

Court Ruling On Naming Consignors Could Have Chilling Effect, Says Auctioneer

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It may have been described in the auction catalog as a silver and enamel box by Ivan Petrovich Khlebnikov, but for auction house owner William Jenack †and perhaps for auctioneers across the United States †Lot Number 193 may as well have been called “Pandora’s box.”

Consigned to a September 21, 2008, auction at William J. Jenack Estate Appraisers and Auctioneers, the box did not unleash the ills of the world, but it did engender a recent court decision that is a game-changer for auction houses.

A New York appellate court ruled that that auction firms do not have an enforceable contract between seller and buyer unless the name of the consignor is disclosed in writing. “Their ruling impacts every auction house in the country,” stated Jenack.

Specifically, Judge Peter Skelos of the Supreme Court of the State of New York’s Appellate Division in a September 19, 2012, ruling, citing the General Obligations Law 5-701, said that a legally recognized contract has to include the names of both parties. That is a far cry from the current trade practice in which many times auction patrons are bidding on an item that may be described as “from the collection of a distinguished gentleman” or “property of a lady,” and this, according to Jenack and others, could have a chilling effect on consignments going forward.

It all began, said Jenack, when he tried to collect on “a deadbeat bidder who had bid [on the box] by telephone.” The box had been estimated \$8/10,000, and as it crossed the block it was pushed by phone and Internet bidders into the \$400,000 level. Bidder number 305, later identified in court records as Albert Rabizadeh, was the winning phone bidder. When Jenack sent an invoice seeking payment for the box, however, the bidder did not remit payment or take possession of the box, which remained in Jenack’s storage facility.

Jenack said he then filed action against the bidder for nonpayment and breach of contract †the absentee bid form advises bidders that payment on any items purchased is due within five days of the auction. The buyer, however, contended that the box had been artificially propelled to the level at which he successfully bid and charged fraud. In 2010, the New York Supreme Court ruled in Jenack’s favor in a nonjury trial following two years of litigation, awarding the auctioneer \$402,398, which comprised the principal amount owed plus interest.

The more recent appeal by Rabizadeh resulted in the reversal of that judgment and introduced a technicality, which may seem small or innocuous, but, like that artifact in Greek mythology, turns out to have severe and far-reaching consequences. Judge Skelos opined that General Obligations Law 5-701 was suitable in governing goods sold at public auction. The statute reads, “If the goods be sold at public auction, and the auctioneer at the time of the sale, enters in a sale book, a memorandum specifying the nature and the price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale was made, such memorandum is equivalent in effect to a note of contract or sale.”

Jenack contends that it is common practice for auction houses not to disclose the names of their consignors, but rather to assign a consignor number to each item. It is less cumbersome, and as long as there is an identifying code that can be matched with the consignor’s name, the system works and has been in use by auction houses for decades.

True, agreed Skelos, but “this Court is governed not by practice in the trade, but by the relevant statute, which it is bound to apply in accordance with foregoing rules of construction.” Without the name of the person on whose account the box was sold, the contract that Jenack had with the deadbeat bidder was not enforceable.

General industry practice may indeed point to a need to change the law, the judge concluded, but “consideration of the propriety of that change is not for the courts, but rests with the Legislature.”

So for now, auction houses in New York State who want to maintain confidentiality with their consignors face the possibility of a bidder successfully reneging on a purchase, citing the appellate court ruling, or sellers may decide to forego public auction and try to reach collectors through a dealer, who does not have to disclose their identity. Jenack said that Christie’s is joining with him to bring the matter to the New York Supreme Court. Toby Usnik, a spokesman for Christie’s, said the firm takes issue with the court’s opinion and is reviewing its legal options.

As for the troublesome box, Jenack said that it was resold at auction for around \$100,000 in “a different economy.” Interestingly, he added, the unidentified bidder happens to share the same bank in Great Neck, N.Y., as Rabizadeh.