

# Kollman Case Offers Cautionary Tale for Art Appraisals

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By Jonathan Curry

How does an estate with two Renaissance-era paintings appraised by one of the period's foremost experts fail to convince the IRS its valuation numbers are right?

The answer, it seems, is by relying too much on opinion and not enough on fact.

The Ninth Circuit, in an unpublished opinion, [recently affirmed](#) a 2017 Tax Court decision in *Estate of Eva Franzen Kollman v. Commissioner* ([T.C. Memo. 2017-40](#)) that took issue with the values of an estate's pair of Renaissance-era paintings, which were provided by an expert from a premier art auction house. Observers say that the pair of opinions reinforces the need for estate planners to be vigilant about their clients' appraisals.

"The IRS's Art Appraisal Service has access to the most preeminent experts in each genre of art, so you cannot sneak something past the Service," Sarah Moore Johnson of Birchstone Moore LLC told *Tax Notes*.

"The appraisals must be well supported and well reasoned," said Johnson, who specializes in estate planning for art collectors. "If comparable sales are to be ignored by the appraiser, as they were in *Kollman*, then the appraisal report must give a credible explanation as to why."

## The Setting

The decedent in *Kollman* owned two old master Renaissance paintings: *Village Kermesse With the Dance Around the Maypole* by Pieter Brueghel the Younger, and *Orpheus Charming the Animals*, by either Jan Brueghel the Elder or Jan Brueghel the Younger.

The estate's expert witness, George Wachter, chair of Sotheby's North America and South America and co-chair of the auction house's old master paintings globally, was an art expert with over four decades of experience but was not a certified appraiser. He wrote a letter for the estate pegging the fair market value of the *Maypole* painting at \$500,000 and the *Orpheus* painting at \$100,000.

In coming to those figures, Wachter cited the layer of grime on the surface of the paintings that would need to be cleaned, and determined that restoration would pose a significant risk, devaluing the paintings.

However, the Tax Court concluded, and the Ninth Circuit affirmed, that Wachter's valuation opinions were unreliable and unpersuasive for several reasons.

For one, the estate's executor consulted another fine art restoration company less than a

month after the decedent died and was told that the cleaning process was “reasonably safe.” Wachter was also viewed to have a conflict of interest, because he offered to sell the paintings at his auction at the same time he provided his valuation estimates.

Both courts noted the glaring lack of any comparable sales price analysis submitted in Wachter’s appraisal. And while the Tax Court noted that post-valuation-date events are generally not to be considered when valuing property for tax purposes, the *Maypole* painting eventually sold for \$2.4 million, and Wachter’s explanation — that a spike in interest in old master paintings by Russian art buyers drove the sales price up — wasn’t supported and failed to satisfy the courts.

The Ninth Circuit affirmed the Tax Court’s decision to value the *Maypole* painting at nearly \$2 million and the *Orpheus* painting at \$375,000, finding that the Tax Court correctly applied the law regarding art valuation and that its expert witness, Peter Cardile, supported the Tax Court’s findings.

## Expert Selection

The pair of court decisions suggests that while obtaining appraisals from a certified appraisal may not be a requirement, it increasingly looks like a best practice.

“When you’re trying to pick someone to be an expert in a Tax Court case, you need somebody who is gonna stand up to scrutiny. I mean, you really want to pick the best that you possibly can,” said Joel N. Crouch of Meadows, Collier, Reed, Cousins, Crouch & Ungerman LLP.

“I think you should go with certified appraisers,” he said.

The Appraisal Foundation, which sets the standards for real estate and personal property appraisers, celebrated the Ninth Circuit’s June 21 decision in a [press release](#), declaring it a “game-changer” that makes clear that personal property appraisers are part of a distinct profession that meets appraiser qualifications and appraisal standards.

Further, estate planners and wealth managers “now have a greater fiduciary duty to their clients” to have a comprehensive understanding of appraiser qualifications when vetting property appraisers, the Appraisal Foundation’s John Brenan said in a statement.

Johnson noted that appraisal requirements vary between Treasury’s income tax regulations and its estate and gift tax regulations.

Income tax regulations for charitable gifts of art when the claimed deduction is \$5,000 or greater require a “qualified appraisal” from a “qualified appraiser” who has earned that designation from a recognized appraisal organization and who has education and experience valuing the type of property being appraised.

The estate and gift tax regulations are more lenient. They make no mention of requiring art valuations for estate and gift tax purposes to come from qualified appraisers; rather, if the artwork has a value of \$3,000 or more, an appraisal from “an expert” must be submitted. As

such, an auction house representative with expertise in that genre of art could legitimately render an opinion without having the appraiser designation.

“Personally, I always seek a qualified appraiser, as that should protect me as a return preparer from penalties for undervaluation . . . or overvaluation,” Johnson said.

Sarah Verano of Withers LLP said that estates commonly turn to auction houses for appraisals, simply because they may already be working with them to sell the estate’s property. “From that perspective, the *Kollsman* case was a little concerning,” because it suggests that kind of relationship can create a conflict of interest, she said.

But, she continued, *Kollsman* had several other significant issues at play, such as the *Maypole* painting being sold for nearly five times the appraised value just four years later, as well as the “real dearth of factual support in the report supporting the appraised value.”

The *Kollsman* estate probably would’ve been best served by obtaining a new, independent valuation expert for the Tax Court trial, according to Crouch. “However,” he added, “there may have been some difficulty finding a new expert, given that one of the paintings sold for \$2.4 million before the Tax Court petition was filed.”

## Don’t Mess With the Best

When the IRS challenges an estate’s appraisals, it brings a formidable team of experts to bear.

“They do have access to some of the best appraisers, and they’ve got the ability to go and hire some people,” Crouch said.

The IRS has an internal team of appraisers, the Art Appraisal Services unit in the IRS Appeals Office. But it also has a team of art experts it can turn to for assistance: the Art Advisory Panel, founded in 1968 and made up of renowned art experts who help the IRS evaluate high-value appraisals.

In the panel’s 2017 [summary report](#), for example, the panel reviewed 365 items and recommended adjustments — up or down — on 61 percent of them.

In *Kollsman*, the IRS turned to Cardile, a “preeminent conservator,” according to the Ninth Circuit, with over 25 years of experience as a certified fine art appraiser.

“Dr. Cardile explained his methodology, reliance on comparables, and research about the paintings’ conditions,” the Ninth Circuit wrote.

“*Kollsman* shows that the IRS has access to the most qualified appraisers for each genre of art,” Johnson said. Similarly, the 1990 case [Estate of Doherty v. Commissioner](#) hung on whether a painting by Charles M. Russell was a forgery, and it “pitted the two foremost authorities on Russell against each other,” she said.

That case dealt with a charitable deduction claim, and although the court did not decide whether the painting was a forgery, it concluded that the poor quality of the painting along with

substantial questions about its legitimacy devalued it. Thus the estate's initial fair market value of \$350,000 was reduced to \$30,000.

Verano speculated that the reason why the *Kollsman* estate opted to appeal to the Ninth Circuit may have been because the estate hoped that Wachter's expertise and extensive background selling old masters would be enough to justify his appraisal.

"However, the decision clarifies that an appraisal from an expert is of little weight without objective support in the actual appraisal report," she said.

## Pro Tips

Both Johnson and Verano observed that the case offers some additional practical insights.

First, an artwork's insurance value isn't binding on its fair market value.

"Art collectors, perhaps due to cautionary tales from their estate planner, are often hesitant to purchase adequate insurance on a work of art, thinking that the IRS will later use the insured value as evidence against the estate," Johnson explained.

But in a lengthy footnote, the Tax Court stated that insurance valuations are not probative of fair market value, noting that both expert witnesses in the case agreed that insured values are often higher than fair market values.

"The Tax Court went out of its way" to make that point, Verano said. "This should provide executors some ease of mind given their duty to ensure an estate's collection is adequately insured without opening the estate to a risk that a high insurance value might be binding for estate tax purposes," she said.

Johnson also said estate planners would be wise to wait until after artwork has been cleaned or restored to sell it or have it appraised.

In *Kollsman*, Wachter relied on the fact that one of the paintings was dirty to justify a low value. But the technology for cleaning art has improved and is now widely considered to be relatively safe, Johnson said.

"This backfired for the taxpayer when the painting later sold for five times the appraisal price," she said.

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