Heirs and IRS Reach Agreement on Unsaleable Artwork Valued at $65 Million

How much is something worth if it can never be sold? When the children of art dealer Ileana Sonnabend inherited her valuable collection of artwork in 2007, among the pieces was a ground-breaking "combine" by Robert Rauschenberg titled "Canyon."

The children paid $471 million in federal and state estate taxes on their mother's estimated $1 billion collection, but they did not think they had to pay any tax on "Canyon." The 1959 work, it turns out, can never be sold because it includes a stuffed bald eagle. Bald eagles are under federal protection and selling or trading one, even if it is part of a famous work of art, is a crime.

The Internal Revenue Service (IRS), however, saw things differently and appraised the work at $65 million. On that basis, the IRS said the estate owed $29.2 million in taxes plus another $11.7 million in penalties.

The children and the IRS have finally reached an agreement: the IRS will drop the tax assessment on the condition that the children donate "Canyon" to a museum and claim no tax deduction for the donation.

After a contest between two major New York City cultural institutions – the Museum of Modern Art and the Metropolitan Museum of Art – over who will get Rauschenberg's masterwork, the children have decided to donate it to the Modern. As the *New York Times* put it, "the eagle has now landed."

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Nursing Home Patient under Custodial Care Not Entitled to Coverage from Insurance

A U.S. court of appeals holds that a nursing home patient was not entitled to coverage from her health insurance plan for her nursing home stay because she received primarily custodial care, not skilled nursing services. *Becker v. Chrysler LLC Health Care Benefits Plan* (7th Cir., No. 11-2624, Aug. 20, 2012).

Evelyn Jeranek had health insurance through her husband's employer. The plan provided that it would not cover benefits for a terminally ill enrollee whose condition is primarily custodial and no longer requires skilled nursing service. Ms. Jeranek entered a nursing home suffering from congenital heart failure, among other maladies. She refused treatment several times, as well as her doctor's recommendation that she go to the hospital.

The nursing home submitted a claim to Ms. Jeranek's insurance company, which denied the claim after finding that Ms. Jeranek had a chronic stable condition that did not require skilled nursing care. After Ms. Jeranek died, her personal representative sued the insurer, arguing that Ms. Jeranek's was a complex patient that required the care of skilled nursing personnel. The district court granted summary judgment to the insurance company, and Ms. Jeranek's personal representative appealed.

The U.S. Court of Appeals, 7th Circuit, affirms, holding that the plan did not cover Ms. Jeranek's nursing home stay because

she did not receive skilled nursing services. According to the court, there is nothing in the plan that "suggests that 'skilled nursing personnel' equates with the provision of 'skilled nursing services,'" so there was a basis for the insurance company's conclusion that the care provided was entirely custodial.

For the full text of this decision, go to: http://www.ca7.uscourts.gov/tmp/KX0KLNEF.pdf.

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Federal Court Rules That Gay Widow Is Entitled to Estate Tax Refund

Finding that the Defense of Marriage Act's (DOMA's) denial of equal benefits to same-sex couples violates the Equal Protection Clause of the Fifth Amendment, a federal court judge has awarded the surviving spouse of a lesbian couple reimbursement for the tax bill she paid on her wife's estate.

Edith Windsor and Thea Spyer became engaged in 1967 and were married in Canada in 2007, although they lived in New York City. Ordinarily, spouses can leave any amount of property to their spouses free of federal estate tax. But when Ms. Spyer died in 2009, Ms. Windsor, now 82, had to pay Ms Spyer's estate tax bill because of DOMA, a 1996 law that denies federal recognition of gay marriages.

Although New York State considered the couple married, the

federal government did not and taxed Ms. Syper's estate as though the two were not married. Ms. Windsor sued the U.S. government seeking to have DOMA declared unconstitutional and asking for a refund of the more than $350,000 in estate taxes she was forced to pay.

Federal court judge Barbara Jones from the U.S. District Court for the Southern District of New York ruled that there was no rational basis for DOMA's prohibition on recognizing same-sex marriages. Jones stated that it was unclear how DOMA preserves traditional marriage, which is one of the stated purposes of the law. As ElderLawAnswers reported last year, President Obama decided to stop defending DOMA, so members of Congress formed an advisory group to defend the law. This is the fifth case to strike down DOMA.

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Judge Orders Refund to Estate That Paid Tax Before Madoff Con Was Revealed

When New Jersey resident Theodore Warshaw died in 2006, his estate was valued at more than $1.8 million. Because in New Jersey any amounts in an estate above $675,000 are subject to estate tax, Mr. Warshaw's executors paid $88,677 to the state.

The bulk of Mr. Warshaw's assets were held in an IRA, and when he died the IRA went to a trust to benefit his widow. The IRA assets were allegedly being invested in stocks, bonds and

other financial instruments by Bernard L. Madoff Securities, LLC. Mr. Madoff's company reported that at the time of Mr. Warshaw's death the value of the IRA was more than $1.4 million.

In December 2008, Mr. Madoff was arrested and it was revealed that Mr. Warshaw was among the victims of the largest Ponzi scheme in U.S. history. The money in Mr. Warshaw's IRA was not being invested but instead had been used to pay other "investors." The IRA's value was not $1.4 million but $0.

Learning this, Mr. Warshaw's estate requested a refund of the $88,677 estate tax it had paid New Jersey. The estate argued that the IRA actually had no value at the time of Mr. Warshaw's death and that therefore his taxable estate was well below the state's $675,000 threshold. New Jersey's Division of Taxation denied the requested refund.

Both sides asked the Tax Court of New Jersey to rule in their favor without a trial. In its argument to the court, the state Division of Taxation cited a 1929 U.S. Supreme Court holding that the value of assets in a taxable estate cannot be determined by events after the date of a death. *Ithaca Trust Co. v. United States*, 279 U.S. 151.

On June 28, 2012, the Tax Court of New Jersey ruled that the Division owes Mr. Washaw's estate the refund. The court wrote that despite the 1929 Supreme Court ruling, "subsequent events may be considered to establish evidence of fair market value as it existed on the date of death." The court held that the discovery of the Madoff Ponzi scheme was relevant to the determination of the IRA's value at the time of Mr. Warshaw's death, and that the IRA was in fact worthless at that time.

To read the tax court's decision in the case, *Estate of Warshaw v. Director, Division of Taxation,* click here.