

## French Court Supports Freedom of Authentication: A Win for Art Experts

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Recently, the high court of appeals in Paris upheld an art expert's right to refuse to authenticate a work of art. While this decision took nine years to come to fruition, it validates an art expert's freedom to make an authenticity determination that he or she sees fit, free from the pressures of legal liability for that decision.

**Authentication** is often critical for the completion of fine art sales since buyers look for authentication as an express warranty that the work is attributable to a certain artist. Authentication can drastically change the price of a work depending on the notoriety of the artist and can sometimes be the deciding factor in the completion of a sale.

This dispute in Paris involved the owner of a painting who believed the painting was authored by the French painter, **Jean Metzinger**. Bozena Nikiel is a well-known expert in Metzinger's body of work as well as the author of an upcoming Metzinger catalogue raisonné. Nikiel holds the droit moral right for Metzinger's work, giving her the ability to attribute works of art to Metzinger. The owner was in the process of selling his painting, but in order to complete the transaction he needed a certificate of authenticity from Nikiel and an assurance that the painting would be included in her catalogue raisonné.

After her initial evaluation of the painting in 2005, Nikiel made clear that she could not authenticate the painting as one by Metzinger and claimed the painting did not meet the level of sophistication exhibited by Metzinger's works. When the owner's art dealer approached Nikiel again two years later insisting she authenticate the painting, she maintained that she could not and returned her consultation fee. Even when the owner commenced legal action in 2009, Nikiel stood strong, insisting the painting was not by Metzinger and that she could not authenticate it.

The lower courts ordered Nikiel to pay damages to the owner of the painting and additional fines of €30,000 due to the court's determination that she had wrongfully refused to authenticate the work. The lower court had appointed an expert who found that the painting was worthy of authentication even though the expert did not specialize in Metzinger's work and Nikiel disagreed with him on several points. In January, the high court in Paris, Cour de Cassation, overturned the lower court's determination that the work was authentic on the grounds that the ruling violated Articles 9 and 10 of the European Convention on Human Rights that guarantees freedom of thought and expression. Nikiel is now free to decide not to authenticate a work based on her own expertise and opinions without worrying that a court could find her liable to the work's owner for such a determination.

The decision here is a victory for art experts who are in the business of authentication. While the decision is confined to France and thus provides the most reassurance to French experts, it will likely have a positive influence on similar disputes being challenged under the European Convention on Human Rights in other jurisdictions. The ruling also may have a persuasive effect on American courts that are dealing with authentication disputes, especially in light of the recent dissolution of some fine art authentication committees concerned with liability issues.

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