VIEWPOINT

by Elin Lake Ewald, Ph.D., ASA

AUCTION WORLD CATCHUP

Exactly where are last year's auction house superstars since the U.S. Justice Department's relentless pursuit of antitrust violators revealed collusion among the top movers and shakers? And how has the auction market been affected?

The first admission of guilt by a senior executive of the world's two leading auction houses came when Christie's Christopher Davidge admitted to participation in price-fixing, thereby allowing that auction house a grant of immunity by offering evidence first. It was said that Diana D. Brooks, then chief executive of Sotheby's, had attempted to offer evidence at that time but that her admission came too late for the same leniency. She has pleaded guilty to a violation of the antitrust laws, admitting to working with Christie's to fix commission prices charged to sellers between 1993 and 1999.

The former auction house president faces the possibility of up to three years in prison and a criminal fine that might go into the hundreds of millions, as well as the possibility of having to pay restitution to clients and one-year probation upon release. After her resignation, Brooks continued to receive her full Sotheby's salary for eight months, which may not have gone far in reducing the impact of the $20-30 million she may have to pay toward the settlement of the Sotheby's fine.

The two major players left with questionable status-at least until the latest development in this highly charged art world drama-were A. Alfred Taubman, 76, former chairman of Sotheby's, and Sir Anthony Tennant, 70, onetime chairman of Christie's. In September 2000, Taubman agreed to pay $186 million of his own money to reduce Sotheby's fine of $256 million in cash and discounts on future commissions to settle a class action lawsuit brought against them by clients. This has been paid. Taubman has claimed all along that if Brooks violated antitrust laws she did it on her own and that he knew nothing about it. Brooks, in her confession however, said that her illegal actions were taken"... at the direction of a superior at Sotheby's Holdings." Taubman's net worth when all these troubles began was believed to have been $720 million.

The latest blow is the recent announcement from the U.S. Justice Department that a federal grand jury in Manhattan has indicted Taubman and Tennant on price-fixing charges that the two men allegedly conspired to fix auction commission rates charged to sellers from 1993 to 1999. That would mean $400 million in commissions to more than 130,000 customers. If found guilty, the men would face three years in prison and a minimum of $350,000 in fines. However, Sir Anthony has made it clear that he has no intention of standing trial in the United States since, as a U.K. subject, he is not subject to the jurisdiction of the U.S. courts. Besides, the price-fixing allegations, the basis of the charges, are not considered crimes in Britain. And, on top of that, according to a friend of Sir Anthony, who was quoted in a British newspaper, the gentleman "has no faith in the U.S. justice system."

The indictment charges that the executives agreed to raise prices by fixing sellers' commission rates based on nonnegotiable schedules. Previously, the commission charged to sellers by both auction houses was ten percent on any item sold, but that fee was negotiable and was often waived on multi-million dollar consignments.

The two auction houses, which control more than ninety percent of the world's live auctions of art works, jewelry and furniture, are accused of conspiring to fix prices in a series of private meetings between Taubman and Sir Anthony over a period of more than six years.

Sir Anthony agrees that there were meetings between the two men, bur that no collusion was going on during the chats. It is believed that the government's case against Taubman will be strengthened by Sir Anthony's refusal to take the stand and deny that he colluded in the case.

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Taubman is expected to sell his sixty-three percent controlling share of Sotheby's voting stock. Among the possible buyers are Bernard Arnault of LVMH and Phillips, de Pury & Luxembourg, and Ronald Baron, who owns fifty-five percent of Sotheby's Class A shares. Baron has been Taubman's chief adversary on the board-a board now headed by Taubman's son, Robert.

On May 18, 2001, Sotheby's senior note rating was cut to junk status by the ratings agency Fitch, while its long and short term debt rose to $254.3 from $198.8 million a year ago. Working capital was $198.8 million in profit a year ago, and now is $1.6 million.

The situation at Sotheby's, as well as the incursions on the auction market made by fast-rising rival Phillips, has created a noticeable number of defections from that auction house of its senior department heads and experts. Alarmed, Sotheby's is spending more than $40 million to pay key employees to remain on board. The retention agreements, staggered up to 2003, note that the employee who leaves Sotheby's before then will forfeit rights to payment.

Taubman resigned as Sotheby's chairman in February of 2000, at the same time as Brooks. It is believed that Michael Sovern, brought in when Sotheby's was deep into the investigation, will remain a permanent appointment as acting chairman, and that Lord Hindlip, chairman of Christie's over the past four years, will also remain.

Additional penalty fees incurred by Sotheby's include a criminal fine of $45 million to be paid over five years. Judge Kaplan also approved a $70 million settlement between Sotheby's Holdings Inc. and shareholders who claimed the auction house misled investors about its earnings, i.e., revenue from commissions charged art buyers and sellers, as well as its net income, and that a significant portion of its profit resulted from an illegal antitrust conspiracy with Christie's International PLC.

Both Sotheby's and Christie's have signed a $512 million civil settlement. This follows weeks of lawyers wrangling over details and Judge Lewis A. Kaplan's warning that without a formal settlement, they faced a February 2001 trial date. Subsequently the judge ordered the giant auction houses to allow individuals who did business with them overseas to pursue their foreign claims in U.S. courts. They will not as a result give up the right to participate in the settlement.

The U.S. Assistant Attorney General, Douglas Melamed, characterized the maneuvers of Christie's and Sotheby's as "…classic cartel behavior ... price-fixing pure and simple." According to a report in London's *Antiques Trade Gazette*, quoting the *New York Times*, documents in the hands of Federal investigators show that Taubman and Sir Anthony Tennant instructed their subordinates, Brooks and Davidge, to carry out their price-fixing orders as early as 1992.

Rumors have been circulating that French corporate giant Bernard Arnault is poised to make a move on Sotheby's. If this were to happen and Sotheby's umbrellaed under Arnault's own auction house *Phillips*, Sotheby's would either disappear or the combined two houses would become a monolithic international giant. Thus far, Phillips has been taking enormous steps to compete with the longtime auction house leaders. It has attracted socially distinguished and well placed members to its board, including J. Carter Brown, former director of the National Gallery of Art in Washington, D.C., and Lord Powell, former political secretary to Margaret Thatcher.

Dealers around town are talking about the guarantees that Phillips has been offering them on art and antiques sales. And Phillips has been bringing in the celebrities to encourage press coverage and produce glamour. Actress Sharon Stone presided over the social aspects of the first big Phillips sale in New York last season, and Simon de Pury, the former chairman of Sotheby's in Europe, a highly visible and popular auctioneer and later a private dealer, conducted two Phillips sales being held at the American Craft Museum in Manhattan. In the spring sales of Impressionist and

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Contemporary art, Phillips was able to exhibit some of the great works from the Hans Berggruen collection at its new New York headquarters at 57th and Madison, a gem-like location. The results of the sale, not quite equal to those of Christie's and Sotheby's, nevertheless underlined the seriousness of Arnault's assault on the two auction house giants.

De Pury originally denied walking over to Phillips, but he apparently changed his mind and resigned from the board of Gucci, one of the rivals of LVMH, the firm owned by Arnault, the owner of Phillips. There must have been something in the works since de Pury's name is now included alongside that of Phillips and de Pury's European art partner, Daniella Luxembourg. In another coup, Arnault hired Michel Strauss, the longtime head of fine arts and an Impressionist expert of Sotheby's, London, to build Arnault's personal art collection into a museum. This is viewed as a challenge to Arnault's rival, Francois Pinault, French owner of Christie's, who is building an art foundation in a defunct Renault factory in Paris. Boys and their toys.

Although Phillips has until now been considered a distant third in the auction hierarchy, the financial incentives it is rumored to be giving consignors are attracting works that once would have gone to Christie's or Sotheby's. Spokespersons for Phillips claim financial arrangements with the auction house are openly stated, but Phillips notes works in which it has financial interest in the back of its catalog, making it more difficult to tell.

As for the results of this auction house upheaval and highly publicized scandal of finger pointing and blame denial? Well, in ones sense it's business as usual. Except that staff and services may have suffered some diminishment over the past year, you'd never know the difference. Sotheby's continues its ever ongoing sprucing up at 72nd and York, Christie's has settled down into its newly renovated elegant building in Rockefeller Center, and Phillips is holding court in midtown. And they are all selling like crazy, with no appreciable slowing of buyer interest in art and objects of all variations. Perhaps it's that the alleged price fixing affected primarily the heaviest of hitters, not the average auction goer. Perhaps it's because we've all become so accustomed to missteps in all areas of public life that it's just another ho-hum incident.

Oh yes, and before we conclude this convoluted tale of auction house intrigue and international goings-on, let us not forget the legal fees. The lead judge, U.S. District Court Judge Lewis A. Kaplan, had noted during the proceedings that lawyers involved in the antitrust case had been "tinkering" with numbers rather than adequately modifying the settlement to customers of Sotheby's and Christie's. He did not indicate how much of the $26.75 million fee earned at that point (March) could be attributed to that tinkering. And the clock keeps ticking.

ABOUT THE AUTHOR

Elin Lake Ewald, ASA, has been president of O'Toole-Ewald Art Associates, Inc., since 1982. Specializing in the appraisal of fine art, she has authored numerous articles about, and lectured on art, art and the law, appraisal function in equitable distribution of properties, appraisal methodology, and appraisal procedures in damage/loss/fraud cases. She is a faithful contributor to the Personal Property Journal. Ms. Ewald holds a Ph.D. from New York University and has served as advisory curator for museum exhibitions and as art advisor to the U.S. Army Corps of Engineers and other government offices.