

a "similar sized work from the same series," sold for \$825,000. The Estate's expert determined the fair market value of the Dubuffet to be \$500,000. For purposes of the notice of deficiency, the IRS valued the Dubuffet at \$750,000, as of the date of death. At trial, the IRS's expert had raised the value of it to \$900,000.

### **The Court's Considerations and Opinions**

In assessing the veracity of the various experts' value determinations, the *Newberger* Court examined the economic conditions as of the date of death and noted,

The market for fine artwork declined precipitously during the autumn of 2008. In October of that year 44% (i.e., double the October 2007 rate) of the artwork up for auction failed to reach its minimum or guaranteed price and was returned to the auctioneer or owner. In 2009 Sotheby's and Christie's, the top artwork auction houses, experienced auction revenue decreases of 53% and 46%, respectively. Lower sale prices and a lack of available, high-quality artwork contributed to the decline in auction revenue. The artwork market rebounded in 2010, with auction revenue from that year nearly doubling the 2009 total and almost matching the 2007 high point.

#### **Picasso Painting**

The determination of the Picasso painting's fair market value was complex. Between December of 2009 and February of 2010, Sotheby's had offered to sell the painting and agreed to "pay the estate \$3 million if the Picasso did not sell at auction." A short time later, Sotheby's raised that price to \$3.5 million. The Estate rejected Sotheby's offer and entered into an agreement to sell the Picasso through Christie's for a minimum price of \$4.8 million, plus 60 percent of the "hammer price" above that amount. On February 2, 2010, the Picasso sold for \$12,927,874. The Estate's expert valued the painting at \$5 million and, at trial, the IRS's expert valued the painting at \$10 million, \$3 million lower than in its notice of deficiency.

The Estate argued that the sale was a "fluke" and should be ignored. Furthermore, "the sale is not relevant because it could not have been reasonably anticipated on the date of death."

Despite the six months between the date of death and the sale of the Picasso, during which time the art market was in recovery, the *Newberger* Court stated, "no evidence is more probative of the Picasso's fair market value than its direct sales price. The estate's experts' failure to consider the sale of the Picasso renders their valuation wholly unreliable. ... We agree with [the IRS's] expert."

#### **Motherwell Painting**

In examining the sale of Motherwell's *In Black and White No.5* painting some 16 months after the date of death, the Court noted that, at the date of sale, "the artwork market had largely rebounded from the downturn." The Court criticized the IRS's expert's \$1.5 million appraisal for the art as "inexplicable" since the \$1.5 million exceeded the actual selling price, which did not reflect the art market downturn. The Court further stated, "[The IRS's expert] did not make a market adjustment as she made relating to the Picasso..." Because the Estate's experts had made adjustments from the sales price and the IRS's expert had not, the Court agreed with the Estate's \$800,000 fair market value.

#### **Dubuffet Painting**

In the determination of the fair market value of the Dubuffet painting, both experts noted that a sale from the same series, a painting very similar to the Estate's painting, sold for \$825,000 in November of 2007, prior to the art market downturn. The Court rejected the IRS's expert's value, saying that the "[IRS's expert's] contention that the Dubuffet's value was higher during the market downturn than ... before the market downturn is, in short, nonsensical." The Court accepted the Estate's expert's \$500,000 determination for the Dubuffet.

### **Summary**

While it is often tempting for experts to ignore a post-valuation-date sale because the sale was "not