

# Appeals court rejects art resale royalties

By Charles Desmarais

Art collectors, dealers and auction houses are no longer obligated to share with artists proceeds from sales of works that increase in value after purchase. That's the ruling by the U.S. Court of Appeals for the Ninth Circuit in San Francisco, which on Friday, July 6, rejected a final attempt to uphold a 1977 California law that entitled artists to royalties on the resale of their work.

Led by the Sam Francis Foundation and artists Chuck Close and Laddie John Dill, a class-action lawsuit to collect royalty payments had been brought against the art auction houses Sotheby's and Christie's and the online site eBay. An earlier decision to dismiss the case by a U.S. District Court was "affirmed in part and reversed in part" on Friday.

The appeals court based its decision primarily on conflicts between the California Resale Royalties Act, which took effect Jan. 1, 1977, and a congressionally amended federal copyright law that went into effect the following year. The possibility that works sold only in 1977 might still be subject to the CRRA was remanded to the district court for further proceedings.

"I'm not surprised, but I'm disappointed," Dill said by phone from Venice (Los Angeles County). He said the amount of money generated by royalties — 5 percent of the resale proceeds — was not the point for him. "It varied over the years. It can be as much as \$2,500 to \$3,000, but some years just in the hundreds." Still, he said, "it was the principle of the thing."

Dill said the effort to win for artists the right to collect resale

royalties "started a long time ago. It was basically Bob Rauschenberg's idea." He said that, among others, artist Richard Diebenkorn supported the idea, "but he wanted to give the money to the Rauschenberg Foundation."

Longtime San Francisco gallerist Brian Gross said he always paid the royalties, but that there was no entity charged with assuring compliance with the law. "Most of the artists I know didn't have the time, the money, the motivation to go after buyers."

"It was flawed," Gross said, "but I always felt the law came from a good place."

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**An appellate court rejected a lawsuit by artist Chuck Close and other plaintiffs to affirm art resale royalties.**