

# The Bakwin Paintings — a tale of fraud and deceit

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**CATEGORY:**

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In 1999, an insurance underwriter asked the Art Loss Register in London to search its database of stolen art to confirm that the seven paintings he was asked to insure during transport from Russia to the UK had not been stolen. The Art Loss Register reported that the images of the paintings matched seven paintings stolen in 1978 from the private residence of Michael Bakwin, a Massachusetts collector. The paintings were valuable: they included a Cézanne, two Soutines, an Utrillo and a Vlaminck. Mr Bakwin instructed the Art Loss Register to try and recover them.

## The Return of the Cézanne

The problem was that no one knew who had possession of the paintings, where they were and whether they were in fact the paintings stolen from the Bakwin collection. Negotiations ensued with various intermediaries claiming to represent the possessor of the paintings. From August 1999, negotiations were conducted primarily between the Art Loss Register acting for Mr Bakwin, and a Swiss lawyer acting for the unidentified possessor. The Swiss lawyer made several proposals which were intended to form the basis of arrangements for the return of the paintings. The first proposal was that the possessor would return the paintings to Mr Bakwin for a payment of \$15million, then the possessor offered to return them for a payment of either 10-15% of their value or \$1million. By October 1999, Mr Bakwin had become nervous that contact would be lost with the mysterious possessor unless a deal was struck. Reluctantly, and after notifying the FBI and the Swiss Police of the proposal, he agreed that if the Cézanne were returned to him, he would transfer ownership of the other six paintings to the possessor. At the end of October 1999, the Swiss lawyer, carrying the Cézanne in a plastic bag, met the Chairman of the Art Loss Register and two art experts in the offices of a private bank in Geneva. The experts confirmed that the painting was authentic and documentation was signed whereby title to the six remaining paintings (which were not produced) were transferred to a recently incorporated Panamanian company called Erie International Trading Company, Inc. The company had been set up by the possessor to continue to hide his identity.

The Art Loss Register had advised Mr Bakwin to agree to this arrangement on one condition: the possessor should confirm that he was not the thief or connected with the thief. It would have been contrary to public policy to appear to reward criminals in this way, when no information had been disclosed about the circumstances of the theft, its perpetrators and the whereabouts of the paintings since the theft, despite sustained efforts by the Art Loss Register to obtain that information. The possessor was asked to confirm in writing that he was acting in good faith and to deposit a sealed declaration of good faith signed by him (but not seen by the Art Loss Register) with a law firm in the City of London, with instructions to the law firm to hold it in escrow.

In December 1999, Mr Bakwin sold the Cézanne at auction at Sotheby's in London for more than £18,000,000.

## The Consignment to Sotheby's

In 2005, the Art Loss Register reported to Mr Bakwin that four of the remaining stolen paintings had been consigned for sale at Sotheby's in London. Mr Bakwin instructed English lawyers to prevent the sale and recover the four paintings. Legal proceedings were launched in the English Court against Sotheby's and Erie International Trading Company for the return of the paintings to Mr Bakwin. Sotheby's were involved in the proceedings merely because they had physical possession of the paintings. There was no suggestion that they had been in any way at fault. Erie claimed that the documentation signed in 1999 showed that the company now owned the paintings. In any event, Erie argued, this matter should not be heard by the English Court because the agreement provided that any dispute should be referred to arbitration in Geneva. True to its word, Erie started an arbitration in Geneva, so that there were two sets of proceedings on foot in different jurisdictions. Mr Bakwin did not consider himself bound by the agreement with Erie. He had entered into it because he had had no choice but to do so if he stood any chance of recovery.

In the English Court, his lawyers argued that the agreement was procured by duress, that it was void and the arbitration clause should not stand. The English judge agreed. Erie appealed. In the meantime, the Art Loss Register had invested considerable resources in tracing the paintings back to the thief. A name came up: Robert Mardirosian. The Art Loss Register established that Mardirosian, a criminal lawyer practising in Massachusetts, had represented the alleged thief at the time of the robbery. The Art Loss Register also established a link between Mardirosian

and Erie. Could Mardirosian be the mysterious possessor of the stolen paintings? The Art Loss Register obtained a copy of Mardirosian's signature. To establish that, in 1999, Mardirosian had been in possession of the paintings, the Art Loss Register wanted to compare that signature with the signature on the sealed declaration held in escrow in the City of London. Mr Bakwin sought disclosure of the sealed declaration. Erie resisted. The Court eventually granted an order requiring the City law firm to open the sealed declaration. Late one evening in January 2006, the Art Loss Register and Mr Bakwin's lawyers attended the office of the law firm to witness the opening of the envelope containing the sealed declaration. To everyone's relief, a signature featured on the declaration. In one hand, the Chairman of the Art Loss Register held the signed declaration and in the other, a document with Mardirosian's signature. The two signatures were the same. The mysterious individual was Robert Mardirosian.

From then on, events unfolded quickly. In a surprise move, Mardirosian told the American press that he had secretly held the paintings for more than twenty years. He recounted how David Colvin, the alleged thief, had visited his office to discuss drug related charges. He was carrying the paintings. Colvin said that he was on his way to Florida to fence them. Mardirosian dissuaded him from doing so. He had nowhere to stay, so Mardirosian offered him a bed. When Colvin departed the next morning, he left the paintings behind.

He was shot dead a few months later. Instead of handing the stolen paintings to the police, Mardirosian kept them and tried to sell them or return them in exchange for cash. When his name became public following the opening of the sealed envelope, he reportedly told Field Fisher Waterhouse, the London law firm ostensibly representing Erie, "to give up". Field Fisher Waterhouse terminated their representation. In February 2007, the Court authorised Sotheby's to return the paintings to Mr Bakwin. A few days earlier, the FBI had arrested Mardirosian in Boston. He will be tried in Massachusetts, probably next year. The location of the two missing paintings has been identified, and Mr Bakwin is likely to recover them soon. He is now seeking to recover damages from Mardirosian and, potentially, from other persons who assisted him in maintaining possession and subsequently seeking to dispose of the stolen paintings. The case continues....

Withers act for Michael Bakwin.

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