

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

FREDERICK ISEMAN,

Plaintiff,

-against-

MICHAEL HECHT, LISE MOTHERWELL,
and CLIFFORD ROSS,

Defendants.

HELEN FRANKENTHALER
FOUNDATION, INC.,

*Nominal
Defendant.*

SUMMONS

Index No. _____

Date Filed: November 8, 2023

TO THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the Plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Pursuant to NY CPLR 503(a) and 509, Plaintiffs designate New York County as the place of trial as the county in which one or more of the parties resided when it was commenced, and the county in which substantial part of the events or omissions giving rise to the claim occurred.

Dated: New York, New York
November 8, 2023



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**COMPLAINT AND JURY
DEMAND**

Plaintiff Frederick Iseman, by his undersigned counsel, brings this individual and derivative action against Defendants Clifford Ross, Lise Motherwell, and Michael Hecht (collectively, the “Director Defendants”), as well as against the Helen Frankenthaler Foundation, Inc. (the “Frankenthaler Foundation” or the “Foundation”) for the limited purpose of an accounting and declaratory and injunctive relief, and respectfully alleges as follows:

INTRODUCTION

1. Helen Frankenthaler is one of the most important figures in post-war American art—and one of only a handful of women artists who achieved international acclaim in the male-dominated field of modern art. Her career spanned six decades, during which she produced groundbreaking works of art. Early in her career, Frankenthaler developed a revolutionary style of painting, called the soak-stain technique, which changed the direction of the Abstract Expressionist movement and earned her a permanent place in art history. Being a woman in a male dominated world, Frankenthaler spent over half a century proving that she would not be written off. Or, as

the artist Louise Bourgeois so aptly put it: “a woman has no place as an artist until she proves over and over that she won’t be eliminated.”

2. Now, over a decade after her death, the Director Defendants’ flagrant breaches of fiduciary duty are threatening to undo all of Frankenthaler’s hard work and proof of her unique status and talent. The Director Defendants are wasting the resources of the Foundation that Frankenthaler set up during her lifetime to protect her legacy, instead exploiting the Foundation for their own individual, personal interests. More specifically, they have been acting as if they are members of some small, private clique, using their roles as directors of the Board of the Foundation to promote their own careers and prestige, not to mention trading Foundation assets for their personal benefit. In other words, rather than the school of “abstract expressionism” of which Frankenthaler was one of the most prominent members, Defendants here are engaging in a kind of “grabstract expressionism” that is effectively destroying Frankenthaler’s legacy.

3. Frederick Iseman, the nephew of the late Frankenthaler, brings this lawsuit to put an end to this course of misconduct, to protect the groundbreaking artwork and legacy that his aunt built during her lifetime, and to save the Foundation that bears her name. He was named to the Board by Frankenthaler herself, with whom he had a uniquely close relationship, and he served on the Board for years since, with no financial interest, until his fellow Directors improperly and unlawfully removed him at a recent meeting in retaliation for raising many of the issues that give rise to this suit. Iseman brings this case out of loyalty to his aunt and because of his promise to her when she was alive to safeguard her legacy.

4. The whole point of the Frankenthaler Foundation is to cement the role and influence of Frankenthaler in art history and to champion her values through grants and other programs. As directors and officers, the Director Defendants at all times owed a fiduciary duty of care to the

Foundation. But the Director Defendants have done none of what Frankenthaler wanted. Rather than promoting Frankenthaler and her work, the Director Defendants have instead exploited the Foundation for their own individual and personal benefit. To give just a few examples:

- (i) Ross, who works as a professional artist, regularly engages in pay-to-play transactions, trading the Foundation's grant-giving capacity in exchange for exhibitions of his own otherwise unremarkable artwork and to generate publicity for his own career.
- (ii) Motherwell, despite her complete lack of appropriate credentials, used her position on the Foundation's Board to curate multiple Frankenthaler exhibitions at local, unprestigious museums, including insisting on a donation of \$1.4 million in Frankenthaler works to a small museum in Provincetown, Massachusetts.
- (iii) Hecht, in exchange for his facilitation of the other Defendants' self-dealing, not only had the Foundation employ two of his own accounting firms, but also had the Foundation make sizable donations to other, unrelated institutions where he sits on the Board. Hecht has continued to serve on the Board despite being repeatedly, publicly accused of breaching his duties to his own brother and other clients.
- (iv) The Director Defendants all failed to do anything about the incompetent management by Elizabeth Smith, the executive director of the Foundation, who receives compensation far more than what is paid to the heads of similar foundations and who has failed to secure a single significant exhibition of Frankenthaler paintings during her tenure.

5. By using the Foundation to serve their own personal ends (to the detriment of the Foundation), each Director Defendant neglected to properly manage the Foundation and wasted corporate assets (both money and Frankenthaler artworks) in direct violation of their fiduciary duties to the Foundation.

6. But that is not all. The Director Defendants, at the ages of 68 (Lise Motherwell), 71 (Clifford Ross), and 87 (Michael Hecht), have made it clear that they intend to close the Foundation altogether and cash out its assets as soon as they can, presumably as part of a plan to cover their own tracks. So, in 2019, the Director Defendants proposed selling or donating the rest of the Foundation's enormous collection of valuable Frankenthaler paintings and shutting down the

Foundation altogether. Doing so would not only destroy the market value of Frankenthaler's work in direct violation of the Directors Defendants' fiduciary duties to the Foundation, but would be overtly contrary to the Foundation's mission, not to mention Frankenthaler's own wishes before she died.

7. Iseman forcefully demanded that the Director Defendants back down from this plan, refusing to accept their proposal. What happened as a result? They backed off at first, but then the Director Defendants called a pretextual "annual meeting" to remove Iseman from the Board—leaving them alone as the three directors of the Foundation, still committed to completely shutting down the Foundation in the near future.

8. But New York law does not permit directors and/or officers of a nonprofit like the Foundation accused of wrongdoing to effectively silence disagreement by kicking another director off the Board without cause by means of a pretextual election. New York law is explicit that removal of a director must be for cause. Allowing nonprofit directors to act otherwise would obviously only encourage boards to remove any director who blows the whistle, rather than addressing and remedying the wrongs for the good of the charity and its beneficiaries.

9. And on top of everything, the Director Defendants are engaging in exactly the types of art world antics, deception, and corruption that Frankenthaler herself despised. As she explained in a 1965 interview:

I think when you're really painting, involved in a painting, what goes on in the art world doesn't matter . . . Sometimes I think the worst thing is the current "worldliness" of the whole scene. It is the most deceptive, corrupting, transient thing, full of kicks and fun but so little to do with what it's all really about.¹

¹ Kristine Stiles & Peter Selz, *Theories and Documents of Contemporary Art: A Sourcebook of Artists' Writings* 31 (2d ed. 2012).

10. This lawsuit is intended to stop the “corrupting” behavior of the Directors of the very Foundation that bears Frankenthaler’s name. Without this lawsuit, the charitable assets at issue—which include thousands of examples of Frankenthaler’s own artwork, her collection of other artists’ work, as well as substantial investments, together worth nearly \$1 billion dollars—will be in danger. The Director Defendants’ flagrant abuses will continue until they effectively “cash themselves out” by shutting down the Foundation completely.

11. The breaches of fiduciary duty here are shocking and egregious. Not only will the Director Defendants’ self-dealing and incompetence continue to harm the Foundation and Frankenthaler’s legacy, but by liquidating the remaining Frankenthaler works held by the Foundation, the Director Defendants will substantially deprive future generations of the opportunity to see and appreciate the work of one of the great American women artists.

12. Accordingly, the relief being sought is targeted to enforcing the purposes of the Frankenthaler Foundation, to “promote and encourage knowledge and appreciation of art.” Iseman sues on his own behalf for his wrongful termination from the Board, he sues derivatively for harm to the Foundation from fiduciary breach and wrongful transactions, and he also demands an equitable accounting and declaratory and injunctive relief from all Defendants, including the Foundation. More specifically, Iseman asks this Court to declare his unlawful removal from the Board of the Foundation null and void, to rescind the Director Defendants’ unlawful self-interested transactions, to remove the Director Defendants and enjoin them from seeking re-election or reappointment as directors and officers of the Foundation, and to enjoin the Director Defendants from selling, donating, or otherwise disposing of works of art from the Foundation’s collection. Iseman also seeks an accounting so that he can take steps to require the Director Defendants to reimburse the Foundation the amounts they have unethically directed for their own purposes. All

of this relief to be ordered by this Court will allow for the selection of new officers and directors who can work to actually preserve maintain the Foundation and its mission going forward long into the future, as was Frankenthaler's objective all along.

PARTIES

13. Plaintiff Frederick Iseman is the son of Helen Frankenthaler's oldest sister, Marjorie Frankenthaler Iseman. He is the Chairman and Chief Executive Officer of CI Capital Partners, a private equity firm that he founded in 1993, as well as successful businessman and philanthropist who resides in New York County and has served on the board of about 50 for-profit and not-for-profit entities. He currently serves on the international council of Belfer Center for Science and International Affairs at the John F. Kennedy School of Government within Harvard University and sits on the Board of the Morgan Library. His philanthropic interests include medical research at Columbia-Presbyterian Medical Center, the Frederick Iseman Theater at Yale University, the Wharton Institute, the Taub Institute for Brain Research, oncology, immunology, and other disciplines. In 2014, he provided Yale with a \$3 million endowment for the creation of the Frederick Iseman Professor of Poetry faculty position.

14. Iseman, as the second child of her oldest sister, was close to Frankenthaler throughout his lifetime until she died in 2011. Frankenthaler herself selected him as a Board member for the Foundation. In her Will, Frankenthaler also specifically expressed her "deep affection" for Iseman, and her gratitude for his "loyalty and ongoing support." And Frankenthaler appointed Iseman as one of three co-executors of her Last Will and Testament ("Will"), as well as trustee for various other assets. Accordingly, Iseman was very involved with the administration and distribution of Frankenthaler's estate.

15. Iseman has also been a director and officer of the Foundation since its founding and was selected by Frankenthaler herself to serve as a Board member. As a longtime director and

officer of the Frankenthaler Foundation, not to mention Frankenthaler's nephew and executor of her Will, Iseman has a substantial connection to the Frankenthaler Foundation, Frankenthaler's legacy, and the charitable assets at issue. Because of his relationship with Frankenthaler and with the Foundation he has a special interest in the continued performance of the Foundation distinguishable from that of the public at large. He is uniquely positioned to ensure that the Foundation and its directors and officers act in accordance with their governing documents and applicable laws, as well as the core mission of the Foundation and Frankenthaler's wishes.

16. Defendant Helen Frankenthaler Foundation, Inc. is a domestic not-for-profit corporation organized under New York law in New York County with a principal place of business at 134 West 26th Street, 5th Floor, New York, NY. It is a 501(c)(3) private operating foundation created while Frankenthaler was alive and was the key beneficiary of her estate.

17. Defendant Clifford Ross resides in New York County. Ross is a Director, President, and former Chair of the Foundation. Ross, who describes himself as an artist, is also a nephew of Helen Frankenthaler, the son of her middle sister Gloria.

18. Defendant Lise Motherwell, who resides in Cambridge, MA and Provincetown, MA, is a Director and Chair of the Foundation. Motherwell, a psychologist with no training in art, was Frankenthaler's stepdaughter from the time when Frankenthaler was married to the artist Robert Motherwell, during the years 1958-1971. Motherwell serves as a director and president of the Provincetown Art Association and Museum ("PAAM"), a position she got because of her last name, familial connections, and her position on the Board of the Foundation.

19. Defendant Michael Hecht, who resides in New York County, is a Director, Secretary, and Treasurer of the Foundation, as well as the Foundation's paid accountant. Hecht was a founding member of Hecht and Company, P.C., certified public accountants, and is now a

consultant at Citrin Cooperman Advisors LLC.² He also serves on the board of Bennington College.

JURISDICTION & VENUE

20. This Court has jurisdiction over this action based on CPLR §§ 301 and 302.

21. Venue for this action is proper in the County of New York pursuant to CPLR § 503(a).

STATEMENT OF FACTS

I. Helen Frankenthaler—Painter and Visionary

22. Helen Frankenthaler was an artistic genius who not only pioneered a completely new painting technique, but ushered in an original way to make and appreciate art. Her story is one of perseverance in the face of repeated attempts by the male-dominated art world to erase both the nature of her achievement and her legacy.

23. Helen Frankenthaler was born in 1928, the youngest of three daughters of New York State Supreme Court Justice Alfred Frankenthaler and his wife, Martha. Her artistic intelligence developed early: in 1937, when Frankenthaler was only nine, she won an honorable mention in a drawing contest at Saks Fifth Avenue. The next year, Justice Frankenthaler, recognizing the talent of his youngest daughter, bought Frankenthaler her first real set of art supplies.

24. Frankenthaler's formal artistic training began at the Dalton School, where she blossomed under the mentorship of Mexican muralist Rufino Tamayo. Tamayo taught Frankenthaler not only the technical craft of painting, but “the seriousness of it, the attitude an

² *Michael Hecht*, CITRIN COOPERMAN, <https://www.citrincooperman.com/Specialists/Michael-Hecht> (last visited Nov. 1, 2023).

artist needed to have toward his or her own work.”³ Frankenthaler graduated from Dalton determined to become a respected artist in her own right and went onto college at Bennington to continue her training.

25. In 1950, following her graduation from Bennington College, Frankenthaler moved back home to New York City. Her arrival in New York could not have come at a better time—the New York art scene was in the middle of a creative revolution and the size and value of the American art market was exploding as a result. Many European artists seeking refuge during World War II had emigrated to New York and American artists began to directly encounter their European counterparts for the first time.⁴ This influx of artistic inspiration was further encouraged by vastly increased funding of the arts by the federal and state government.

26. During this period, Jackson Pollock was the clear leader of the aesthetic revolution that would come to be known as Abstract Expressionism.⁵ Abstract Expressionism is best known for large-scale, abstract paintings that break away from traditional artistic processes. While artists had varying approaches, they “shared a commitment to an abstract art that powerfully expresse[d] personal convictions.”⁶ Their work shifted the rest of the art world’s focus onto New York City for the very first time in art history.⁷

27. Upon entering the New York art scene at this time, Frankenthaler quickly embedded herself in the group of artists who were part of this new abstract movement. “[I]t is a tribute to Frankenthaler’s intelligence and ambition that she was soon up to speed on the latest innovations

³ Mary Gabriel, *Ninth Street Women – Lee Krasner, Elaine de Kooning, Grace Hartigan, Joan Mitchell, and Helen Frankenthaler: Fiver Painters and the Movement that Changed Art* 316 (2018)

⁴ Stella Paul, *Abstract Expressionism*, THE MET (Oct. 2004) https://www.metmuseum.org/toah/hd/abex/hd_abex.htm.

⁵ *Abstract Expressionism: A Distinctly American Style*, MUSEUM OF MODERN ART, <https://www.moma.org/collection/terms/abstract-expressionism/a-distinctly-american-style> (last visited Nov. 1, 2023).

⁶ *Abstract Expressionism: About Abstract Expressionism*, MUSEUM OF MODERN ART, <https://www.moma.org/collection/terms/abstract-expressionism> (last visited Nov. 1, 2023).

⁷ *Id.*

of the [Abstract Expressionists], in addition to becoming friendly with many of its leading lights, including Pollock.”⁸ At twenty-one and only one year out of college, Frankenthaler searched for “a way to release the gift she knew existed inside her.” She believed she was “capable of something big, something grand, something utterly original.”⁹

28. Frankenthaler described her first encounter with Pollock’s paintings as a “beautiful trauma.”¹⁰ The same year she moved to New York, Frankenthaler’s then-boyfriend, famed art critic Clement Greenberg,¹¹ took her to an exhibition of Pollock’s early work at the Betty Parsons Gallery on East Fifty-Seventh Street. After seeing Pollock’s work for the first time, Frankenthaler felt a new sense of urgency: “I had no plan,” she later explained, “I just worked. The point was how to get down the urgent message I felt somehow ready to express, in the large, free scale it demanded.”¹² Although “everyone was waiting for the next breakthrough in painting,” journalist Adam Gopnik observed in the *New Yorker*, “no one would have bet money on Frankenthaler being the one to achieve it.”¹³ Yet, within two years, she would produce art that spawned a completely new school and style of abstract painting.

29. In October 1952, at twenty-three, Frankenthaler painted her first masterpiece that she called “Mountains and Sea.” As the *New York Times* put it, “Miss Frankenthaler was working in a manner distinctly her own.” *Mountains and Sea* was the first painting that incorporated her innovative and revolutionary soak-stain technique. As a result, “art would never be the same.”¹⁴

⁸ Roberta Smith, *A Young Colorist, Antennas Quiver*, N.Y. TIMES, (Mar. 21, 2023) <https://www.nytimes.com/2013/03/22/arts/design/helen-frankenthaler-at-the-gagosian-gallery.html?pagewanted=all>.

⁹ Gabriel, *supra*, at 311.

¹⁰ *Id.*

¹¹ Greenberg was fast becoming one of the most respected and authoritative writers on contemporary art and was one of the earliest champions of the Abstract Expressionists.

¹² Gabriel, *supra*, at 459.

¹³ Adam Gopnik, *Helen Frankenthaler and the Messy Art of Life*, THE NEW YORKER (Apr. 5, 2021), <https://www.newyorker.com/magazine/2021/04/12/helen-frankenthaler-and-the-messy-art-of-life>.

¹⁴ Gabriel, *supra*, at 460.



Helen Frankenthaler, *Mountains and Sea*

30. The soak-stain technique that Frankenthaler used in *Mountains and Sea* served as the foundation for what eventually came to be known as “Color Field” painting. As part of this technique, Frankenthaler thinned down oil paint until it had a watery consistency and then poured the mixture onto raw, unprimed, and unstretched canvas. Within each painting, Frankenthaler layered multiple colors and abstract shapes. The “entire picture was created by means of pouring or staining these thin washes of color onto the canvas surface without the aid of any visible prior design,” a New York Times critic wrote of her 1950s pieces.¹⁵ Like Jackson Pollock, Frankenthaler rejected the careful, representative imagery of the artists she had studied in school. Instead, when the viscous paint mixtures she created touched the raw canvas, the colors and shapes truly took on lives of their own.

31. Although Frankenthaler’s method borrowed from Pollock’s drip painting technique, the results were completely new and her own. Like Pollock, Frankenthaler laid her canvas on the floor, not an easel, and engaged her entire body in the creation of her work. But

¹⁵ Hilton Kramer, *Helen Frankenthaler’s Art in the 50’s*, N.Y. TIMES (Jun. 7, 1981), <https://nyti.ms/48VGRH7>.

where Pollock filled his canvases with furious splatters of pigment, “her paint form[ed] seas of color that ebbed and flowed.”¹⁶ Frankenthaler had “taken what she learned from Pollock and moved beyond him.”¹⁷ “What I took from [Pollock] was the gesture and the attitude and the floor working,” Frankenthaler observed in a 1988 NPR interview. “But I wanted to work with shapes in a very different way. And instead of being involved in his technique, what evolved for me out of my needs and invention had to do with pouring paint, and staining paint.”¹⁸



Frankenthaler at work in her New York studio in 1957.¹⁹

32. Although *Mountains and Sea* was not an immediate commercial success—the New York Times referred to it in transparently sexist terms as “sweet and unambitious”²⁰—Frankenthaler’s contemporaries definitely took note. In April 1953, unbeknownst to Frankenthaler,

¹⁶ Gabriel, *supra*, at 459.

¹⁷ *Id.* at 460.

¹⁸ Susan Stenberg, ‘Color Field’ Artists Found a Different Way, NPR (Mar. 8, 2004), <https://www.npr.org/2008/03/04/87871332/color-field-artists-found-a-different-way>.

¹⁹ Burt Glinn, *In the Studio: Helen Frankenthaler and the Bohemians*, MAGNUM PHOTOS, <https://www.magnumphotos.com/arts-culture/art/in-the-studio-helen-frankenthaler-bohemian-beat-generation-burt-glinn/> (last visited Nov. 1, 2023).

²⁰ Gopnik, *supra*.

Greenberg brought a group of friends, including Kenneth Noland and Morris Louis, to her studio to view her painting. Noland and Louis were exhilarated by Frankenthaler's innovative technique. "It was as if Morris [Louis] had been waiting all his life for [this] information," Noland recalled. The two painters returned home to Washington D.C. and spent the next several years developing their own bodies of work "until they produced paintings that successfully incorporated Helen's discovery."²¹

33. Louis would later refer to *Mountains and Sea* as a "revelation," and "a bridge between Pollock and what was possible."²² Frankenthaler, remarking on Louis's quote, noted, "yes, and they walked right over that bridge, meaning they walked right over me."²³ Without reference to Frankenthaler's influence on their work, Noland and Louis were anointed the founders of the "Washington Color School,"²⁴ or the "Color Field Movement," a collective of D.C.-based artists who had adopted the soak-stain technique. Color Field painting became the second major phase of Abstract Expressionist art, with the first being Pollock's "action painting" style. Color Field artists were known for large-scale works that were dominated by flat expanses of color and included minimal detail.²⁵ Greenberg championed the group, but in his many writings on the subject, he never mentioned Frankenthaler's influence or place within the Color Field painters.²⁶

34. Despite being effectively sidelined, Frankenthaler nevertheless persisted. By twenty-four, Frankenthaler had put on two solo exhibitions.²⁷ In 1955, at the age of twenty-six, her

²¹ Gabriel, *supra*, at 479.

²² *Id.* at 478-79.

²³ *Id.*

²⁴ David Gariff, *The Washington D.C. Color School*, NAT'L GALLERY OF ART (Sept. 25, 2018) <https://www.nga.gov/audio-video/audio/eb-20th-century-art/eb-20th-century-art-dc-color-school-11.html>.

²⁵ Lisa Wainwright, *Colour-Field Painting*, ENCYC. BRITANNICA, <https://www.britannica.com/art/colour-field-painting> (last visited Nov. 1, 2023).

²⁶ Gabriel, *supra*, at 479.

²⁷ Gabriel, *supra*, at 478.

work entered a museum collection for the first time.²⁸ And in 1958, Frankenthaler married Robert Motherwell, an older, far more famous Abstract Expressionist.²⁹ They stayed married until 1971, but ultimately divorced because of his drinking.

35. The year after her marriage to Motherwell, Frankenthaler won first prize at the Première Biennale de Paris and began to have a regular presence in major international exhibitions. At thirty-one, with less than a decade of professional painting under her belt, Frankenthaler had her first retrospective at the Jewish Museum in New York. The show included nineteen paintings that traced her evolution from art student to internationally renowned painter.

36. Of course, Frankenthaler's unprecedented success did not stop critics from picking apart the "feminine nature" of her paintings, characterizing her work as "derivative and pleasing," rather than "difficult and sublime."³⁰ In the 1960s, Frankenthaler's work became the "favorite subject of mainstream magazines that appealed to high end readers." But Frankenthaler was still criticized by her colleagues in the art world for these associations. Just as she had been erased from the Color Field movement, she was again rejected from membership in the avant-garde.

37. In 1966, Frankenthaler was selected as one of only four artists to represent America at the Venice Biennale and, in 1969, the Whitney Museum of American Art hosted her second retrospective. Then, in 1989, she became the second woman ever to have a retrospective at MoMA. By the time she died in 2011, Frankenthaler had garnered virtually every accolade the art world has to offer. She left behind nearly sixty years of paintings that told the story of who Frankenthaler was and what she had accomplished.

²⁸ *Id.* at 553.

²⁹ Gopnik, *supra*.

³⁰ *Id.*

38. The impressive and extensive exhibition history of Frankenthaler’s work while she was alive is astounding, especially given her gender. Even today, women artists are vastly underrepresented in the world’s leading cultural institutions and undervalued in the commercial market. A 2019 study found that, in the permanent collections of eighteen major U.S. art museums, 87 percent of the artworks were created by men.³¹ The commercial art market, too, suffers from this bias—the highest price fetched at auction by a living woman artist³² was just twelve percent of the highest price achieved by a male living artist.”³³

39. Frankenthaler fought hard for her own success. But at every turn, her status as a woman threatened to impede her legacy. Frankenthaler’s rightful place at the helm of the Color Field movement was stolen from her by her male contemporaries, even though “she was the fount of it.” As art historian Irving Sandler noted, “there’s no bones about it.”³⁴

40. It is only in the past several decades that Frankenthaler has been widely recognized as the “crucial link” between the Abstract Expressionists and the Color Field movement.”³⁵ But what is most striking about her career is “how much all the things that were said to belittle her, sometimes by other women, now seem to point her towards art’s larger soul.”³⁶ In continuing to paint, and in refusing to apologize for her gender while she did, Frankenthaler cemented her place within the tradition of resistance established by the women artists who came before her.

³¹ Katy Hessel, *The Story of Art Without Men* 10 (2022).

³² Jenny Saville, *Propped* (1992).

³³ David Hockney, *Portrait of an Artist* (Pool with Two Figures) (1971).

³⁴ Gabriel, *supra*, at 479.

³⁵ Kramer, *supra*.

³⁶ Gopnik, *supra*.

41. Helen Frankenthaler was “one of the most admired artists of her generation,” and she committed her life to her craft. Upon her death at age 83, she had laid the groundwork for her legacy to continue and to evolve long after she was gone. And Frankenthaler entrusted the Defendant Directors with the Foundation she built in her name to cement her rightful place in the canons of art history.



Frankenthaler in her Connecticut studio in 2003.³⁷

II. The Helen Frankenthaler Foundation

42. Despite her critics’ and contemporaries’ attempts to erase her contributions during her lifetime, Frankenthaler was well aware of the impact she made on the art world and was insistent on reinforcing her legacy. To that end, as early as 1984, she established the Helen Frankenthaler Foundation, Inc. The original certificate of incorporation explained that its purpose was “to promote and encourage knowledge and appreciation of art, irrespective of its medium, by exhibition and other promotion.”

43. From the Foundation’s founding in 1984 to her death in 2011, Frankenthaler’s commitment to her Foundation and her legacy was unwavering. In the final years of her life,

³⁷ Grace Glueck, *Helen Frankenthaler, Abstract Painter Who Shaped a Movement, Dies at 83*, N.Y. TIMES (Dec. 27, 2011) <https://www.nytimes.com/2011/12/28/arts/helen-frankenthaler-abstract-painter-dies-at-83.html>.

Frankenthaler had multiple conversations with friends, family, including Iseman, and her attorney regarding her vision for the Foundation, many of which are memorialized in contemporaneous writings. Her goals were sweeping, but reasonable for an artist of her stature—Frankenthaler’s primary desire was for the Foundation to promote her body of work carefully and strategically, both domestically and internationally, to ensure that her effect on art history would never be forgotten, given that during her career, she had consistently been disregarded by the male artists she had influenced as well as by others like her former boyfriend, Clement Greenberg.

44. Indeed, by the late 1990s and early 2000s, Frankenthaler went out of her way to memorialize her goal for the Foundation—to “keep[] HF’s work ‘alive.’” While Frankenthaler established the Foundation in 1984, it was not named the primary beneficiary of her estate until 2004, when Frankenthaler executed her Will. Between 1984 and 2004, Frankenthaler not only memorialized her wishes for the Foundation in a memorandum prepared by her attorney in 1998 (the “Kokot Memorandum”), but she also presented that document to the Foundation’s Board at two meetings in 2001, when she herself was President of the Foundation. Ross, Hecht, and Iseman were present at both meetings. The Kokot Memorandum could not have been clearer as to Frankenthaler’s wishes. It explicitly states that she “would like this memorandum to stand as a statement of [her] intentions for the future of the Foundation after [she] is deceased.” It was not until she presented her intentions for the Foundation to the Board and was sufficiently satisfied the Directors would abide by her explicit wishes that Frankenthaler agreed to name the Foundation as the primary beneficiary of her estate. In other words, Frankenthaler did not endow the Foundation with her remaining unsold paintings and other work until the Directors, including Ross and Hecht, committed that they were aligned with her vision for the Foundation’s future.

45. The whole point of the Foundation, in Frankenthaler's view, was to arrange for major showings of her art, as well as the orderly and prestigious placement of her works (with "[s]ales and gifts to be done selectively"), to publish books and catalogues documenting her career, and to sponsor "noteworthy and carefully supervised and monitored grants of funds." Frankenthaler was so intent on crafting a cohesive legacy that she asked the Foundation to consider deliberately leaving her "less worthy works" out of any catalogue and even mentioned "possibly destroying" some of those lesser works.

46. Frankenthaler also wanted the Foundation to "continue to be self-perpetuating." As her personal lawyer explained when memorializing her goals for the Foundation: "You would prefer that *the Foundation continue to be self-perpetuating*; the Directors, however, have discretion to liquidate (*hopefully not*) and/or make other arrangements for the satisfactory disposition of your works and the works of others and terminate the Foundation (*hopefully not*)" (emphasis added). Similarly, at an early Foundation meeting in 2001, which was attended by Frankenthaler as well as by Iseman and Hecht, Frankenthaler's personal lawyer explained that there is "[n]o underlying reason why HF Fdt. cannot be perpetual ... Better opportunity for HF's name & work to continue ... people beyond this Board who can continue the work of HF Fdt.-scholarship-know HF work, authenticate work, promote via exhibitions, etc."

47. Not surprisingly, Frankenthaler also outlined detailed requirements for the Foundation's activities, requesting that her work be exhibited "on a regular basis" with "other artists of major importance." Frankenthaler was explicit in her insistence on prestige—that the Foundation select only "major centers of art" for the display of her artwork, specifically identifying institutions such as MoMA, the Metropolitan Museum, The Whitney Museum of American Art, and the Guggenheim. Beyond these key institutions, Frankenthaler also stated that "consideration

is to be given to major museums in Texas, California, Chicago, Boston, Europe, and Asia” and that the Foundation should “seek greater exposure in Europe, Japan, Korea, Singapore, Hong Kong and other art centers where there has been little exposure of [Frankenthaler’s] work in [her] lifetime.” At the heart of Frankenthaler’s detailed instructions was a simple “guiding principle”—the works should be placed “in such manner that encourages the development of the finest images of the works, both here and abroad.”

48. Beyond the exhibition of her works, Frankenthaler also directed the Board of the Foundation to “[s]ponsor noteworthy and carefully supervised and monitored grants of funds” based on Frankenthaler’s “major artistic interests and [to] perpetuate interest in [her] works.” Frankenthaler’s instructions regarding the caliber of institutions or individuals who are to receive these grants were again explicit—along with “prestigious” and “worthy” institutions, grants could be made only to “highly esteemed critics or artists, as well as scientists or medical professionals or researchers.” For the avoidance of any doubt, Frankenthaler made it clear that she “eschew[s] anything that is ‘middlebrow.’” To achieve those goals, she requested “strong leadership by a professional Foundation Executive Director” who would be “knowledgeable in the art world and in financial and administrative affairs.”

49. Frankenthaler remained steadfast in these goals. Her Will, finalized in 2004, pursuant to which Iseman was named a co-executor, bequeathed to the Foundation most of her “personal archival materials,” transferring her major artworks, money, and property to the Foundation.

50. The documentation setting up the modern-day Foundation is all fully consistent with Frankenthaler’s explicit wishes, which Frankenthaler conveyed directly to Ross and Hecht in 2001. The Foundation’s mission, as embodied in the operative certificate of incorporation, is to

promote and encourage knowledge and appreciation of art. The certificate also includes a clear prohibition on self-enrichment or self-dealing, stating that “no part of the assets, income, or profit shall be distributable to or inure to the benefit of its directors or officers or any private individual.” The Foundation’s operative bylaws contain complementary provisions, including, among other items, a prohibition on receipt of any salary, “directly or indirectly” by officers and directors of the foundation unless authorized by the Board; a requirement that directors and officers disclose “the existence and material facts” relating to transactions in which they have a financial interest; a prohibition on conflicted directors voting on transactions when they have a conflict; and a prohibition on “improperly influencing the deliberation or vote” regarding a conflicted transaction.

51. Although the Foundation bylaws permit the Board to increase or decrease the number of directors with a majority vote, the Director Defendants have opted not to do so, so today’s Board only consists of Ross, Motherwell, and Hecht. On information and belief, this is because the introduction of any new Board members would risk uncovering the Defendants’ neglect and malfeasance outlined further below and disrupt the tacit arrangement among the Director Defendants to support each other in their self-dealing ventures with respect to the Foundation.

III. The Director Defendants’ Self-Dealing and Waste of Corporate Assets

52. Unfortunately, what Frankenthaler so desperately wanted to happen with respect to the Frankenthaler Foundation did not come to pass. Instead, as of today, only twelve years after her death, each of the Director Defendants uses and exploits the Foundation to advance their own personal interests and careers in clear violation of their fiduciary duties and New York law and in betrayal of their commitment to safeguard, protect, and promote Frankenthaler’s legacy.

53. Not surprisingly, this misconduct on the part of the Director Defendants is also in direct violation of the Foundation’s bylaws. The operative bylaws stipulate that directors must

disclose any substantial financial interest connected to any transaction between the Foundation and any other entity, and that the conflicted director must recuse themselves from a final deliberation or vote on that contract or transaction. The bylaws also mandate that a conflict-of-interest disclosure statement be furnished annually by each director. The Director Defendants have, at most, treated these material requirements as minor and meaningless details, often ignoring them completely, both in form and in substance.

A. Ross's Malfeasance

54. Clifford Ross uses the Foundation and Frankenthaler's name for his personal advantage, trading his proximity to and influence over the grant-giving aspects of the Foundation to further his own career as a professional artist. Left unchecked, Ross will continue to waste the Foundation's assets in pursuit of his own selfish interests.

55. While Ross may have experienced a measure of commercial and critical success as a visual artist at some point in his career, those days have long since passed. Ross's work has been exhibited in a museum setting only a handful of times since 2016, and the highest price his work has ever received at auction was \$32,500 in 2018.³⁸ But Ross is determined to keep his struggling artistic career alive and is willing to exploit his aunt's legacy to do so. Between 2013 and 2021, The Foundation made approximately \$1.8 million in grants or donations to organizations and institutions closely associated with Ross for no apparent reason other than their connection to Ross. Few, if any, of those grants and donations satisfied the specific requirements that Frankenthaler had clearly established. And this betrayal worked—while the average price of a Frankenthaler piece dipped materially between 2015 and 2019, the far more modest price of pieces by Ross were

³⁸ *Clifford Ross*, ARTSY, <https://www.artsy.net/artist/clifford-ross/auction-> (last visited Nov. 1, 2023).

at their highest during those very same years. By trading the Foundation's resources for his own gain, he increased the price of his own works to the detriment of Frankenthaler's.

56. Ross's pattern of self-dealing is transparent: Ross influences the Foundation to donate to organizations and institutions to gain leverage, which he then uses to pressure those organizations and institutions to include his own work in their exhibitions or otherwise provide him with a platform from which he can promote himself. And, in some cases, on information and belief, Ross suggests to the organizations and institutions that the Foundation will make future donations should they agree to show his art. When it comes to the Foundation and his aunt's legacy, Ross's priority is, and always has been one thing and one thing only—himself. And despite the serious commitment he made to Frankenthaler to protect and cultivate her legacy, Ross has fallen victim to his own hubris, repeatedly prioritizing his own, “middlebrow” career over that of his aunt's.

57. Perhaps the most obvious example of this involves the National Gallery of Art in Washington D.C. Since 2021, the Foundation has donated \$75,000 to the National Gallery of Art, where Frankenthaler's seminal painting *Mountains and Sea* is on long-term loan.³⁹ Then, in 2022, Ross offered to gift one of his works to the National Gallery for its permanent collection, which the Gallery accepted, but did not place for public viewing.⁴⁰ Once the gift was accepted, upon information and belief, Ross immediately directed the Foundation to update his biography on the Foundation website to state that his “work is in the collection[] of . . . the National Gallery, among others.” Ross knew that the National Gallery would likely accept his gift, despite his relatively

³⁹ *Helen Frankenthaler (1928-2011)*, NAT'L GALLERY OF ART, <https://www.nga.gov/press/2011/hellen-frankenthaler.html>.

⁴⁰ *Clifford Ross, Hurricane LXXX (Variant A)*, NAT'L GALLERY OF ART, <https://www.nga.gov/collection/art-object-page.225844.html>

insignificant, “middlebrow” career, because of his position in the Foundation and the donations that the Foundation had made to the National Gallery.⁴¹

58. In fact, one of the few institutions to show Ross’s work in recent years is the Parrish Art Museum in Water Mill, New York. It is hardly a coincidence that, at Ross’s urging, the Foundation has donated over \$50,000 to the Parrish Museum in the years following his 2017 exhibition. As a result, in 2019, the Parrish Museum displayed an exhibition featuring works by Frankenthaler, which was sponsored in large part by Barbara Slifka, a wealthy philanthropist who was then 90 years old, for whom Hecht has power of attorney. (Hecht is currently embroiled in litigation due to his alleged breaches of fiduciary duty as Trustee of Slifka’s family trust. *Randolph W. Slifka v. Michael Hecht*, Case No. 650936 (New York Supreme Court)). It goes without saying that the Parrish Museum, located in Southampton and now in Watermill, New York, is a far cry from the “major centers of art” that Frankenthaler explicitly identified regarding future exhibitions of her work.

59. The Foundation similarly donated \$87,000 to Guild Hall, another small arts center in the Hamptons, located in East Hampton, New York. In exchange for that donation, Ross had a solo exhibition at Guild Hall in 2011, and it owns two Ross photographs. Ross did not disclose this relationship to the Board nor recuse himself from any votes that approved these donations to Guild Hall.

⁴¹ In addition to his use of Foundation assets to promote and further his own career, Ross has capitalized on his proximity to Frankenthaler’s fame. In 2009, for example, an exhibition of Ross’s photography at the Museo Archeologico Nazionale di Napoli in Naples, Italy bore the title “Mountains and Sea,” an obvious reference to Frankenthaler’s 1952 masterpiece by the same name. Yet, the press release for the exhibition did not reference or credit Frankenthaler; Ross merely lifted the widely known title in attempt to impart gravitas to his own show. See *Mountains and Sea (Museo Archeologico Nazionale di Napoli, Naples, Italy 2009)*, CLIFFORD ROSS, <https://www.cliffordross.com/exhibitions/mountains-and-sea#tab:thumbnails>; http://stg-images.exhibit-e.com/www_cliffordross_com/Museo_Nazionale_Napoli.pdf.

60. Ross also urged the Foundation to hire Resnicow and Associates as the Foundation's communications consultant. On information and belief, in exchange for his support during the hiring process, Resnicow frequently features quotes from Ross prominently in their press releases about the Foundation and the art world more generally.⁴² The Foundation paid Resnicow and Associates over \$130,000 in 2022 and was projected to pay them at least \$120,000 in 2023. Despite the fact that Resnicow advertises on their website that they “position[] clients to stand out in a world saturated with information,” “build new audiences,” and “enhance” their clients’ “reputation nationally and internationally,” there can be no legitimate dispute that they have failed to do any of this with respect to the Frankenthaler Foundation.

61. But Ross did not stop there—he has also funneled Foundation dollars into other organizations to boost his reputation and encourage positive coverage of his career in the art industry press. The Brooklyn Rail magazine, for example, with which Ross has a longstanding relationship, has received over \$200,000 in donations from the Foundation since 2014. The Brooklyn Rail was established in 2000 to provide commuters on the L train with a broadsheet “containing a short series of slanted opinions.”⁴³ Again, the Brooklyn Rail was clearly not what Frankenthaler had in mind when she described “noteworthy and carefully supervised and monitored grants of funds based on [Frankenthaler’s] major artistic interests.” Following these donations from the Foundation to Brooklyn Rail, the magazine has interviewed Ross for an issue, published a poem inspired by his work, published an article written by Ross,⁴⁴ and hosted a video

⁴² See e.g., *More than \$1.5 Million Awarded to Arts and Cultural Institutions by Helen Frankenthaler Foundation This Fall*, RESNICOW AND ASSOC. (Oct. 1, 2020), <https://resnicow.com/client-news/more-15-million-awarded-arts-and-cultural-institutions-helen-frankenthaler-foundation>; *New Covid-19 Relief Effort Supports Artists on Long Island’s East End*, RESNICOW AND ASSOC. (July. 20, 2020), <https://resnicow.com/client-news/new-covid-19-relief-effort-supports-artists-long-islands-east-end>.

⁴³ Theodore Hamm, *A Brief History of the Brooklyn Rail*, BROOKLYN RAIL, <https://brooklynrail.org/history/?f> (last visited Nov. 1, 2023).

⁴⁴ Upon information and belief, Ross was compensated by Brooklyn Rail for this article.

seminar given by Ross on its platform. In a Board meeting in June 2022, the Foundation Board approved a grant of \$45,000 to Brooklyn Rail in support of its upcoming “Singing in Unison” exhibition, which was to take place in multiple locations throughout Brooklyn. Ross exhibited his artwork in three of those locations, a fact that he omitted during the Board’s discussion, and eventual approval, of the grant. There is no record that Ross recused himself from any votes that approved donations to Brooklyn Rail, or that he disclosed his relationship with the magazine to the other Board members. On information and belief, Douglas Dreishpoon, the director of the Catalogue Raisonnee project,⁴⁵ is a consulting editor of Brooklyn Rail and never disclosed that relationship to the Board.

62. In addition to the Parrish Art Museum, Guild Hall, The Drawing Center, and Brooklyn Rail, the Foundation donated \$40,000 to Bomb magazine since 2018. Bomb is another small publication that is closely affiliated with Ross. Ross has written for Bomb several times, once served as a contributing editor, and Bomb has reviewed Ross’s photography favorably. Ross did not disclose this relationship to the Board nor recuse himself from any votes that approved these donations either.

63. Ross even had the chutzpah to use the Director Defendants’ attempted removal of Iseman as an opportunity to promote himself. While there was no public announcement when Iseman was improperly removed from the Board, Ross took over as President and, upon information and belief, immediately updated his own Wikipedia page to reflect his new position

⁴⁵ A “catalogue raisonné” is a comprehensive scholarly reference text in which each work known to have been executed by a particular artist is illustrated, thoroughly documented, described, and assigned a permanent reference number. One of the main purposes of a catalogue raisonné is to establish a reliable corpus of authentic works.

under the pseudonym “brooklynartlover.” The Wikipedia user “Brooklyn art lover” has edited only the Clifford Ross page and has done so regularly since 2015.⁴⁶

B. Motherwell’s Malfeasance

64. Lise Motherwell has barely tried to hide her self-interested approach to the Foundation. Back in 2013, she even had the audacity to request \$180 an hour to assist with the management and administration of the Foundation. For the director of a nonprofit organization like the Foundation to receive any compensation, much less compensation like this, is extremely unusual, if not unheard of. Normally, rather than taking money from the nonprofit, nonprofit board members like Motherwell are expected to make sizable contributions to the foundation. On information and belief, Motherwell received payment for her Board work, nevertheless. And when she was no longer getting paid directly, as detailed below, Motherwell made sure that the Foundation paid her in other ways.

65. Motherwell also disregarded Frankenthaler’s wishes regarding the exhibition and donation of her artworks, choosing to prioritize yet another minor, local museum in the town where she spends her summers over the world-class institutions that Frankenthaler explicitly requested. And she has used her last name and proximity to her father, Robert Motherwell, and to Frankenthaler to elevate her own status within the art world, to the detriment of the Foundation.

66. Motherwell lives part-time in Provincetown and owns two homes there. She has been a Director of PAAM since 2004 and has served as its President since 2017. Established in 1914, PAAM is a small, narrowly focused institution: its mission is to collect, preserve, exhibit, and educate about the work of artists of the outer Cape Cod area.⁴⁷

⁴⁶ *Clifford Ross: Difference Between Revisions*, WIKIPEDIA https://en.wikipedia.org/w/index.php?title=Clifford_Ross&diff=prev&oldid=1179374030 (last visited Nov. 1, 2023).

⁴⁷ *About PAAM*, PROVINCETOWN ART ASS’N AND MUSEUM, <https://paam.org/about-paam/> (last visited Nov. 1, 2023).

67. Motherwell is a retired licensed psychologist and has no curatorial credentials or training in art history. Before becoming a clinician, she earned a Ph.D. in Learning and Epistemology from MIT. In other words, apart from her last name and her connections to Frankenthaler, absolutely nothing in Motherwell's academic or professional history suggests that she would be qualified for the role that she holds within the Foundation.

68. Despite her lack of curatorial experience or credentials, in 2018, Motherwell co-curated an exhibition of Frankenthaler's work at PAAM. Motherwell and Smith first raised the PAAM exhibition as early as 2013, at which point the proposal was rightfully questioned by the other members of the Board. Indeed, during the October 31, 2013, meeting, the Board discussed the "pros and cons" of pursuing the PAAM exhibition as part of a "small, focused traveling show," noting that the proposal would require additional consideration in light of "the larger picture" of future shows at more prestigious institutions. The Board also expressed concern that a deluge of small exhibitions such as the PAAM show could interfere with the prospect of a larger retrospective of Frankenthaler's work at a major museum, as Frankenthaler had intended. But Motherwell and Smith would not be deterred, and, upon information and belief, they moved forward with preparations for the PAAM show anyway.

69. For over five years, Motherwell and Smith expended valuable Foundation time and resources on preparations for the PAAM show, even co-authoring a book about the exhibition to coincide with its opening, which hardly anyone purchased.⁴⁸ Not surprisingly, the exhibition at PAAM went almost entirely unnoticed in the wider art world. The Frankenthaler show was "one of the largest [exhibitions] in PAAM's history,"⁴⁹ but the institution did not have the reputation or

⁴⁸ Lise Motherwell & Elizabeth Smith, *Abstract Climates: Helen Frankenthaler in Provincetown* (2018).

⁴⁹ *Abstract Climates: Helen Frankenthaler in Provincetown*, PROVINCETOWN ART ASS'N AND MUSEUM, <https://paam.org/frankenthaler/> (last visited Nov. 1, 2023).

resources required to accomplish Frankenthaler's goal of "encourag[ing] the development of the finest images of [Frankenthaler's] works both [in the United States] and abroad." Instead, the PAAM show did little, if anything, to promote Frankenthaler, while consuming significant Foundation resources that could, and should, have been directed to more worthy endeavors.

70. One year later, in 2019, despite the lackluster reaction to the PAAM show, the exhibition, again curated by Motherwell, travelled to the Parrish Art Museum, the same small Hamptons venue discussed above. As noted above, the Frankenthaler exhibition at the Parrish Museum was sponsored by Barbara Slifka, a benefactor of the arts, over whom Hecht holds power of attorney.

71. But Motherwell did not stop there. At a June 2022 Board meeting, long after the PAAM exhibition had ended, Smith suggested that the Foundation make a gift to PAAM of five Frankenthaler watercolors that had been included in the show. On information and belief, Motherwell discussed this gift beforehand with Smith and encouraged her to raise the proposal with the other Board members. The gift, which was valued at \$1.4 million, imparted zero benefit to the Foundation: the small-time, largely unnoticed exhibition had already ended, and there was nothing else for PAAM to offer the Foundation. But for Motherwell, there was still plenty to gain. Although Frankenthaler was explicit in her wishes for the distribution of her masterpieces, directing that sales and gifts of her works were to be "done selectively," Motherwell had her own agenda. On information and belief, her role as President of the Board of PAAM provides Motherwell with clout and social capital within the wider Provincetown community. Accordingly, the donation furthered her reputation and cemented PAAM's debt to her.

72. Despite such rampant conflicts of interest, there is no evidence that the Board discussed or voted on Smith's proposal, or that Motherwell recused herself from the discussion

and/or vote due to her conflict of interest. But at a Board meeting three months after she suggested it, Smith stated that the transfer of the five works to PAAM had been completed. Motherwell was personally and publicly credited with the Foundation's donation. In a public speech at PAAM, Motherwell even bragged about calling the CEO of PAAM and saying: "I was just able to get the Helen Frankenthaler Foundation to gift *us* five Frankenthaler paintings" (emphasis added).⁵⁰

C. Hecht's Malfeasance

73. Michael Hecht has been involved in multiple proceedings in the past five years relating to charges that he engaged in unethical conduct and self-dealing. In November 2018, for instance, Hecht's brother, Donald Hecht, sued him for unlawfully transferring \$6 to \$8 million in artwork, including several Frankenthaler paintings, from his former Hecht and Company office to his new Citrin Cooperman office. As part of that lawsuit, Michael Hecht's own filing conceded that Hecht and Company, which he and his brother ran together, suffered from an "absence of proper corporate governance." The case was never resolved since it ended when his brother Donald Hecht died in 2022. *Donald Hecht v. Michael Hecht*, Case No. 655734 (New York Supreme Court).

74. Then, in a September 2022 proceeding against the Barbara Slifka Trust, for which Hecht was the Trustee, an arbitral panel concluded that "Hecht conveniently lacked knowledge of [certain] issues," "allowed [a] conflicted and irregular appraisal-based allocation process to go forward and essentially did nothing to evaluate the fairness of its result"—"[a]ll this despite the fact that Hecht was Trustee . . . and, as he admitted, owed its beneficiaries fiduciary duties." *Randolph W. Slifka v. Michael Hecht*, Case No. 650936, ECF No. 55 (New York Supreme Court) (quoting *Randolph W. Slifka and David Dove v. Barbara Slifka*, AAA Case No. 01-20-0014-1074).

⁵⁰ Provincetown Art Association and Museum, *Helen Frankenthaler Provincetown Series*, YOUTUBE at 00:01:50 (Dec. 20, 2022), https://www.youtube.com/watch?v=-V8_I_CotcU.

75. Earlier this year, based on these same facts, Hecht was sued in his personal capacity for breaching his fiduciary duties as Trustee of the Barbara Slifka Trust. As alleged in the Amended Complaint, Hecht used his position as Trustee to obtain a release of claims against him personally and favored the interests of one trust beneficiary over another because he had a financial stake in the former's estate. That case is still ongoing. *Randolph W. Slifka v. Michael Hecht*, Case No. 650936 (New York Supreme Court).

76. Given these lawsuits, it is hardly surprising that Hecht has also used his position at the Frankenthaler Foundation to line his own pockets—getting paid hundreds of thousands of dollars to handle the Foundation's accounting needs. Specifically, since at least 2014, the Foundation has employed Hecht for accounting services, paying Hecht and Company P.C. \$61,948 in 2014; \$58,181 in 2015; and \$81,485 in 2016, all during Hecht's tenure as Secretary and Treasurer of the Board. When Hecht shuttered Hecht and Company P.C in 2018 and moved to Citrin Cooperman, Citrin Cooperman was then hired by the Foundation. The Foundation paid Citrin Cooperman \$53,720 in 2018; \$76,908 in 2019; \$69,708 in 2020; and \$48,095 in 2021. On information and belief, Citrin Cooperman remains the Foundation's accounting firm, was paid tens of thousands of dollars in 2022, and was paid or will be paid tens of thousands of dollars in 2023.

77. The Foundation's votes to retain Hecht and his accounting firms were nothing more than a rubber stamp. The Foundation did not meaningfully discuss Hecht's fees or any alternative accounting firms, despite that, as detailed below, Hecht is 87 years old and actively embroiled in multiple scandals involving allegations of his own self-dealing and similar misconduct.

78. Why did Motherwell and Ross fail to challenge Hecht or the performance of his accounting firms? The answer is simple: both Motherwell and Ross relied on Hecht's ongoing support of their own self-dealing. Similarly, Hecht counted on the other Director Defendants to

continue lining his own pockets. In other words, the agreement and understanding, though corrupt, was mutually beneficial.

79. For example, as discussed above, in 2019, the Parrish Museum hosted an exhibition featuring works by Frankenthaler, which was mainly sponsored by Barbara Slifka. At that time, Hecht held power of attorney for Slifka, served as her accountant and financial advisor, and oversaw her Trust. The Parrish Museum is also one of the only institutions to show Ross's work in recent years and, at Ross's urging and with the consent of Hecht and Motherwell, the Foundation has donated over \$50,000 to the Parrish Museum.

80. Hecht also breached his fiduciary duties in his role as Treasurer of the Foundation. Hecht used Fiera Capital and Fidelity as the main investment advisors for the Foundation, splitting the Foundation's liquid assets between equities and fixed income investments. Hecht and the other Director Defendants refused to look at other wealth managers or attempt to meaningfully assess the Fund's performance. In 2019, after years of disappointing returns, Iseman suggested that the Foundation engage Cambridge Associates, LLC—an investment office for many major universities, museums, and other foundations. Cambridge Associates assessed the Foundation's investment approach and found it lacking, yet the Board declined to engage them and has not since considered another investment group. Hecht never sought an external audit of the Foundation's financials, despite the Foundation's high net worth.

81. Not surprisingly, like Ross and Motherwell, Hecht used the Foundation's assets to his own personal advantage by directing the Foundation to make donations to organizations he is involved in boost his own status. Hecht, for example, is a trustee of Bennington College. The Foundation has made at least \$5 million in donations to Bennington while Hecht has been a Director. There is nothing to suggest that Hecht recused himself from decisions about the donations

or disclosed his relationship with the College, whether on the conflict-of-interest disclosure form or otherwise. Upon information and belief, Hecht caused the Foundation to donate those large sums to Bennington so that he could maintain his position as a Bennington trustee without having to make personal donations from his own assets. Indeed, between July 1, 2021, and June 30, 2022, Michael and Sandy Hecht donated a meager \$1,000 to \$2,499 to Bennington College. This is a pattern of behavior for Hecht, who similarly directed donations from the Lucille Lortel Foundation, where he was an Officer and Director, to Bennington College to shore up his position as a trustee of the college.

IV. The Foundation Fails to Advance Helen Frankenthaler's Legacy

82. The Director Defendants also failed miserably in supervising the actions of the Foundation's Executive Director, Elizabeth Smith. The Foundation's record, under 10 years of Smith's management, is nothing short of abysmal. As the Foundation's public Facebook page itself had to concede earlier this year, "It's been quite a while since a body of work by Helen Frankenthaler has been on view in New York."⁵¹ Even beyond New York, under Smith's leadership, the Foundation has secured only a handful of minor regional shows, like the ones discussed above, exhibiting Frankenthaler's work. Many of those shows mainly benefited the Director Defendants, not Frankenthaler's legacy or the Foundation. What's more, under Smith's supervision, millions of dollars in Foundation assets have been wasted, including valuable Frankenthaler paintings that Smith has given away without securing anything for the Foundation in return. On information and belief, Ross acknowledged Smith's poor performance in a

⁵¹ Helen Frankenthaler Foundation, FACEBOOK (Mar. 10, 2023), <https://www.facebook.com/HelenFrankenthalerFoundation/>. The last show in New York exhibiting Frankenthaler's work was proposed, curated, and put on by Gagosian, with virtually no help or assistance from the Foundation.

conversation with Iseman, stating that, while Smith would not be the executive director he would choose if he could do it all over again, a “weak director” like Smith “offends no one.”

83. In 2019, for example, the Foundation gifted to the Tate Modern a “major” Frankenthaler painting, titled *Vessel*, worth millions of dollars. In return, the Tate put Frankenthaler’s painting in a back room and engaged in little to no publicity, other than hosting a talk featuring the supposed “experts,” Ross and Smith.⁵² Ross, of course, used that panel as an opportunity to talk at length about his own career as an artist, rather than the legacy of Frankenthaler. On information and belief, at the time the exhibition took place, it was not even listed on the Tate’s website. Smith did not secure a long-term agreement with the Tate for future exhibitions of Frankenthaler’s work. Indeed, although the Tate is in possession of about 39 Frankenthaler pieces, only a handful are on display at any one time.



Helen Frankenthaler, *Vessel* (1961)⁵³

⁵² *Exhibitions: In the Studio (Room 8)*, HELEN FRANKENTHALER FOUND., <https://www.frankenthalerfoundation.org/exhibitions/in-the-studio-room-8-helen-frankenthaler> (last visited Nov. 1, 2023).

⁵³ *Helen Frankenthaler: Vessel (1961)*, TATE, <https://www.tate.org.uk/art/artworks/frankenthaler-vessel-104286> (last visited Nov. 1, 2023).

84. For years, Smith has reported to the Board that she was in talks with major institutions to host a retrospective of Frankenthaler's work in 2028 to coincide with the 100-year anniversary of Frankenthaler's birth. Yet Smith has made little to no progress on this front—she has failed to secure a commitment from even one major institution. For example, despite claiming for more than two years that an important museum in the Midwest had agreed to serve as a mainstay of the traveling retrospective, Smith announced at a recent Board meeting that the museum was no longer interested, failing to explain the apparent change of heart. That is so despite the Foundation recently gifting the museum a beautiful and expensive Frankenthaler painting. And Smith has repeatedly dismissed opportunities to court other major institutions for the retrospective. On at least one occasion, Smith simply failed to show up for a dinner with key decision-makers at a major, London institution at which a Frankenthaler exhibition was to be discussed. As another example, the Morgan Library expressed interest in an exhibition, but Smith failed to follow up there as well.

85. Despite Smith's empty promises, there have been no major recent shows of Frankenthaler's paintings. The only real Frankenthaler shows have been arranged by Gagosian without any material support from the Foundation. Instead, the Foundation has shown her work at minor, regional museums, with little to no fanfare.⁵⁴ Indeed, on information and belief, Gagosian representatives repeatedly voiced concerns about Smith, stating that they could not get timely or sufficient responses from her on important questions and that Smith blocked Gagosian's access to the Foundation's inventory of artwork. In fact, a key Gagosian representative approached Iseman to request that the gallery work directly with the Board rather than with Smith. At the time of filing, the Foundation had coordinated only four current displays of Frankenthaler's work at exhibitions

⁵⁴ *Exhibitions: Recent*, HELEN FRANKENTHALER FOUND., <https://www.frankenthalerfoundation.org/exhibitions/recent> (last visited Nov. 1, 2023).

in Greenwich, Connecticut, Arles, France, Verplanck, New York, and Villa Carmignac, Porquerolles Island. Not one is at a notable museum, despite Frankenthaler specifying the importance of displaying her work in major institutions. And in all four cases, Frankenthaler's pieces are part of larger, multi-artists shows. There are only two upcoming shows scheduled. The first is in Bielfeld, Germany, and is merely a loan of a piece the Foundation already lent long-term to the Tate.⁵⁵ The second, which is the only major show planned for 2024, is an exhibition of Frankenthaler's work at Palazzo Strozzi in Florence, Italy. On its website, the Foundation takes full credit for coordinating the Palazzo Strozzi show.⁵⁶ On information and belief, however, the show was initiated by Jason Ysenburg, a Director at Gagosian, and Mario Platero of Palazzo Strozzi, not by the other Director Defendants, Elizabeth Smith, or anyone else at the Foundation.

86. The Foundation's grant-giving activities, as detailed above, have been aimed at facilitating self-enrichment, not furthering the Foundation's purposes and interests. The only innovative program the Foundation has undertaken, the Frankenthaler Climate Initiative, which funds energy efficiency and clean energy generation projects for art institutions, was made possible solely by Iseman and based on his close connections with leadership at the Rocky Mountain Institute, which partnered with the Foundation to start the initiative. The Frankenthaler Climate Initiative is the first program of its kind in the U.S. for the visual arts. The Initiative funds projects in the following categories: (1) scoping grants, which help museums understand the climate and energy mitigation opportunities that are available to them; (2) technical assistance grants, which support institutions in the specification and budgeting phase of future energy efficiency projects;

⁵⁵*Exhibitions: Current & Upcoming*, HELEN FRANKENTHALER FOUND., https://www.frankenthalerfoundation.org/exhibitions/current_and_upcoming (last visited Nov. 2, 2023); *Helen Frankenthaler: Vessel (1961)*, TATE, <https://www.tate.org.uk/art/artworks/frankenthaler-vessel-l04286> (last visited Nov. 2, 2023).

⁵⁶*Exhibitions: Current & Upcoming*, HELEN FRANKENTHALER FOUND., https://www.frankenthalerfoundation.org/exhibitions/current_and_upcoming (last visited Nov. 2, 2023).

and (3) implementation grants, which provide partial seed funding for energy efficiency projects.⁵⁷

The Frankenthaler Climate Initiative was Iseman's idea and made possible by Iseman's connections and work; although Smith and the Director Defendants have not hesitated to take credit for it themselves publicly. Despite the public need for other grant-based initiatives consistent with the Foundation's mission, Smith has not proposed or organized any similar programs.

87. And no matter her lackluster, often negligent, performance, Smith's salary has almost doubled during her tenure at the Foundation—in 2014, she earned \$224,000, and her salary in 2021 was \$391,000. On information and belief, that salary has since increased to over \$400,000 for 2022, and even higher for 2023. Smith has facilitated the Director Defendants' self-dealing, as detailed above, in exchange for a generous salary (in 2023, more than \$400,000 for 35 hours a week of work) for over a decade, all while failing to mount any meaningful, high-profile exhibitions of Frankenthaler's paintings or to develop Frankenthaler's commercial market. On information and belief, Smith often works even less than her allotted 35 hours.

88. And Smith cannot possibly say that she has not been provided appropriate resources. The Foundation (along with the Helen Frankenthaler Catalogue Raisonné, LLC) employs no fewer than fourteen people. At Smith's request, the Foundation recently hired a Deputy Director, adding hundreds of thousands of dollars in annual costs. All in, the Foundation has budgeted to spend around \$1.9 million dollars on salaries and related costs in 2023.⁵⁸ That number jumps to over \$2.5 million when "director and staff expenses" for the "Catalogue Raisonné project" are included.

89. The Foundation is clearly underperforming as compared to the similar foundations established by Frankenthaler's peers. For example, the careers of Joan Mitchell and Frankenthaler

⁵⁷ FRANKENTHALER CLIMATE INITIATIVE, <https://frankenthalerclimateinitiative.org/> (last visited Nov. 1, 2023).

⁵⁸ In 2022, the Foundation spent around \$1.5 million on salaries and related costs.

are analogous in many ways—Mitchell and Frankenthaler were born within three years of each other, both moved to New York in the early 1950s to pursue their painting careers, and both held important roles within the Abstract Expressionist movement. Yet, even to a layperson, the Joan Mitchell Foundation appears more developed and successful. Frankenthaler pieces have been featured in 65 shows between 2015 and 2023, while Mitchell’s have been featured in 127 shows during the same period, including 13 solo shows at prestigious institutions, 3 retrospectives, and a “Monet-Mitchell” show in both Paris and St. Louis. Put another way, the Mitchell Foundation has procured double the number of exhibitions, while simultaneously showing Mitchell’s work at much more prestigious institutions.

90. In addition, the Joan Mitchell Foundation website includes a digital library where the public can view over 500 of Mitchell’s works alongside curatorial commentary written for each picture.⁵⁹ Website visitors can also view the Mitchell Foundation’s five-year strategic plan, a substantial and detailed framework that outlines the group’s intentions, priorities, and key strategies.⁶⁰ Nothing analogous is available to the public with respect to the Frankenthaler Foundation.

91. And the efforts on the part of the Mitchell Foundation have led to concrete results in the commercial market as well: The average price over the last decade for a Mitchell piece is \$6.2 million, while the average for a Frankenthaler is a comparatively paltry \$1.7 million. Mitchell’s auction record stands at \$16.6 million, where Frankenthaler’s record is only \$7.8

⁵⁹ *Joan Mitchell’s Artwork*, JOAN MITCHELL FOUND., <https://www.joanmitchellfoundation.org/joan-mitchell/artwork> (last visited Nov. 1, 2023).

⁶⁰ *About the Foundation: Vision, Priorities, Strategies (2020-2024)*, JOAN MITCHELL FOUND. <https://www.joanmitchellfoundation.org/about/strategic-plan-2020-2024> (last visited Nov. 1, 2023).

million.⁶¹ This year, Mitchell's record may be broken again, as Christie's is offering a work with an estimated value of \$25-\$35 million.⁶²

92. Indeed, the Director Defendants appear to have zero interest in the long-term market for Frankenthaler's art. On information and belief, both Ross and Hecht have sold or tried to sell Frankenthaler pieces in recent years. On information and belief, Hecht and Ross have also advised Bennington College to sell the Frankenthaler works that Frankenthaler herself had donated to Bennington. Iseman, on the other hand, has held onto his Frankenthaler works and purchased additional pieces. Importantly, because the Foundation owns over 3,000 Frankenthaler pieces, a diminished market for her work not only betrays the Foundation's mission and Frankenthaler's clear wishes, but also harms the Foundation's primary asset.

93. And while the Frankenthaler Foundation is wildly underperforming the Joan Mitchell Foundation, Smith is wildly overpaid as compared to her counterpart: Smith's average salary was \$320,083 from 2015–2021, while the average salary for the director of the Joan Mitchell Foundation was \$246,393. The director of the Mitchell Foundation oversees a significantly larger organization, with more employees, more shows, and more logistics, and yet makes much less than Smith, while doing a much better job.

94. The Frankenthaler Foundation's consistently dismal performance is also completely at odds with the recent resurgence of interest in women artists. While society has been revisiting the role of women in art history, the Foundation has failed to promote Frankenthaler's important role even within that narrative. In recent years, there have been at least two significant

⁶¹ *Joan Mitchell Auction Results: Blueberry, 1925-1992*, ARTSY <https://www.artsy.net/auction-result/503721> (last visited Nov. 1, 2023); *Helen Frankenthaler Auction Results: Royal Fireworks, 1975*, ARTSY <https://www.artsy.net/auction-result/6426906> (last visited Nov. 1, 2023).

⁶² *Joan Mitchell (1925-1992), Untitled*, https://www.christies.com/lot/lot-6453094?ldp_breadcrumb=back&intObjectID=6453094&from=salessummary&lid=1 (last visited Nov. 11, 2023).

books featuring Frankenthaler— “Ninth Street Women: Lee Krasner, Elaine de Kooning, Grace Hartigan, Joan Mitchell, and Helen Frankenthaler: Five Painters and the Movement That Changed Modern Art” by Mary Gabriel and “Fierce Poise: Helen Frankenthaler and 1950s New York” by Alexander Nemerov. Yet Smith made no effort to capitalize on these books or the renewed interest in Frankenthaler triggered by their publication. In fact, Mitchell pieces were included in two recent shows perfect for Frankenthaler’s work that Frankenthaler was not included in because of the Foundation’s incompetence: *Women and Abstraction: 1741–Now*, Addison Gallery of American Art, Andover, Massachusetts (January 28–July 30, 2023) and *Beyond Ninth Street: Legacies of Women in Abstraction*. Kemper Museum of Contemporary Art, Kansas City, Missouri (June 22, 2023–February 10, 2024). Three other recent exhibitions were focused on postwar American art that included Mitchell but failed to include Frankenthaler: *Distinctive/Instinctive: Postwar Abstract Painting*, Michael Rosenfeld Gallery LLC, New York (February 20–May 22, 2021), *From Gesture to Form. Postwar European and American Art from the Schulhof Collection*, Peggy Guggenheim Collection, Venice (January 26, 2019–March 18, 2019), and *American Dreams: Classic Cars and Postwar Paintings*, McNay Art Museum, San Antonio (February 14, 2019–May 19, 2019).

95. The Director Defendants have resisted all efforts to supervise Smith and her management of the Foundation more closely. Iseman has repeatedly suggested applying clearer metrics to assess the Foundation’s effectiveness under Smith, and has pushed to have more exhibitions, more press coverage and, overall, more Frankenthaler. His efforts have only been met with, at best, apathy, more often, outright hostility.

V. The Director Defendants Scheme to Dissolve the Foundation and Liquidate Its Assets

96. In 2019, Iseman first learned that the other Foundation directors were not interested in abiding by Frankenthaler's wishes that the Foundation continue to exist in perpetuity. More specifically, on June 13, 2019, Motherwell sent the Foundation directors a "Strategic Plan proposal," falsely stating that Frankenthaler had "clearly designated a 20-year lifespan for the Foundation." Iseman responded by stating that he was unaware of any such desire on the part of Frankenthaler: "to my knowledge [there is] absolutely nothing in her will or the charter of the foundation or her legal instructions or any written wish whatsoever that reflects a self-terminating 20-year timespan." To the contrary, Iseman made it clear that Frankenthaler had always intended the Foundation to exist in perpetuity: "All my conversations with Helen about her legacy and the foundation were about the very long term, because that is how she thought."

97. The next day, Iseman, writing to the Board, expressed his conviction that Frankenthaler did not intend for the Foundation to end after 20 years: "[M]y view is that no one was clearer about her wishes than Helen and she was not shy about documenting them. The foundation and the will were long and well and thoughtfully crafted documents—down to the minutiae of tiny individual gifts—and I think that there is no chance whatsoever that Helen would have left such an important matter undocumented because she documented pretty much everything she wished." Iseman noted that while Frankenthaler was "assured . . . of her place in art history," she "wanted the work of her foundation to go on and on as she wished her reputation to go on and on." Iseman believed, and still believes today, that Frankenthaler intended that "the foundation was there to serve forever to celebrate her work and the work of her school and art in general." Iseman concluded by observing: "Helen was not self-effacing and she had to my knowledge no intentions to be self-effacing in her afterlife. Quite the opposite."

98. On June 14, 2019, Iseman, replying to an email from Motherwell, explained why setting an end date for the Foundation would depart from the Foundation's interests for more practical reasons: "[f]rom a management perspective – recruiting the best talent – having a brief and finite span of life is bad for the mission of fulfilling Helen's wish to steward the future of her reputation and works. In addition, both the nonprofit and commercial art worlds want to know that just as there will be [a] market for her works, the assurance that there will be a foundation to support shows and exhibitions in the future can only enhance the commitment to Helen's oeuvre."

99. Fearing for the future of the Foundation, and his aunt's legacy, Iseman pushed the Director Defendants to give up their plan to close the Foundation. Despite his efforts, however, at the September 2019 Board meeting, the Defendant Directors all said that they supported a strategic plan that would have had the Foundation donating or selling all key works by Frankenthaler by 2030, with an eye to fully liquidating the Foundation's assets and winding down the Foundation by 2034.

100. Iseman immediately raised concerns that liquidating the Foundation's substantial assets in such a short time, and thus flooding the art market with Frankenthaler's paintings, would significantly diminish the value of Frankenthaler's body of work overall. Iseman also argued that the proposal contradicted Frankenthaler's express wishes and the Foundation's publicly stated mission of promoting and enshrining her legacy. Only after Iseman vigorously argued against the proposal, including presenting extensive evidence of Frankenthaler's wishes and the opinion of Iseman's personal counsel, did the Director Defendants stop discussing their plans to dissolve the Foundation in front of Iseman.

VI. The Director Defendants Retaliate and Attempt to Remove Plaintiff

101. In 2023, after years of poor management and even worse results, Iseman continued to push the Director Defendants to run the Foundation properly, and argued against a premature,

harmful, and self-serving wind-up of the Foundation. Iseman was once again met with refusals and resistance from the Director Defendants. Ultimately, the Director Defendants improperly ejected him from the Board with only the flimsiest of excuses.

102. On January 22, 2023, Iseman emailed the Director Defendants and Smith with what he thought was exciting news. The day before, he had met the curator of a leading international modern art museum who, he wrote, was “quite interested in a Frankenthaler show and would like to meet with Elizabeth when he comes to New York in the second half of April.” In another email, Iseman added that he had a meeting scheduled for the next day with an important individual in the international art world, and that he would put him in touch with Smith. Motherwell, however, was completely uninterested. She said that the other Board members were “uncomfortable” with these conversations, and asked Iseman “not to take any of your recent conversations any further.”

103. Shortly thereafter, Iseman expressed concerns about the Director Defendants’ self-dealing and mismanagement and called for compliance measures to be put in place. Iseman questioned whether it had been appropriate for Motherwell to have curated the PAAM show without Board approval and noted that there was a clear pattern of self-enrichment by the Director Defendants.

104. A couple of months later, in March 2023, Iseman again raised his concerns, complaining “that there is a double standard and there is a lot of ‘inside baseball’ at the HFF that isn’t being shared.” He asked for “better coordination” and for clearer supervision of Elizabeth Smith. He raised several concerns about her poor communication with key institutions, including the Metropolitan Museum of Art, and noted that the Foundation was failing to communicate with key museums, galleries, and institutions.

105. On April 21, 2023, the Board held its annual meeting, the first regular meeting since the beginning of the Foundation's fiscal year. At that April 2023 meeting, Hecht delivered the financial reports, in accordance with past practice and the Foundation's bylaws. The Agenda also included a discussion of "expanding the board" and "the future of the collection." As part of that discussion, the other Director Defendants again proposed winding down and then liquidating the Foundation completely by giving away the rest of its collection over a relatively short period of time. The Director Defendants also proposed adding Board members who would presumably support that goal.

106. The next day, on April 22, 2023, Iseman insisted by email that the Board "does NOT have an unfettered right to end the foundation," asking what the ramifications would be "to Helen's market? Her reputation? Her grant recipients? Her work? To the foundation itself[?]" Iseman made it clear that winding down the Foundation as the Director Defendants had proposed would blatantly violate the Board's legal and ethical duties: "We are fiduciaries. We have a duty of care. . . . I think you are playing with fire and risk doing great harm to the foundation by even discussing it." Iseman further complained about the lack of due diligence with respect to the Directors Defendants' plan: "Where is [the] research. Where are [the] memos?" He explained that the Foundation exists to serve Frankenthaler's legacy and the public interest and emphasized that closing the Foundation harms both.

107. Rather than address the concerns raised by Iseman, the Director Defendants instead secretly schemed to remove Iseman from the Board. Knowing that Iseman would not condone their plan to prematurely shut down the Foundation, upon information and belief the Director Defendants worked together to come up with a plan to shut down the Foundation anyway. That

plan, of course, hinged on first removing Iseman from the Board, notwithstanding the lack of any cause or appropriate basis.

108. More specifically, less than a month after the last Board meeting, or on May 15, 2023, Motherwell wrote to the Board with a strange reminder of another meeting to be held on May 19. Motherwell noted that Board materials would be provided in a future email and said that “we have not held an annual meeting yet this year, so Friday’s meeting will be the annual meeting of the Board.” This reference to an annual meeting was plainly false—as noted above, the Foundation had, in fact, already held its annual meeting just a few weeks earlier on April 21, 2023. Indeed, Motherwell referred to the May meeting at one point, not as an annual meeting, but as simply an “exec session.” Clearly, Motherwell’s plan was to label the meeting an “annual meeting,” so she and the other Director Defendants could remove Iseman from the Board without cause.

109. Unbeknownst to Iseman, John Silberman, the Foundation’s longstanding attorney, and personal attorney to Iseman, recused himself from Board discussions in early 2023. Iseman only found out about the recusal when, on May 15, 2023, he noticed that Silberman was not included on an email from Motherwell about the second, falsely-labeled “annual meeting.” (Silberman was customarily included on all such communications). On information and belief, Silberman was forced to recuse himself when the Director Defendants began meeting in secret to scheme to remove Iseman from the Board. And the Director Defendants hid that from Iseman for months.

110. On May 18, 2023, the day before the meeting, Motherwell notified Iseman that she, Hecht, and Ross would “not be supporting your nomination for or voting in favor of your re-election as a Foundation director and officer at the meeting.” This reference to a “re-election”

was a complete fiction. In reality, the Director Defendants were removing Iseman to protect themselves and their plan for self-enrichment. That removal was without cause and in violation of New York law. And, in an attempt to buy Iseman's silence, Motherwell offered that the Board was "prepared to discuss a suitable positive message about your moving on from the Board, as well as a mutually beneficial understanding to be respectful of each other." The email was signed "Lise, Michael, and Clifford."

111. This attempt to remove Iseman from the Board did not align either with the Foundation's bylaws or New York law. Because the true "annual meeting" of the Board had already taken place in April 2023, the Director Defendants could not and did not merely choose not to re-nominate him. The Foundation bylaws provided that "each director will hold office until the next annual meeting and the election or appointment and qualification of the director's successor or the director's earlier death, resignation, or removal." And the law and the bylaws both prevent a director of a nonprofit foundation from being removed unless for cause.

112. Here, not only did the Board not provide Iseman with any "cause" for his removal, but also no good cause existed. Indeed, Motherwell expressly (and incorrectly) noted in her email that "our vote does not require a reason."

113. During the May 19 Board meeting, Iseman made it clear to the Defendants that the Foundation was "not an organization that I feel I can simply walk away from. I care too much about what is at stake here." He explained he was acting out of his concern "about the legacy of Helen Frankenthaler and, quite frankly, because I want to do all I can to ensure the Helen Frankenthaler Foundation is what Helen wanted it to be. And what her legacy deserves." He added that he believed the Board owed it to Frankenthaler and one another to constructively confront

hard problems, not run from them. He ended his statement noting that “an amicable outcome that benefits the HFF is and has been my only cause.”

FIRST CAUSE OF ACTION

(Improper Removal Without Cause – Violation of Due Process Rights, N-PCL § 706 –
Against Director Defendants)

114. Plaintiff incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

115. Section 706 of the New York Not-for-Profit Corporation Law (N-PCL) provides that directors of a non-membership organization can be removed only “for cause.” Even the Director Defendants did not purport to remove Iseman for cause.

116. The Foundation’s bylaws require that the Board formally vote to decrease the number of directors, or replace Iseman, otherwise “each director will hold office until the next annual meeting and the election or appointment and qualification of the director’s successor or the director’s earlier death, resignation, or removal.”

117. The Director Defendants’ decision to not nominate Iseman for re-election was neither completed during a legitimate annual meeting, nor with a proper vote in accordance with the bylaws.

118. Iseman’s purported non-re-election was therefore in reality an improper effort at removal.

119. To the extent the Board attempted to and/or did remove Iseman, it did so without cause. Iseman had taken his duties as a Foundation Board member and director seriously by regularly attending meetings, providing opinions and guidance, and seeking to further the goals of the Foundation and his aunt’s legacy.

120. The Director Defendants sought to remove Iseman only after he challenged their unethical self-dealing and ineffective management of the Foundation, in retaliation for his blowing the whistle on these breaches of their fiduciary duties.

121. The Director Defendants also failed to provide Iseman with sufficient warning. Iseman was informed that the Director Defendants did not intend to re-elect him by email the night before the Board meeting.

122. Upon information and belief, the Director Defendants schemed to remove Iseman well before the meeting, forcing the recusal of John Silberman, who served as counsel to the Foundation and as Iseman's personal counsel.

123. The resulting Board meeting thus did not involve proper consideration of Iseman's complaints about the mismanagement of the Foundation and, as explained above, did not follow the processes provided under the Foundation's bylaws and required by New York state law.

124. Because the Director Defendants did not replace Iseman on the Foundation or properly move to change the number of Board members, and because the alleged election did not take place at an annual Board meeting, the purported removal is null and void.

125. In the alternative, Iseman should be deemed re-instated as a director and officer because his removal was done out of compliance with the Foundation's by-laws and/or because he was removed without cause.

126. Accordingly, because of the foregoing, the Director Defendants' decision not to nominate Plaintiff for re-election was null and void.

SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty to the Foundation – N-PCL §§ 715, 717, 720 –
Against Director Defendants)

127. Plaintiff incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

128. Because the Director Defendants did not replace Iseman on the Foundation Board or properly move to change the number of Board members, and because the alleged election did not take place at an annual Board meeting, the purported removal is null and void and Iseman has standing as a director to bring this cause of action.

129. In the alternative, Iseman should be deemed re-instated as a director and officer because his removal was done in a manner that was not in compliance with the Foundation's by-laws and/or because he was removed without cause. As a result, Iseman has standing as a director to bring this cause of action.

130. In the alternative, Iseman has standing to bring this cause of action because he has a special interest in the matter at issue, the Frankenthaler Foundation, and the charitable assets it holds. Iseman was not only a director of the Foundation for its entire existence, but Iseman is Frankenthaler's nephew, was co-executor of her Will, and had a special relationship with Frankenthaler. He has specific recollection and knowledge of what Frankenthaler wanted the Foundation to achieve.

131. The Director Defendants are directors and officers of the Foundation and at all relevant times owed a fiduciary duty of care to the Foundation. They have at all relevant times been required to discharge those duties in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. Those fiduciary duties include the

reasonable management and disposition of corporate assets, and prevent the acquisition of, loss, or waste, of corporate assets.

132. The Director Defendants also needed to follow basic principles regarding conflicts of interest and related party transactions. As outlined in the Foundations bylaws and N-PCL § 715, this includes disclosing conflicts of interest, not participating in in deliberations or voting related to conflicted transaction, consideration of alternative transactions, and documentation of the basis for the approval, which requires a majority vote.

133. Each Director Defendant's grossly negligent and/or intentionally harmful actions violated their fiduciary duty of care toward the Foundation and its assets. For example:

- (i) Clifford Ross directed donations to organizations he participated in, and desired to show his work in, trading on the Foundation's name and assets to further his career in art. He failed to appropriately recuse himself from Board votes regarding self-interested grants, and similarly did not notify other Board members of the conflicts.
- (ii) Lise Motherwell funneled the Foundation's resources to PAAM, where Motherwell is President of the Board. Despite having no curatorial experience or credentials, Motherwell co-curated a Frankenthaler show in Provincetown with Elizabeth Smith, which she paired with the donation of paintings worth around \$1.4 million, for which she was publicly credited.
- (iii) Michael Hecht is Treasurer and a Director of the Foundation and also serves as the Foundation's accountant and is paid for such services. The Director Defendants were insufficiently impartial to continually approve Hecht's retention as accountant and refused to consider any alternatives to Hecht's services. Upon information and belief, Hecht charged more than was appropriate for his services, and did not devote sufficient time, expertise, or thought to his role as accountant or to the management of the Foundation's assets. Hecht also violated his obligation to use his expertise in managing the institutional funds, including by disregarding the necessary factors.
- (iv) The Director Defendants approved the hiring of, and continued to retain the services of, Elizabeth Smith as Executive Director for the Foundation. Smith has failed to promote the Foundation's mission or Frankenthaler's legacy. Despite those failings, the Director Defendants have authorized payments to Smith of over \$2 million dollars over the last decade, with Smith's salary increasing each year.

- (v) The Director Defendants intend to dissolve the Foundation prematurely once they can no longer extract benefit from it, despite Frankenthaler's express wish that the Foundation continue in perpetuity. Premature liquidation would flood the art market, devaluing Frankenthaler's work and harming her legacy.
- (vi) The Director Defendants tried to terminate Iseman after he challenged their ineffective leadership and self-dealing, to try to sweep his complaints under the rug and prevent him from challenging their illegal acts.

134. The Director Defendants failed to discharge their duties in good faith and with reasonable care, which has resulted in the waste of corporate assets.

135. It would be futile for Plaintiff to ask that the Director Defendants stop engaging in these harmful actions, since the Director Defendants are the Foundation's only other directors.

136. As a direct result of the Director Defendants' continuing gross negligence and/or intentional harm, the Foundation has been damaged, including through the waste of corporate assets, lost opportunities, and more.

137. Accordingly, the Director Defendants must account for their official actions as directors and officers of the Foundation and the Court should set aside the unlawful transfer of corporate assets to Director Defendants, to the extent practicable.

THIRD CAUSE OF ACTION

(Wrongful Related Party Transaction – N-PCL § 715, EPTL 8-1.9(c) – Against Director Defendants)

138. Plaintiff incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

139. The Director Defendants used the Foundation to provide grants and donations to institutions and organizations in which they had financial interests without, upon information and belief, obtaining proper authorization from the Board or a determination from the Board that the transactions were fair, reasonable, and in the Foundation's best interest.

140. As defined in EPTL § 8-1.4(a), the Foundation, a nonprofit corporation organized under the laws of New York for charitable purposes, is a trust, and each of the Director Defendants, who hold and administer the Foundation's property for charitable purposes, a trustee.

141. The Director Defendants needed to follow the standards of care regarding conflicts of interest and related party transactions outlined in N-PCL § 715 and EPTL § 8-1.9.

142. As defined in N-PCL § 102(a)(24) and EPTL § 8-1.9(a)(8), a related party transaction is any transaction or arrangement to which the Foundation is a participant and in which a director, officer, or key person of the Foundation has a financial interest.

143. Pursuant to N-PCL § 715(a) and EPTL § 8-1.9(c)(1), the Foundation shall not enter into any related party transaction unless it is determined to be fair, reasonable, and in the Foundation's best interest, and any Director who has an interest in a related party transaction must disclose in good faith to the Foundation the material facts of such interest.

144. On multiple occasions, Director Defendants failed to disclose in good faith their interest in a related party transaction, in violation of N-PCL § 715 (a) and EPTL § 8-1.9(c)(6).

145. And, in violation of N-PCL § 715(h) and EPTL § 8-1.9(b)(5), on multiple occasions, Director Defendants failed to recuse themselves from Board deliberations about related party transactions in which they had an interest.

146. Accordingly, the Court should enjoin, void, or rescind the unlawful related party transactions, and award damages and such other appropriate remedies, in law or equity to ensure compliance with the requirements of the law.

FOURTH CAUSE OF ACTION
(Equitable Accounting– Against All Defendants)

147. Plaintiff incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

148. The Director Defendants are directors and officers of the Foundation and have at all relevant times owed a fiduciary duty of care to the Foundation.

149. The Director Defendants were entrusted with the care of and control over the assets of the Foundation, including money and property.

150. The Director Defendants and nominal defendant the Foundation are in possession of the relevant financial and other records, including records of the sale and loan of Frankenthaler's works that are not publicly available.

151. No other sufficient remedy exists in law or equity.

152. It would be futile for Plaintiff to ask that the Director Defendants stop engaging in these harmful actions, since the Director Defendants are the Foundation's only other directors.

153. Accordingly, the Defendants must produce the Foundations financial records, demonstrate how money was expended, and return improperly gained funds and/or property. Defendants must also provide an accounting of all of the artworks in the Foundation's inventory to ensure that none of these valuable assets are sold or otherwise transferred during the pendency of this dispute.

FIFTH CAUSE OF ACTION

(Unlawful Removal – N-PCL §§ 706(d), 714(c) – Against Director Defendants)

154. Plaintiff incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

155. Under N-PCL §§ 706(d) and 714(c), courts have the power to remove any director or officer "for cause" and to bar directors or officers from re-election or reappointment.

156. The Director Defendants are directors and officers of the Foundation and have at all relevant times owed a fiduciary duty of care to the Foundation.

157. Because each of the Director Defendants has, through gross negligence and/or intentional actions, violated their fiduciary duty of care to the Foundation, there is good cause for their removal, and to bar them from re-election or reappointment as directors and officers of the Foundation.

SIXTH CAUSE OF ACTION

(Declaratory Judgment – Against All Defendants)

158. Plaintiff incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

159. A bona fide justiciable and substantial controversy exists between Plaintiff and Defendants as to whether the Director Defendants breached their fiduciary duties.

160. Declaratory judgment would help settle the issue, bring finality to the dispute, and enable the Foundation to proceed without uncertainty.

161. Accordingly, Plaintiff is entitled to a declaratory judgment that the Director Defendants breached their fiduciary duties as directors and officers of the Foundation.

SEVENTH CAUSE OF ACTION

(Injunctive Relief– Against All Defendants)

162. Plaintiff incorporates by reference all preceding paragraphs and re-alleges them as if set forth fully herein.

163. Both Plaintiff and the Foundation have suffered ongoing, irreparable harm as a direct result of Director Defendants' breach of their fiduciary and statutory duties. If Director Defendants continue the alleged conduct, the Foundation will suffer irreparable injury.

164. Plaintiff seeks to enjoin Director Defendants from (a) continuing to breach their fiduciary and statutory duties to the Foundation; (b) selling, donating, or otherwise disposing of any works of art from the Foundation's collection; (c) using the Foundation's assets to carry out

self-dealing, related-party transactions; (d) dissolving the Foundation during the pendency of this dispute; and (e) such other relief as the Court deems just and proper.

165. Plaintiff seeks the removal of the Defendant Directors from the Board, and, to the extent necessary, Iseman's reinstatement.

166. Plaintiff also seeks an accounting of the charitable fund funneled to each of the Director Defendants and/or spent in furtherance of their personal goals, and requests restitution to the Foundation of those funds.

167. Such an injunction is appropriate for the reasons set forth above, including, without limitation, that the Director Defendants have willfully ignored the legal requirements applicable to not-for-profit organizations, and no Directors remain on the Board who have shown an understanding and respect for not-for-profit law and the fiduciary duties that are owed to the Foundation.

168. The balance of the equities supports granting the requested injunctive relief, as any potential harm caused by enjoining the Director Defendants' conduct as described herein is speculative and is, in any event, far outweighed by the irreparable harm that both Plaintiff and the Foundation will suffer should the Director Defendants be permitted to continue breaching their fiduciary and statutory duties.

TRIAL DEMAND

169. Plaintiff demands a trial by jury on all causes of action so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the Court:

A. Award the Foundation compensatory, punitive, and any and all other damages made available by law in an amount to be determined at trial.

- B. Declare that Iseman remains a director and officer of the Board, and, in the alternative, reinstatement him as a director and officer.
- C. Declare that Director Defendants violated their fiduciary duties as members of the Board.
- D. Enjoin the Director Defendants as described above.
- E. Award Plaintiff attorneys' fees, experts' fees, costs, and disbursements in prosecuting this action to the extent permitted by law.
- F. Granting Plaintiff any other relief that the Court deems just and proper.

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