

AN INTRODUCTION TO ART FRAUD

by Marc Carrier

Online auctions: art fraud for the masses... Internet forgeries and flimflams.

The work by American abstract painter Richard Diebenkorn attracted lots of attention on eBay. The bids opened at .30 cents and soon started soaring. The price reached four figures, then six figures, finally selling to a buyer in the Netherlands for \$135,805 USD.



The painting was a fake. And so were most of the bids. A U.S. court sentenced Kenneth Fetterman to almost four years in jail for this crime.

Fetterman and his accomplices posted bogus paintings on eBay—the forged works of Alberto Giacometti, Maurice Utrillo, Edward Hopper, and others—using a swindle called shill bidding to drive up the prices. It's an easy trick. One or more individuals register to an auction site under a variety of anonymous profiles, and compete with real buyers by posting phony bids. There's nothing new about this. It is a ploy that has been around since the earliest days of bricks and mortar auction houses. The Internet just makes it easier.

Too easy.

Auctions now reach far beyond the carpeted salons of Christie's and Sotheby's thanks to the Internet, resulting in a widespread democratization of art fraud. Anyone with a computer and a modem is now vulnerable to online deceit. And the problem appears to be growing. According to the Internet Fraud Complaint Center, a partnership between the FBI and the National White Collar Crime Center, almost half of all reported crimes concern online auction sites. The latest available figures (2002) show 48, 252 total complaints of fraud for the U.S. alone—a three-fold increase on the previous reporting year—for a median value of nearly \$300 USD per complaint. Internet auction fraud makes up 46% of that figure, for a loss of over \$20 million USD, while statistics on Canada's ReCol Website (Reporting Economic Crime Online, a collaboration between the RCMP and National White Collar Crime Centre of Canada) show that 19% of all reported crimes concern Internet auction fraud.

How is the online auction industry dealing with this problem?

It was difficult to reach eBay Canada's Toronto office. Dialling their number led the caller through an electronic maze of recorded instructions, ending in a voice-mail too full to receive more messages. After several emails and one snail-mail, an answer came from their Public Relations department. But the reply fell far short of answering specific queries on art fraud, and just repeated the general advice to buyers found on their site. A second communication repeating specific questions on dubious art sales remains unanswered.

The key word in eBay's response to potential fraud appears to be "marketplace": referring to themselves as a marketplace -- rather than a retailer -- shifts total responsibility on the buyer. eBay is the shopping-mall, the sellers are the tenants. But this analogy falls apart when you understand that eBay (and other auction sites) take a percentage on the selling price of every transaction, creating a de facto partnership with sellers and raising obvious issues of conflict of interest. Are genuine efforts made to drive out swindlers who are also high volume sellers? Perhaps the answer is in the growing number of complaints against online auction sites.

On <http://www.my3cents.com/>, a consumer advocate Website, we found a long list of complaints against eBay and fraudulent sellers, including this e-mail, "If you're the winning bidder and you do not pay you are suspended.

If the seller takes your money and does not send the item, no action is taken against him, he's got eBay's blessing to defraud you and keep doing it to others because he's a paying customer. It's been a month since I put the complaint and this seller is still allowed to defraud buyers on eBay."

Another buyer writes, "She does not respond to her emails and she is no longer an eBay seller. She is however selling her prints on other websites and will not send me my print."

And finally, this from yet another customer: "I have just been ripped off of \$785.00 US by a scam artist on eBay and no amount of emails to eBay can get that sleazy outfit to respond to my plight."

No matter what efforts eBay claims to be making to limit fraud, buying art from an online auction site—like buying from a bricks and mortar auction house, for that matter—is ultimately a question of caveat emptor, buyer beware. In fairness, it might well be impossible to keep track of the millions of transactions that take place throughout worldwide sites—eBay claims eight million buyers and sellers worldwide. And eBay's site does include a comprehensive security centre, offering very good advice for buyers and sellers alike, including a mechanism for reporting unsatisfactory transactions or outright fraud. But, much like the response to our questions, these do not address the specific complexities of buying art. And the question remains, How does eBay Canada respond to these reports and complaints?

Part of the answer to that question might lie in the eBay Canada Discussion Board—a forum for exchange of problems and solutions among buyers and sellers. It shows that a significant number of complaints centre on non-delivery and inability to contact eBay. One of these emails, headed "eBay Loses Another Buyer", is from someone who asks, "How long can eBay last with only sellers and no buyers?"

The disgruntled user goes on to say that he or she (it's impossible to determine gender from the user name) fell victim to fraud five times out of 150 purchases, with an average loss of \$500 USD per bad transaction. Complaints and requests are fruitless, as the buyer says that he or she never received a penny. The e-mail goes on to state that, "...the claims process itself can drive you nuts."

This posting provoked a string of e-mail responses—five pages in all—many of them relating similar experiences:

- "...lots of people out to make a quick buck."
- "...it is very depressing to hear good buyers feeling this way."
- "I am now in the process of filing claims on three items."

Protecting yourself: Beware of bad answers to good questions.

Buying art should always be approached with great caution, and consumers must be doubly alert when faced with the relative anonymity of online auction sellers. But buyers can offer themselves a measure of protection by asking a few simple questions, and knowing what the right answers should be.

Before placing a bid on a work attributed to a non-living artist, always enquire on the availability of a valid Certificate of Authenticity—a document commonly referred to as a COA—signed by a living, recognized expert on the artist, designating the specific work on the auction block. If the seller will not show you the actual certificate (some promise to include it in delivery after you buy the work... bad idea), he or she should at least provide the name and contact information of the signatory, allowing you to call and verify the claim.

Ask for a provenance, a paper trail showing the work's commercial journey from the artist's studio to the seller. A valid provenance can include gallery stickers, catalogue listings, a photo of the artist with his work, or a verifiable list of previous owners. The more a provenance is anecdotal, the less valuable it is. It should not sound like a colourful Gothic tale, but offer verifiable facts.

If you're bidding on a work by a living artist, get his or her number and verify the authenticity. The provenance in this case is evident.

If, for any reason, the seller refuses to provide valid documentation for a painting or print, don't buy it. It's that simple. And your caution should be proportionate to the enthusiasm of the refusal:

Recently, a seller on a major online auction site described a Rouault print as carrying a "...guaranteed authentic signature".

Like any cautious buyer, we asked the seller how he proposed to substantiate such a categorical statement. It seemed like a reasonable enough request. But the reply was quick and angry, containing an irate accusation of sarcasm; and the seller's surprising statement that nothing could be unconditionally guaranteed, "...short of the artist stepping from the grave." The reply was in direct contradiction to the posting's unconditional guarantee, and a very good reason to stay well away.

Another transparent ploy is the spontaneous "discovery" of names and initials on the back of a work. A recent posting's description stated, "The painting dates to the C16th/C17th, on the reverse of the painting is a handwritten description of the painting as well as the words 'by Albrecht Durer'."

We asked what dating technique had been used, and whether any documentation could be provided. The seller responded that the painting simply "looked very old", and added this interesting bit of information, "I did not even know who 'Albrecht Durer' was until I searched the web tonight!"

We can safely assume that Albrecht Dürer never came within daubing distance of this painting. And it is anyone's guess how the name – spelling mistakes and all – ended up scrawled on the back.

Yet another posting featured a work allegedly painted by Jackson Pollock. The online description carried what the seller called a provenance, the anecdote of how a "well known friend" of the artist had received the work as a gift, and how the seller had purchased the painting from "the actual curator of the collection." That may well be true, but all the players in the story are anonymous, and the seller refused to identify them.

An unverifiable claim is useless.

Also, when asked for a confirmation of authenticity, the same seller answered that he would not provide one because of "...the politics that riddle the art world."

Less than honest sellers frequently use offence as the best defence, putting themselves above the rabble of "unethical exploiters" poisoning the art world with their "dishonesty and rapaciousness". They sometimes snigger at the mere mention of a Certificate of Authenticity, assuring you that most of them are "...not worth the paper they're printed on." And they are right, to a certain extent. A valid certificate of authenticity must conform to specific rules of ethics and common practice; most importantly, the signatory must be a living, recognized expert on the artist. Otherwise, it is indeed worthless. But that does not discredit the correct process of authentication. It simply means that any old piece of paper, signed by anyone is simply not a Certificate of Authenticity.

There are several works by Dali, Picasso and Matisse currently for sale on eBay, all of them offered with a Certificate of Authenticity. The so-called COAs are issued by the National Art Guild, an organization that appears unknown to the world of art, and signed by someone called George Kopel. There is no information as to Kopel's expertise at authenticating Dali, Picasso or Matisse, nor does the certificate carry any contact information for him. And, like the National Art Guild, this Mr. Kopel seems unknown to the world of art. Repeated requests for addresses or phone numbers of either Kopel or the National Art Guild remain unanswered.

It is at best misleading to describe such documents as Certificates of Authenticity.

When someone makes a claim, check it, check it again and then triple check, however plausible the story sounds.

“Can you provide a valid Certificate of Authenticity and a provenance for this work?” we asked the seller of an alleged Jean-Paul Riopelle painting.

Identifying himself only by his given name, the seller replied that he was the one who issued Certificates of Authenticity for Riopelle’s work, insinuating he was a recognized expert on the late Canadian abstract painter—in passing, here’s good advice: an authenticator, no matter how impressive his or her credentials, should never play the double role of seller. He went on to explain that he’d purchased the painting in Paris when he was director of a major Riopelle catalogue raisonné project, an illustrated, exhaustive chronological inventory of the artist’s work. When asked if he would identify himself fully in order to verify this claim, he categorically refused.

Was he telling the truth? There’s no way of knowing. But one thing is certain: authentic Riopelles fetch a great deal of money, with a record set for the artist in 1989 at \$1.5 million US. Why is this seller, who claims to have solid provenance and authentication, selling an original Riopelle acrylic on paper through the Internet—note that selling is not without its own risks—when a recognized auction house would offer more security and probably bring in bids at or above the six figure mark?

And why the reluctance to let a potential buyer verify claims of valid documentation?

Both these unanswered questions should arouse a strong instinct of suspicion in a cautious buyer.

Specific problems, specific precautions

Requesting valid, documented authenticity and provenance documentation is good advice, on or off the Web. But there are a few more precautions you can take, specific to online auctions:

- Be cautious about purchasing from sellers who do not accept PayPal® or credit cards, both offering a measure of protection against fraud; be extra wary of those who accept only cashier’s cheques, money orders, wire transfers, or foreign currency payments.
- For greater peace of mind, use an escrow service. That’s when a third party agency holds the payment for a fee of about 5% of the price, paying the seller only upon satisfactory conclusion of the transaction.
- If photos of the work are poor, ask the seller for better ones. If they persist in being of low quality, you can assume someone is trying to hide something.
- Get solid contact information for the seller, like a telephone number and an address. If there’s a problem with the purchase, an ephemeral and virtually anonymous e-mail address will be of little use.

A recent case in U.S. courts demonstrates the sort of easy deceit that e-mail technology allows. The trickster was selling bogus articles, which he had no intention of delivering, and to create a sense of security in his buyers he posted a number of “reference” names and their email addresses. Hiding behind these false identities, he happily gave himself glowing recommendations. When the law finally caught up with him, the dishonest seller used this relatively simple scheme to bilk some 200 victims out of nearly \$50,000 USD.

Most major online auction sites offer a consumer satisfaction ranking for sellers—eBay calls it Feedback—posting both positive and negative e-mails received from buyers. But they are simply too easy to manipulate to be of any practical use. Just like the shill bidding trick, sellers can submerge themselves with self-generated feedback and end up with a 98% positive rating.

And that’s just what Michael Paul Jackson did.

A student at Virginia’s Radford University, he scanned images of products from other sellers and posted them for auction as his own. Under the eBay seller identity of “skunkker”, he accumulated more than 100 positive comments

on his feedback file. He did this by “buying” a few of his own products, and giving himself rave reviews under several identities. Jackson defrauded eBay users out of \$120,000 USD.

Holding unhappy buyers hostage and bullying them into posting a positive feedback is yet another nasty trick. Typically, the seller will withhold a refund or replacement item until you add to his or her positive ratings.

What to do if you get stung?

First, here’s what you should not do: Feel foolish.

We’re all vulnerable to fraud, simply because we’re all human. When the I’ve just got to have it syndrome kicks in, you could end up buying just about anything. Remember, if an online art auction seller cheats you, you’re in good company. It happens to thousands of people every year.

Try this sobering exercise...

The next time you sit at your computer, before you log on to a favourite online auction, take a few minutes to Google the words internet art fraud and you should get about 500,000 hits. If you are the victim of online fraud, you will soon see how you are not alone. It is worth repeating the IFCC statistics from the beginning of this article: close to 25 million people a year report online auction frauds in the U.S. alone. And, still according to the IFCC, the problem seems to be growing.

The same agency offers the following excellent advice if you fall victim to an online auction swindle:

- File a complaint with the online auction house. eBay makes it fairly easy to do this, but you must submit an Online Fraud Complaint at <http://crs.ebay.com/aw-cgi/ebayisapi.dll?crsstartpage> 30 days after the listing end date to qualify for their Fraud Protection Program.
- Notify local and national law enforcement. You can do this online with the RCMP at http://www.rcmp-grc.gc.ca/scams/index_e.htm, as well as through provincial law enforcement agencies, like the Sureté du Québec and the Ontario Provincial Police.
- Notify law enforcement in the perpetrator’s city, province, state, or country.
- File a complaint with the shipper.
- File a complaint with the Better Business Bureau.

And if the Internet is the source of the problem, it can also be the source of the solution:

Google the words Internet art fraud alerts and you’ll get about 76,000 hits. Many of these sites offer excellent advice on protecting yourself against swindlers, and several offer free email fraud alerts. Notable among them is the Internet Fraud Watch site of the National Fraud Information Center at <http://www.fraud.org/>, Cyber Criminals Most Wanted at <http://www.ccmstwanted.com/>, and the aforementioned IFCC’s site at <http://www.ifccfbi.gov/index.asp>. Most feature easy to use online complaint forms.

If it looks too good...

Are thieves lurking behind all the postings on online auction sites? Of course not. Millions of people buy online every day, and the majority of them are pleased with their purchase, artwork or otherwise. eBay claims that fraud hits only one in every 40,000 transactions. That may be a self-serving statistic—not all frauds are recognised or

reported by buyers—but you still do not want to be that one victim in a sea of happy customers. And the intricacies of the art trade increase the potential for chicanery. Extreme caution should guide your bidding.

The bad news is that buyers—perhaps a growing number—are being swindled. The good news is that the law is catching up with the crooks. A recent Associated Press story tells of two gallery owners trying their luck at skill bidding online, eventually facing arrest, conviction and a court order to make restitution to the victims.

Another cause for optimism is the growing number of complaints. If eBay sees itself as a marketplace, perhaps the analogy should be pushed to comparing it with the stock market: mega stock scandals have flooded the news in recent years, resulting in markets tightening their rules, regulations and enforcement; if complaints of fraud are numerous enough to seriously erode confidence in online auction sites, the industry will have no choice than to take real action against swindlers.

***It will become a matter of survival.
No buyers, no marketplace.***