

New evidence uncovered in Warhol Foundation lawsuit

Collector says a signed work from the same series confirms his work is genuine

JASON EDWARD KAUFMAN

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The federal lawsuit in which a private collector is suing the Andy Warhol Foundation and its subsidiary Art Authentication Board is about to take a dramatic turn. Lawyers for plaintiff Joseph Simon-Whelan have uncovered evidence that his 1964 Warhol self-portrait which the Authentication Board has twice rejected, was considered authentic by Warhol himself. Simon-Whelan's New York-based lawyer Seth Redniss believes that the evidence—an identical, signed work from the same series—“definitively establishes that Warhol knew about Joe Simon-Whelan's painting and the series it was from and that he considered it an authentic work”. Redniss plans to use the evidence to support his client's suit, which was filed in New York in 2007.

According to Redniss, an identical red silkscreen self-portrait from the same series was signed personally by Warhol in 1969 and dedicated to his Swiss dealer Bruno Bischofberger who owned it at the time. The inscription on the reverse of the canvas reads: “To Bruno B Andy Warhol 1969.” That same painting was included in the 1970 catalogue raisonné of Warhol paintings and works on paper, 1960 to 1967, compiled by art historian Rainer Crone. The work was reproduced on the dust jacket, as noted in the catalogue entry (#169). Crone says that he produced the book “with the close co-operation and supervision of and by the artist”, and that “Warhol chose and approved [Bischofberger's painting] for the cover.”

The “Bischofberger” painting changed hands several times—it was

reportedly owned by Heiner Bastian and Erich Marx—before it was purchased from Bastian in 1999 by London dealer Anthony d’Offay who then sold it to prominent San Francisco-based collectors Charles and Helen Schwab. By this time a new Warhol catalogue raisonné was underway, sponsored by Zurich dealer Thomas Ammann and the Warhol Foundation. In 2002, Sally King-Nero—a co-author of the Ammann catalogue and a member of the Authentication Board—went to examine the work in San Francisco.

The Schwabs subsequently submitted the painting to the Authentication Board and received a letter in May 2003 informing them that although Warhol signed, dedicated and dated the self-portrait, it nonetheless is not a work by Warhol. The Schwabs could not be reached for comment, and their advisor, art consultant Mary Zlot, told *The Art Newspaper* that she is not at liberty to discuss the episode.

Then the self-portrait—which Warhol chose as the cover image for the 1970 catalogue raisonné which he oversaw—was dropped from a 2004 volume of the catalogue raisonné overseen by Ammann and the Warhol Foundation. In 2005, the Schwabs resubmitted the work to the Authentication Board. It was again rejected and D’Offay agreed to repurchase the painting from the Schwabs. Meanwhile, Simon-Whelan had submitted his work from the same series to the Authentication Board in 2003 and it, too, was rejected. He resubmitted it in 2004 with additional supporting material, but the board upheld its earlier decision.

The crux of the Authentication Board’s rejection is that the self-portraits were part of a series made without the artist’s supervision. Their history is fairly well documented: in exchange for a loan of video equipment, Warhol had provided the lender with acetates of the self-portrait to use to make silkscreen paintings. They were brought to commercial printers in New Jersey who produced approximately 10 to 12 canvasses. “This contradicts the way Warhol worked,” explained the Authentication Board in its 2005 letter to the Schwabs, noting that Warhol’s other silkscreens were produced from paste-up mechanicals made in the studio, printed by printers he worked with, then hand retouched. But members of Warhol’s circle and a number of experts have disagreed, noting that the artist adopted industrial production

techniques which challenged traditional concepts of authorship.

Warhol himself appears to have deemed the “Bischofberger” work his own. At a 1986 Warhol show at D’Offay Gallery in London, he signed a copy of the 1970 catalogue, writing directly over the dust-jacket image of the painting. According to Crone: “It is unthinkable that Warhol would have signed the book and the image if there was the smallest doubt in his mind that the work was not authentic.”

“I don’t see how the Warhol Foundation can explain this without making it seem they know more than Warhol did—unless they say their standards of what constitutes a Warhol trump those of Warhol personally,” says Redniss. Ronald Spencer, a lawyer with the New York firm of Carter Ledyard & Milburn, who represents both the Authentication Board and its parent Warhol Foundation, declined to comment. The Simon-Whelan lawsuit alleges a conspiracy by the Warhol Foundation and its Authentication Board to control the market for the pop artist’s works. But whether or not a conspiracy existed, it appears that the rejection of the self-portrait series will be difficult for the Authentication Board to defend.

Although the Warhol Foundation remains unconvinced as to the authenticity of the work, the Tate has endorsed the series. D’Offay had planned to include the signed and dedicated 1964 self-portrait along with 232 Warhols in the Artist Rooms collection—more than 700 contemporary works he conveyed last year to the British nation though gift and purchase.

The National Galleries of Scotland and the Tate, which jointly own and manage the collection, informed The Art Newspaper: “During the negotiations on the D’Offay gift a number of works were discussed that did not eventually become part of the gift. These included the early Warhol Self-portrait since we agreed with Anthony that it would be better not to include any work, the provenance of which might in any way be questioned. However, we ourselves have no reason to doubt the authenticity of this painting.”

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