

2005 WL 5936839 (S.D.N.Y.) (Trial Pleading)  
United States District Court, S.D. New York.

UNITED STATES OF AMERICA,

v.

Richard VITRANO, Defendant.

No. 05 CRIM. 1264.  
December 5, 2005.

**Information**

Michael J. Garcia, United States Attorney.

Judge Keenan.

**COUNT ONE**

**(Wire Fraud)**

The United States Attorney charges:

***Background***

1. At all times relevant to this Information, RICHARD VITRANO, the defendant, resided in New York, New York, and was engaged in the business of selling paintings, drawings, prints and other fine art over the internet.

***The Scheme to Defraud***

2. From in or about September 2002, through on or about April 26, 2005, RICHARD VITRANO, the defendant, engaged in an art fraud scheme using the internet as a vehicle to sell forged and/or inauthentic art. In order to market the inauthentic paintings, VITRANO caused third-party nominees to open internet accounts on eBay under business names that appeared to be art dealers and galleries, through which VITRANO would list paintings for sale. VITRANO used the third-party eBay accounts to transmit misrepresentations concerning paintings he put up for auction, claiming falsely, among other things, that the paintings were authenticated and attributed to particular known artists, such as Raoul Dufy, Phillip Guston, Diego Rivera, Edward Potthast and A.H. Wyant. By means of false representations concerning authenticity, artist attribution and provenance, VITRANO fraudulently induced purchasers to buy paintings through the VITRANO-controlled third-party internet accounts. The purchasers paid for the paintings with credit cards and thereby caused funds to be wired to various bank accounts to which VITRANO had access, and VITRANO withdrew the funds.

3. To conceal his role in the fraud and to evade financial responsibility for the fraudulent sales, RICHARD VITRANO, the defendant, persuaded other persons, including friends, relatives and business acquaintances, to establish accounts with eBay, the internet auction service. Between in or about September 2002 and on or about April 26, 2005, VITRANO caused at least approximately fifteen individuals to open accounts with eBay for VITRANO to use for the purpose of marketing and selling art. The third-parties used their own names to open the eBay accounts. In all cases, VITRANO exercised full control over the activity and content of the third-party eBay accounts, and VITRANO posted the information and photographs of the paintings being offered on the particular accounts from his computer in New York, New York.

4. VITRANO further caused the third-party eBay account holders to open bank accounts to conduct the financial transactions related to the internet sales of art. The third-party nominees provided VITRANO with ATM and debit cards to the bank accounts, and VITRANO thereby withdrew funds received into the accounts through credit card payments for the artwork sold. In many instances, VITRANO promised to pay the nominees approximately \$100 to \$200 per month for the use of the eBay accounts and bank accounts.

5. In order to finance the purchase of paintings to fraudulently market and sell over the internet, VITRANO induced two individuals, inexperienced in matters relating to art, to go into business with him. Both business partners filed business certificates with the New York, New York, county clerk, opened internet eBay accounts in their names for VITRANO to use in connection with selling paintings, and opened and/or maintained bank accounts and credit card accounts for the use of the purported art business.

6. VITRANO obtained the inventory of art work to sell on the internet by attending, and/or directing his business partners and others acting on his behalf to attend specific auctions in New York, New York and to bid on paintings VITRANO selected. VITRANO arranged for his business partners and others to be responsible for payment for most of the art purchases. Most, if not all, of the paintings VITRANO acquired in the above described manner, were sold to VITRANO and his nominees with the express disclaimer that the works are not attributed to any particular artist and not authenticated.

7. The third-party eBay accounts VITRANO used in connection with his scheme to defraud, included, but were not limited to, the following:

<b>SCREEN NAME</b>	<b>DATE ACCOUNT OPENED</b>
The Last Art	September 22, 2002
Vasare 10	October 6, 2002
RV Fine Art	October 7, 2002
Carambot 13	April 12, 2003
Lled 227	April 13, 2003
Ibay Finds	July 12, 2003
Alibay Arts	February 16, 2004
Ands Art Ands 81	July 9, 2004
Carly Collection	August 17, 2004
Green Art Grottoman 3	October 5, 2004
Gallery 910	October 26, 2004
The Fine Art Co.	November 22, 2004
Ambraraouda	November 28, 2004
Blue Sky Art 67	December 9, 2004

Tar Heel Fine Art

March 8, 2005

Fine Canada Art

March 10, 2005

8. VITRANO marketed unauthenticated and unattributed paintings through the above-listed internet accounts, which VITRANO had caused third-party nominees to establish for his use. To entice bidders, VITRANO made material, false representations concerning the art works, including, but not limited to, the following:

a) VITRANO falsely stated that the paintings were authentic and that the works had been professionally attributed to particular artists, when VITRANO knew that he had acquired the paintings at local auction pursuant to an express disclaimer indicating that they were not authentic and not attributed to any known artist;

b) VITRANO falsely represented that he had obtained independent "appraisals" attesting to the market value and authenticity of the paintings, when, in truth and in fact, VITRANO fabricated the appraisals himself by cutting and pasting from legitimate appraisals of other art work, and inserting false information about the painting VITRANO was offering for sale, which information VITRANO had made-up;

c) VITRANO represented that paintings had a documented, prior ownership history, or provenance, when as VITRANO well knew, VITRANO had fabricated back-dated invoices to make it appear as if the paintings had been bought and sold through legitimate galleries in the past. As part of the scheme to falsify provenance, in or about March 2003, VITRANO purchased approximately 30 historical auction catalogues for two art galleries that existed in New York, New York but which are no longer in existence. VITRANO cut and pasted from these historic catalogues to create fake invoices purportedly reflecting prior transactions by the galleries involving the painting as well as fictitious historical buyers.

9. VITRANO further engaged in a fraudulent practice known as "shill bidding" designed to artificially drive up the auction price of the paintings he was attempting to sell. VITRANO would put paintings up for auction on one of the third-party eBay accounts, and then, from his computer in New York, New York, place higher internet bids on the painting through another third-party eBay account. VITRANO would then contact the second highest bidder and falsely claim that the high bidder fell through and offer the painting for sale to the "second chance buyer" privately.

10. VITRANO obtained payment for the fraudulent paintings he sold almost immediately, as the customers who purchased paintings from the VITRANO-controlled eBay internet auction accounts typically paid by credit card. When a credit card company wired payment into the bank account, VITRANO would ship the art from New York, New York, to the purchaser and immediately withdraw the funds from the bank account into which payment had been delivered.

11. Many of the purchasers subsequently discovered that the paintings they had purchased were copies, works not created by the hands of the artists whose signatures appeared on them, and/or otherwise in contradiction to VITRANO's representations. One purchaser who bought a purported Edward Potthast from the Gallery 910 eBay account had a fine art restorer examine the painting after receiving it, and discovered that the painting was not painted by Edward Potthast and that the Potthast signature had been added to the painting at a later time. This purchaser returned the painting to Gallery 910, by shipping it to New York, New York, at VITRANO's instructions, to a rented mail box. On or about March 23, 2005, this purchaser received an email from Gallery 910, which VITRANO caused to be sent, stating that the painting had been received and that "credit" would be issued. This purchaser has not received any refund to date.

12. Between in or about September 2002 and on or about April 26, 2005, many other customers returned paintings purchased from the e-Bay sites described above, and demanded refunds. When customers returned paintings, the credit card companies would generally "charge back" the purchase price to the bank account into which payment had been made. Because VITRANO deliberately did business in the names of nominees, and because VITRANO withdrew funds from the nominee bank accounts

as soon as the funds were wired in, VITRANO evaded making refund payments. Further, the credit card companies charged VITRANO's third-party account holders with the refunds, leaving the nominees, not VITRANO, with balances due and owing.

13. VITRANO also put many returned paintings back up for auction on the internet after customers had returned them reporting them to be forged and inauthentic. Generally, when customers returned paintings, VITRANO instructed them to mail the paintings to various rented mail boxes which VITRANO maintained in New York, New York, in the names of nominees. In numerous instances, VITRANO put such returned paintings for auction again, on a different third-party eBay internet account, repeating misrepresentations about the painting's authenticity and attribution.

### ***STATUTORY ALLEGATION***

#### **(Wire Fraud)**

14. From in or about September 2002, up to and including on or about April 26, 2005, in the Southern District of New York and elsewhere, RICHARD VITRANO, the defendant, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, to wit, a scheme to defraud persons into purchasing paintings over the internet by making false and fraudulent, material representations concerning the authenticity, artist attribution and provenance of the paintings, did transmit and cause to be transmitted by means of wire, radio and television communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, on numerous instances VITRANO sent and caused to be sent emails over the internet from a computer in New York, New York, in connection with the sale of paintings.

(Title 18, United States Code, Sections 1343 and 2.)

### ***FORFEITURE ALLEGATION***

15. As the result of committing the wire fraud offense in violation of 18 U.S.C. § 1343, alleged in Count One of this Information, RICHARD VITRANO, the defendant, shall forfeit to the United States pursuant to 18 U.S.C. § 981(a) (1) (C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense, including but not limited to the following:

1. Image of temple, oil on canvas;
2. Landscape, signed "Whorf";
3. Asian scene print numbered 88/120;
4. Still life print numbered 18/20;
5. Modern abstract image, watercolor, signed "Marin";
6. Drawing of woman, signed "Reginald Marsh";
7. Abstract image, watercolor, signed "A 75";

8. Drawing of Rabbi, signed "Holstein";
9. Two figures, drawing;
10. Shipyard working scene, oil painting;
11. Peasant, poster, in style of Diego Rivera;
12. Tavern scene, drawing, signed "F. Roylet 1883";
13. Partially clothed woman, print, signed "Modigliani";
14. Portrait of woman, print, signed "M. Laurencin";
15. Painted tile, signed "Foujita";
16. Abstract image, watercolor, signed "Dove";
17. Still life, oil on cardboard, signed "Stogowski Eva";
18. Street scene, watercolor, signed "Utrillo Marurice V";
19. Landscape, drawing, signed "Jerusalem";
20. Image of Woman, poster;
21. Floral arrangement, poster, dated 1980;
22. Bearded man, watercolor, signed "Alklum"
23. House scene, drawing on paper, signed "B Vassloff";
24. Landscape with building, drawing, signed "Boris Vassiloff";
25. Flowers, watercolor on rice paper, stamped;
26. Figure, drawing, signed "de Beuroul";
27. Abstract image, watercolor, signed "Rioppele";
28. Lake scene, oil on canvas, signed "H. Stiglitz 06";
29. Man and woman figures, oil on board, signed "NC Wyeth";
30. Abstract image, oil on canvas, signed "Severini";
31. Woman figure, poster, titled "Love Blossom", signed "Louis Icart";

32. Roses, poster, signed "Paul de Earypic";
33. Peasants and riders, oil on poster board, signed "JC Orozco";
34. Seascape, etching print, numbered 72/88;
35. Lake with sail boats, oil on canvas;
36. Profile of woman, oil on board, signed "Oscar Bleu";
37. Street scene, oil on canvas, signed "R Hausmann";
38. Church scene with trees, oil on canvas, marked on back "House of Heyden";
39. Nymphs around lake, watercolor on paper, signed "Derain";
40. Forest river scene, oil on canvas;
41. Seascape, watercolor, signed "Homer";
42. Abstract image, oil on board, signed "K F Dat";
43. Man and woman figures, drawing/lithograph, signed "Picasso";
44. Street scene, watercolor, signed "Maurice Utrillo";
45. Framed six panel floral, print;
46. Landscape, oil on canvas, signed "Eneking";
47. Still life, oil on canvas, signed "S.D. Rosa";
48. Lake scene with bridge, oil on canvas, signed "E. Crane";
49. Men and horses, silk screen poster, signed "Dufy";
50. Vase of flowers still life, oil on board, signed "Carles";
51. Woman figure, oil on canvas, signed "Simone Drimnee";
52. Woman in beret, oil on canvas, signed "Picasso";
53. Landscape with cottages, oil on canvas, signed "P. S. Rombaut";
54. City skyscape, oil on canvas, signed "M Katz";
55. Mountain scene, oil on canvas, signed "Bernhard Daniel";
56. Wall hanging, arts and crafts sculpture, depicting Perimolta Circus;

57. Abstract image, oil on canvas, signed "Milton Resnick".

*Substitute Asset Provision*

If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981, 982, 1341, 1343 and Title 28 United States Code, Section 2461.)

<<signature>>

MICHAEL J. GARCIA

United States Attorney