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INTERNATIONAL ARTS

A Tug of War Over Art-Sales Transparency

By SCOTT REYBURN SEPT. 25, 2015

LONDON — A new art market season has begun, and with it another sequence of multimillion-dollar auctions that will amaze and mystify those unacquainted with the inner workings of the art world.

Auctions have, for centuries, been a theatrical way to sell art. But over the past two or three years, with the proliferation of high-value guarantees at Sotheby's and Christie's flagship contemporary sales — and the complex financial arrangements that go with them — they have become a form of spectacle that even experienced audience members can struggle to fully understand.

In London in October and in New York in November, auctioneers will invite bids for certain artworks that have, for all intents and purposes, already been sold. A flurry of imaginary "chandelier" bidding often leads up to the undisclosed guarantee price being bid, either by an unidentified third-party (who ensured the sale in return for a cut of any "upside") or by the auction house itself, usually through a staff-member on the phone. This may well be followed by further bidding from unidentified would-be buyers on telephones or in the room, sometimes against further bids from the guarantor, until the hammer finally falls.

"The auction houses have created a theatrical experience, heightening the emotion of buying and selling," Greg B. Davies, head of behavioral and quantitative finance at Barclays Bank, said in a telephone interview. "The insiders are in a privileged position. They are networked. Outsiders can buy access to the assets, but not the knowledge base. This creates a barrier. You're either in the fold or not."

A painting might sell at a public auction for more than $100 million, and the identities of the seller, the guarantor, the external bidders and the final buyer will remain cloaked in confidentiality. More than four months later, the wider world has yet to gain any definitive idea who sold, guaranteed or bought the 1955 Picasso painting “Les Femmes d’Alger, (Version ‘O’)” which soared to an all-time auction high of $179.4 million at Christie’s on May 11.

Back in January, at the World Economic Forum in Davos, Switzerland, the American economist Nouriel Roubini, who is a collector, ruffled feathers by telling The Financial Times that the art market needed more regulation because it had become routinely susceptible to trading on insider information, money laundering, price manipulation and tax evasion.

The theme was picked up again on Sept. 3 at the 2015 Art Business Conference in London. Robert Hiscox, former chairman of Hiscox Insurance and another prominent collector, told more than 300 delegates that the art trade was the like “the Wild West.” He added that it was the last “unregulated market” and that unregulated markets did not work because “people are too venal.”

This year, outsiders have been given a peek into the murk at the top of the art world courtesy of the continuing legal dispute between the Russian billionaire Dmitry E. Rybolovlev and the Swiss businessman and dealer Yves Bouvier. Mr. Bouvier is alleged to have made excessive undisclosed profits while compiling a collection of about 40 works by famous artists for Mr. Rybolovlev.

Among the transactions, Mr. Rybolovlev said he paid $127.5 million for a Leonardo da Vinci that he subsequently discovered Mr. Bouvier had acquired privately for between $75 and $80 million. In Monaco, Mr. Bouvier is fighting private and public legal actions on charges of fraud and complicity in money laundering, and in France he is under investigation for the alleged theft of two Picasso gouache paintings.

These cases would seem to validate the assertion made at the Art Business Conference by Pierre Valentin, a partner in the London law firm Constantine Cannon, that to characterize the art market as unregulated was “complete nonsense,” since legal processes are at least in operation. He told delegates that research by his firm had shown that the British art market, for example, was governed by 167 laws and regulations, “and that figure was going up, not going down." He did suggest, however, that there should be "targeted" measures to regulate "certain auction practices and certain types of insider dealing."

All the major auction houses maintain that they are rigorous in upholding ethical business practices at their sales. Mitzi Mina, head of Sotheby's London media office, said in an e-mail that her auction house "has in place a comprehensive and robust know-your-client program which amongst other things, ensures we are in compliance with the latest anti-money laundering/anti-corruption regulations in place throughout our selling locations."

Nonetheless, it's not particularly difficult to dream up ways of making money in the art market in a gray sort of way.

Say, for example, I discover a brilliant young artist on Facebook. After a crazy week at my house in the Hamptons, he has made 30 abstract paintings for me, which I've bought for a total of $90,000. Having posted examples on Instagram, I enter one of these paintings into a contemporary day sale and ask two business associates, who are cut in on the deal, to bid it up to $150,000. After the sale, a benchmark auction price posted on Artnet, and news of the artist's inclusion in a forthcoming museum show — which happens to be curated by a friend of mine — establishes my new acquaintance as a hot young artist. Over the next six months, we discreetly sell 20 more paintings at auction and privately for an average price of $70,000 each.

This fictional scenario may or may not have parallels with last year's mania for "flipping" young art at auction. But there's no escaping the increasing opacity of certain moments at recent public sales. Just what exactly is going on when a dealer tops up the bidding on a young artist in whom he has taken an investment position? And are there conflicts of interest when an auction house shares a financial guarantee with a third party?

"There is a growing sense that some business practices, particularly at the high end of the auction sector, lack transparency and invite suggestions of insider trading," Tom Flynn, director of the art market master's degree program at Kingston University, in London, who moderated a panel at the conference, said in a telephone interview.

Mr. Flynn and Mr. Valentin are among a number of people who think that the auction houses might benefit from some more regulatory attention.

But this is rather different from the systemic issues that nearly 20 years ago led the United States Justice Department to began a three-year criminal investigation into auction house collusion. In 2000, Sotheby's and Christie's were compelled to pay a combined $512 million to settle claims that they cheated their buyers and sellers. In April 2002, a federal judge sentenced A. Alfred Taubman, Sotheby's principal owner and former chairman, to a year and a day in prison and fined him $7.5 million for his role in the price-fixing scheme.

Mr. Taubman died in April, at the age of 91. Emphasizing how times have changed since that collusion scandal, Sotheby's has secured its former boss's art collection for sale in November and January, but only after guaranteeing the Taubman estate a minimum price of $500 million to stave off Christie's, its rival.

For the moment, most people involved in the art world remain pretty relaxed about the murkiness that awaits them in the forthcoming season.

"The opaqueness is an attraction," Suzanne Gyorgy, global head of art advisory and finance at Citi Private Bank, said in an interview. "You become part of a game, with insider rules. I would like some more transparency with third-party guarantees. But people don't want the art market to be regulated, because then all the fun would be taken out of it. Kind of like when Dorothy pulled back the curtain on Oz."

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