

The End of the Berkshire Museum Saga: Everyone Loses

05.02.18 | Linda J. Rosenthal, JD



Last summer, the directors of the Berkshire Museum in lovely Pittsfield, Massachusetts, abruptly announced a momentous – previously secret – decision to sell off artwork worth over \$50 million. These paintings include “Shuffleton’s Barbershop” (1950), “[a]n undisputed masterpiece by Norman Rockwell [which] was donated to the museum by the artist himself in 1958.” The sell-off, according to the board, was to fix what it characterized as a catastrophic financial deficit.

This back-room strategy to turn around the troubled institution and position it in a new artistic direction set off immediate howls of protest from supporters and patrons, from many in the Pittsfield community, and from the art world nationwide. The “deaccessioning” of works of art is a practice that museum associations deeply oppose and condemn.

In [Controversial Decision for Berkshire Museum](#), we reported on the story to that point in October 2017. In response to the board of directors’ scheduling of a Sotheby’s auction of the works of art in the fall of 2017, opponents – including the Rockwell heirs – took legal action to halt these sales. In mid-November, in [Berkshire Museum Drama Heats Up](#), we posted again on lawsuit updates. Since then, there have been rapid-fire developments, but the legal battle is now at an end. Justice David Lowy of the Massachusetts Supreme Judicial Court issued a [ruling on April 5, 2018](#), in favor of the Museum’s Board of Directors. Their plan – including the artwork sales (with some restrictions) – can and will go forward. But this is hardly a full-blown win for that side; in addition to huge legal fees and costs, they will face ongoing anger and mistrust from opponents, and the reputational damage to the institution may be permanent.

Legal Issues

At the point we left off in this disheartening tale, there were two lawsuits pending, and the Massachusetts Attorney General, Maura Healy, had officially “intervened” as a party to the legal proceedings. Her office has jurisdiction and authority to monitor and regulate charitable organizations in the Commonwealth. Critics, though, asserted that her action was too little, too late. Part of the rationale of the judge’s November decision to grant temporary stays on the sale of the artwork was to give Ms. Healy’s office time to investigate the matter, including the assertions by the museum board that the organization was in such dire financial straits that there was no alternative to selling off a substantial part of the museum’s art treasures.

In many respects, Felix Salmon, former financial journalist and now commentator, aptly sums up this mess (as of November 2, 2017) in his entertaining and informative article titled *The Berserk Battle Over the Berkshire Museum and Its Art Collection*. “After throwing the Berkshires into chaos into July, Pittsfield’s storied Berkshire Museum has found itself brought up in front of Berkshire County’s Superior Court. The museum had bet everything on a desperate and deeply unethical plan to sell off the most valuable and historic artworks in its collection, rip out the architectural heart of the building, and build up a fortress endowment so large that it would never need public support again.” “To be clear: from day one,” Mr. Salmon (an unabashed critic of the proposal) continued, “the plan looked very, very bad.” Why? Because the controversial deaccessioning decision goes to the fundamental purpose of a museum; that is, to “preserve its collection.” He adds that the “...job of a *collection* is *not* preserve the museum and to help it reinvent itself as something out of Harry Potter....” (emph. added).

Felix Salmon summarized the problem: “[The sales] proceeds would mostly go into the museum’s endowment, after first spending \$20 million on gutting the museum and replacing it with – well, no one really knows what exactly, but there’s a lot of word salad about ‘a radically new interdisciplinary approach’ where artworks will be ‘integrated with cutting-edge technology’.” His analysis also includes more background information as well as a discussion of some of the legal and ethical issues in this case.

Between November 2017 and now, there have been many court filing and rulings as well as news and opinion articles, all of which have gone deeply “into the weeds” of the legal battle; see, for example, here, here, and here. Among the issues covered is the tricky matter of legal “standing”; that is, whether community opponents of a move by a cultural institution’s board of directors have a legal right to go into court and try and block it. Court rulings in February and again – now – in early April, indicate that opponents did *not* have the requisite legal standing.

Of course, the simple fact that a revered institution is the subject of so many news stories in such a brief stretch of time is a bad outcome – win or lose. This institution’s reputation, built up over many decades, is in tatters.

Conclusion

From our point of view, the specific legal proceedings, arguments, and rulings in the Berkshire Museum case are less compelling than the larger issue which we have discussed before: that is, the growing trend of “stakeholder revolts” against secretive, drastic decisions by directors of community institutions.

We’ve covered two compelling recent instances: Sweet Briar College in Virginia and the San Diego Opera. In each case, the board of directors drew up plans to abruptly shut down those institutions

on alleged financial insolvency grounds. In each case, a broad coalition of opponents, both inside the organization as well as in the surrounding community, swiftly organized and essentially “overthrew” the existing regime to stop the devastating proposal.

These are hardly the only two examples of a growing phenomenon of “people power.” That’s what makes the strikingly tone-deaf course of action of the Berkshire directors so astonishing. Every step they took was a chapter straight out of “How *Not* to Govern a Community Institution 101.”