

# COIN WORLD

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## Accountability matters

By **Armen R. Vartian** | 05-10-13

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I recently received an email from a Coin World reader asking what remedies a coin buyer would have if he purchased "raw" (uncertified by a third-party grading service) coins from a dealer as Mint State 60 or Mint State 63, and then the coins were returned "no graded" (were rejected for encapsulation) upon submission to a major grading service.

Answering his question got me thinking about the impact of grading services in the industry generally, and also about a legal doctrine applied to sales of art and set forth in a recent federal court decision in New York.

### Facts simple

The facts of the New York case were simple.

A collector wanted to sell a painting by Milton Avery, and sent the painting to a warehouse in New York City where, as the court noted, "any prospective buyer ... could inspect it." A firm ended up buying the painting for \$200,000, after the firm's president inspected it at the warehouse.

Shortly thereafter, this firm, a dealer, submitted the painting to the Avery Foundation, which declared it a fake. The collector refused to make a refund. The court sided with the collector.

### Siding with the collector

First, it declared that although both parties may have been mistaken as to the painting's authenticity, the dealer was negligent in not having the Avery Foundation examine the painting before the purchase transaction, rather than afterward.

The court also noted that even if the seller knew the painting was a fake, the dealer had every opportunity to have the painting inspected by the foundation, and therefore couldn't reasonably have relied upon any statements the seller made about authenticity.

The federal court emphasized that the foundation had sent the seller a letter stating that its representatives were willing to travel to the warehouse for an inspection, and that the dealer should have done more than merely have its president look at the painting himself.

### Inspect before buying

Citing other cases involving failure to properly inspect real estate to discover defects, the court concluded, "The very fact that [the dealer] felt the need to seek authentication by the Avery Foundation after the purchase indicates that it knew how to do so prior to the purchase."

It's not clear how my reader's situation is affected by this. In the stamp collecting field, it is normal for buyers to require expertization before concluding a purchase.

I say "concluding" because sometimes the stamps are submitted before money changes hands, and other times the transaction is completed subject to the buyer having the right to rescind if the stamps are found to be inauthentic.

No such practice exists for coins, in part because so many coins are already

certified. Nevertheless, raw coins still are bought and sold with some frequency.

#### Consider certification

Would it be fair for a court to chide a buyer of fake or overgraded coins for not having had the coins submitted to the grading service before he purchased them?

Many, if not most, sellers would balk at such a requirement, and simply sell to someone else. And the buyer in the New York case was a dealer, who presumably knew the risks.

Shouldn't collectors also be held responsible for knowing the risks of buying uncertified coins?

Shouldn't collectors also be responsible for knowing that, for coins of substantial value, if they aren't certified, it might be because they aren't genuine or are overgraded?

Armen R. Vartian is an attorney and author of *A Legal Guide to Buying and Selling Art and Collectibles*.