

# Recent Cases Paint Troubling Picture of Art Experts in Poland

*August 31, 2011 by Sheppard Mullin*

In the current financial crisis, when stock market indexes are falling and the only certain thing in the capital market is uncertainty, investors are paying more attention to art, which in addition to their artistic value, can provide a relatively high rate of return.

Growing demand on the art market results not only in higher prices, but also greater incentive to increase the number of works available on the market. One of the most popular and secure ways to purchase artworks is provided by auction houses or antique shops. Security measures concerning such type of transactions are ensured by professional art experts. They confirm whether particular artwork is genuine, as well as carry out its appraisal. Despite this immense responsibility, there has been an increasing number of cases in the recent decade showing that art experts do not perform their duties in a proper manner. These cases enhance discussion on more accurate regulation of artwork trade and the role of art experts. Below are the best-known cases from the Polish art market:

1. In 2008, the media reported that the National Museum in Gdansk purchased a counterfeit painting by Wyczółkowski for PLN 80,000 with expertise provided by Prof. Jerzy Malinowski. When the case was disclosed, the museum ordered another expertise from Prof. Dariusz

Markowski. Basing on chemical test results he certified that the painting was counterfeit.

2. In December 2007, the police seized a fake painting by Jan Cybis with a value was estimated at PLN 30,000 . Authenticity of the artwork was questioned by the painter's son, Dr. Jacek Cybis, who disagreed with the positive expertise of Dr. Hanna Bartnicka-Górska.
3. In May 2000, Mariusz Jańczuk bought a fake painting by Moses Kisling - "Boy sitting on the chair" for PLN 150,000, which, as stated in a professional expertise from the "Polswiss Art" auction house, was genuine. Its authenticity was questioned by Kisling's son and the case was brought to court.
4. In March 2001, Dr. Łukasz Kosowski, an art expert from the same auction house, confirmed authenticity of the Henryk Siemiradzki painting - "Salome" which eventually turned out to be a forgery.
5. In 2005, journalists from TVN (a TV station) and "Rzeczpospolita" (a newspaper) prepared a sting against two art experts: Dr. Irena Kossowska and Dr. Łukasz Kossowski. With the approval of a well-known Polish artist, Franciszek Starowieyski, they hired a young painter to create a fake painting by the artist. Experts not only approved the painting, but determined its age at 46 years and also estimated its value at PLN 3,200 .

These examples exposed serious problems that significantly affected certainty and security measures on the Polish art market.

First of all, it is crucial to emphasize that substantive requirements for a candidate art expert are vague and give rise to reasonable doubt. As a matter of fact, almost anyone can be an art expert. Moreover, experts are neither obliged to have liability insurance nor assume any responsibility for their decisions. In such cases as presented above, it is often an auction house that bears responsibility for an incorrect expertise.

Secondly, art experts should be aware that their activity is also examined by deontological norms. Many combine work as an art expert with museum employment. It is therefore necessary to point out that section 8, paragraph 13 of the Professional Ethics Code of the International Council of Museums (ICOM) explicitly states that persons employed in museum should not undertake other paid employment or accept outside commissions that are in conflict with or which may be viewed as being in conflict with museum interests. In fact, one could argue that presented practices are perceived to be damaging to a museum or the profession as well as matters of professional ethics.

Recent scandals intensified discussions among members of the Association of Polish Antiquarians, which resulted in adoption of a resolution on the procedure for selecting art experts. Its provisions stipulate that the Association will appoint experts upon official request of its member with a recommendation from two other members.

Although these changes shall be perceived positively, it is hardly possible to change a negative trend without significant regulation of the art market. In such conditions art is not always a good investment, but will always remain a matter of taste and personal preferences.

Włodzimierz Szoszuk  
adwokat, Senior Partner  
Head of IP Practice Group  
Wardyński & Partners  
Al. Ujazdowskie 10  
00-478 Warszawa

tel.: (+48) 22 437 82 00, 537 82 00

fax: (+48) 22 437 82 01, 537 82 01