mrs. Hoffman and her representatives that he allegedly had played a key role in persuading Mr. Martinez and Studio Capital to sell the Red Rothko at auction, her complaint claims.

Bill Carmody, an attorney for L&M Arts, said "anybody can throw sensationalistic things into a complaint, but there's no support for this sort of allegation." He said Mr. Mnuchin had no incentive to push the painting toward a Sotheby's auction, because he only makes money from private sales, not from an auction.

Sotheby's Mr. Meyer auctioned the painting off for Studio Capital in 2010. According to the complaint, Mr. Mnuchin told Mrs. Hoffman's representative that Mr. Meyer had "seduced" Mr. Martinez and his associates into selling the Rothko painting at auction. Mr. Meyer declined to comment.

Thomas C. Danziger, a New York art attorney, said the case should serve as a warning for people in the art world who blithely sign confidentiality agreements. "Most people who ask for them to be signed don't need them, most people who sign them don't know what they're signing," he said.

Corrections & Amplifications

An earlier version of this article incorrectly said that Marguerite and Robert K. Hoffman had pledged the Red Rothko to the Dallas Museum as part of a broader gift.

Write to Mark Maremont at mark.maremont@wsj.com