

Authentication Board to Death by Lawsuits

November 8, 2011 by Sheppard Mullin

The recent news that the Andy Warhol Art Authentication Board, Inc. will dissolve in early 2012 brings the role of authentication boards in the art world to the fore once again. The Board, which has been charged with authenticating the works of Andy Warhol since 1996, has been the subject of controversy, probably owing more to the nature of Andy Warhol's art-making process and his fame rather than anything the Board may have done. Warhol was famous for industrializing the art-making process, frequently directing others to execute works on his behalf. The question of what makes a Warhol is subjective and is open to changing interpretation as scholarship develops, as it involves current thinking on what steps of the art-making process the artist must control in order for a piece to be considered attributable to that artist. The Warhol market is also gargantuan. ArtTactic reports that his art accounted for 17% of contemporary art sales at auction in 2010 and 12% of the total contemporary art sold in the first decade of this century.

A handful of other twentieth-century artists' estates have set up authentication boards, including Jean-Michel Baquiat, Alexander Calder, and the husband and wife, Jackson Pollack and Lee Krasner. The Pollack-Krasner Authentication Board only operated for six years (1990-1996) before dissolving after the completion of the Pollock catalogue raisonné. With the dissolution of the Warhol Board, it begs the question: Are authentication boards more trouble than they are worth?

An argument against authentication boards is that there is a conflict of interest between the authority of the board to authenticate the works of the artist's estate that they represent and the fact that the same interested parties frequently have vast holdings of that artist's works. This has led to allegations that a board would deny authentication of works in the public stream of commerce in order to increase the value of works held by the artist's estate. They in effect hold a monopoly on authentication. The fact that the main auction houses, museums, and dealers understandably would not trade in works that were not verified by an authentication board gave these bodies vast power.

Moreover, authentication boards consistently ask the person submitting for authentication to sign a release from any future claims based on the outcome of the authentication process. This is a hard pill to swallow when the outcome of authentication could mean the difference between a valuable piece of an artistic legacy and a questionable piece of canvas. The Warhol Board literally affixed their imprimatur by either stamping in red ink, "DENIED," or alternatively affixing a black authentication stamp and assigning a catalog number. The Warhol Foundation found itself having to devote more resources to legal fees each year in order to defend its authentication activities. While running the Board was costing around \$500,000 each year, the legal fees ran to \$7,000,000 last year alone.

The question remains, if there is no authentication board, how will works be authenticated? The short answer, according to Warhol Foundation president, Joel Wachs, speaking to *Gallerist*, is that, "the Warhol authentication process would now follow the same path it would for any other artist." Most artists do not have an authentication board. The process is left to the purview of scholars and the estates of the artists. A catalogue raisonné produced sometime after the death of the artist becomes the primary source by which art is authenticated. The Warhol catalogue raisonné remains in process. Leading this project are two members of the Authentication Board. But even the publishing of a catalogue raisonné is not enough to fend off legal liability. For example, suit was brought

against the Pollock-Krasner Foundation demanding that it include certain works that were not contained in the original catalogue. Even so, the lesson that authentication boards have taught is that the less an artist's estate is actively involved in authenticating a work, as opposed to a passive inclusion of a work in a catalogue raisonné, the less likely these actions will be subjected to legal scrutiny. That is the authentic truth.