

COIN WORLD

Protecting confidentiality

By **Armen R. Vartian** | 04-05-13

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Readers know my thoughts about contracts, namely that they should be in writing. One reason for this is the Statute of Frauds.

The Statute of Frauds is a centuries-old rule of English Common Law that has been incorporated into most U.S. states' laws, requiring certain types of contracts to be in writing.

Because one of the contracts covered by the statute is the sale of goods for more than a certain amount (usually \$500), it's a good idea to assume your coin sale/purchase is covered.

Disclosure

States differ about what the "writing" must include, but a recent case in New York state has caused concern in the auction industry because it seems to require an auction house to disclose the name of its consignor and buyer in order to enforce an auction transaction.

The case, *Jenack v. Rabizadeh*, concerns the sale of a 19th century Russian silver and enamel box, the successful bidder's failure to pay, and the auction house's lawsuit to enforce what it alleged was the buyer's contractual obligations.

Last October, New York's Appellate Division ruled that the auction house did not prove compliance with the Statute of Frauds, New York's version of which requires auction houses to prepare "a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale was made."

The auction house's "clerking sheets" referred to the consignor and buyer by number. The court accepted the auction house's submission of the buyer's absentee bidder form in satisfaction of the statute, as it contained both the bidder's name and the same number listed on the clerking sheet, and was signed by the bidder.

However, the auction house was unwilling to provide an equivalent document relating to the consignor, so the court refused to enforce the sale.

The New York Court of Appeals, New York's highest court, has agreed to review this decision, which has caused much furor among lawyers and businesses fearing that it may end the longstanding practice of giving consignors complete anonymity should they request it.

Backing out on sale

One art law expert complained that "now you can back out of any transaction where the name of the seller is not provided," and another said, "Anonymity should not be seen as an abuse of the law."

On the other hand, a respected art law scholar has suggested that New York's statute, by specifying exactly what an auction house must do to enforce a sales contract, helps auction houses much more than it hurts, and that more transparency was needed in the auction process anyway.

Still others argue that the ruling was quite narrow and technical, relating only to what needed to be in the auction house's records, and that there's no cause for

fuss here. I'm in that camp.

Commercial lawyers are used to preparing agreements protecting confidential information that arises during litigation, and courts likewise are experienced in handling such matters.

If an auction house really needs to maintain its consignor's confidentiality, it can nevertheless have the appropriate document prepared containing the consignor's name, but take steps to protect that information in the unlikely event that the consignor's goods result in a lawsuit against the buyer.

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