

Art Market

Auctioneers defend phantom bidding

But New York politician says it is "chicanery" and proposes prohibitive legislation

LONDON. The leading auction houses have issued robust responses to proposed legislation in New York to identify "chandelier" or "sham" bidding at auction.

The practice of bidding-up lots with non-existent, "phantom" bids up to the vendor's reserve is currently legal. Increasing the price with phantom bids once it is over the reserve is illegal.

However, a New York State Assembly Bill, presented to the Senate in June, aims to scrap this distinction, saying that sham bidding "is essentially a deceptive practice". The bill proposes that auctioneers identify phantom bids by saying "for the consignor" in order to "put an end to the chicanery being perpetrated by the auction houses".

In a statement issued in

response, Sotheby's says that this would effectively disclose a consignor's minimum price at auction and, as such, "would be very damaging to the New York auction market and would drive a substantial amount of business to London".

The firm—which believes the term "chandelier" is used by its detractors—also argues: "Will the next step be to require sellers

of real estate to disclose the minimum price they would be willing to accept?"

Christie's spokesperson, Toby Usnik, echoed Sotheby's view: "We also oppose the proposed legislation and feel that all auction participants are well served by the current practice."

The bill was introduced by New York assemblyman Richard Brodsky. Speaking to *The Art*

Newspaper, Mr Brodsky says that the auction houses "are no longer market makers, but are market participants and, as such, are riddled with conflicts". He believes that "if they want to excite bidders, they ought to hire exotic dancers".

Mr Brodsky has introduced similar bills for the past 20 years and held a hearing in January 1991 proposing increased regu-

lation in the art market, including banning "chandelier" bidding (*The Art Newspaper*, March 1991, p17; October 1992, p25). These were rejected at the time, although some provisions—such as disclosure of what works are guaranteed—were later adopted.

The process for his latest proposal to become law could take up to two years.

Melanie Gerlis

Phillips de Pury sacks photography heads over "cultural differences"

LONDON. Phillips de Pury's decision to dismiss Rick Wester, worldwide director of photographs, and Lisa Newlin, New York director of photographs, at the end of July has surprised both their colleagues and competitors in the photography market given the department's recent success. Mr Wester says the only reason he was given for his dismissal was "cultural differences" between him and Simon de Pury, chairman of the auction house.

Speaking to *The Art Newspaper*, Mr Wester said: "I was told at my exit interview: '[Mr de Pury's] European, you're American. You like sports and baseball, he doesn't'."

Mr Wester was appointed to lead Phillips de Pury's photography department in 2004, soon after Philippe Garner—together with Joshua Holdeman—left to go to rival Christie's. He built up a new team, including the appointment of Lisa Newlin—previously at Christie's—to head the New York department.

Phillips de Pury acknowledges that Mr Wester and Ms Newlin "helped to establish the company's leading position in the photography market". For the first six months of 2007, Phillips de Pury's photography team under Mr Wester brought in around \$15m and, according to its own published reports, was its fastest growing department, with sales up 137% compared with the same period last year.

Prior to his dismissal, Mr Wester says he had asked for a performance review in recognition of some of the above achievements. The response, says Mr Wester, was his dis-



Incompatible: Wester (left) and de Pury (right)

missal, together with that of Ms Newlin, whom he describes as "guilty by association".

He also says it was a total surprise. "This was completely out of the blue. If there was a personality clash [with Mr de Pury], then it was not something that was ever made explicit," he added. "I was vocal in my opinions on certain projects and strategic decisions, but always had the impression that free-thinking and innovation were welcomed." He has yet to decide whether to sue the auction house for unfair dismissal.

Speaking to *The Art Newspaper*, Simon de Pury would not comment on the circumstances of the pair's dismissal. He stressed that the firm was committed to its photography department and the success that he expected from the new team now in place. On

the same day as Mr Wester and Ms Newlin were dismissed, Phillips de Pury announced that Charlie Scheips, a freelance curator, art advisor, writer and cultural historian, was to become its worldwide director of photographs. M.G.

Warhol board faces threat of class action

Movie producer sues, believing his work is genuine

NEW YORK. The Andy Warhol Art Authentication Board is the target of a multi-million-dollar lawsuit that alleges that it has been illegally controlling the Warhol market. The suit, filed on 13 July in New York, also names as co-defendants the Andy Warhol Foundation, which established the board in 1995, the Estate of Andy Warhol and Vincent Fremont, a trustee of the estate who is the exclusive agent for sale of Warhol paintings owned by the Warhol Foundation.

The plaintiff, movie producer Joe Simon-Whelan, is the owner of a 1964 canvas self-portrait of Warhol that the board has twice rejected, and as a result is nicknamed "double denied". He is seeking damages "well in excess of \$20m". He alleges that "while the board was ostensibly created as a not-for-profit corporation that would be independent from the Warhol Foundation which funds it, in reality, the...board is completely controlled by Fremont, and the foundation, who routinely exploit the board's



Rejected twice: Joe Simon-Whelan's Warhol

purported independence...for significant personal benefit."

Mr Simon-Whelan's legal team includes Lee Weiss and Brian Kerr, partners in the Class Action Group of New York-based Dreier LLP. They say there are other collectors in the same position as Mr Simon-Whelan and that if they join the suit the court will certify them as a "class" collectively eligible to

recoup damages. As yet, no one else has joined the suit.

Ronald Spencer, a lawyer who represents the board and the foundation, says the latter will respond by 14 September seeking a motion to dismiss.

"Mr Simon-Whelan is disappointed with the board's opinion of his painting since it apparently keeps him from selling it for ten times what he paid for it," says Mr Spencer. (Mr Simon-Whelan acquired the work for \$195,000 in 1989 and reportedly had a buyer for \$2m when the work was first rejected by the board in 2001.) He says the suit is "without factual support or legal merit [and] will drain resources from the charitable and educational activities of the foundation" (see p6).

Mr Simon-Whelan's painting was produced not by Warhol himself, but by Richard Ekstract, a publisher who in 1964 bartered the loan of video equipment to Warhol in exchange for the right to produce silkscreen paintings using acetates of a Warhol self-portrait. The board rejected it based on testimony from Mr Ekstract and his printers that Warhol did not participate in or supervise the production.

However Mr Simon-Whelan says that the work was twice authenticated as a genuine Warhol (*The Art Newspaper*, October 2004, p8): by Mr Fremont in 1987, and by Fred Hughes in 1988. Both Mr Fremont and the late Mr Hughes were executors of the Warhol estate before the establishment of the Authentication Board. Jason Edward Kaufman

Art for Parkinson's

Twenty-four YBAs, all patrons of Fergus Henderson's St John restaurant in London, are donating works to a charity auction to be held at Christie's on 16 October. Mr Henderson was rendered unable to cook when diagnosed with Parkinson's disease in 1998. A successful Deep Brain Stimulation (DBS) operation saw him return to the kitchen

and he is co-hosting the Christie's auction to benefit the work of the Parkinson's Appeal. Artists donating works include Peter Blake, Rebecca Warren, Damien Hirst and Antony Gormley. Some works—such as Angus Fairhurst's appropriately named *Deep Brain Stimulation 2007* (right)—have been made specifically for the sale M.G.



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