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The Arts

## **Turning a Collection Into a Foundation, Without a Big Tax Bill**

By CAROL KINO

ONE truism of a strong art market is that it lures material to auction that may not normally be offered for sale. Even the most reluctant collector may be persuaded to part with a beloved artwork by the promise of a previously undreamed-of profit.

Last spring, a cache of choice lots offered in Christie's postwar and contemporary sales ended up on the block for precisely this reason. They included an important 1949 Willem de Kooning abstraction, "Sail Cloth"; an untitled 1964 color field painting by Mark Rothko; Franz Kline's "Crow Dancer," from 1958; and 12 other paintings, constructions and sculptures from the same collection. When the sale in May was over, all but one had sold, achieving a total of \$44,334,800 - a considerable advance on the group's presale estimate of about \$29 million to \$41 million.

Yet the collectors who had lived with and loved these artworks for decades, Barbara and Donald Jonas of New York, did not have personal profit in mind. Instead, the couple tried to fulfill a long-cherished goal: creating a charitable legacy.

"The art was always going to be given at our death to charity," said Mr. Jonas, 76, in an interview in his Fifth Avenue apartment. "But as the value of the work kept appreciating, the thought was, why not give ourselves the joy of doing it in our lifetime?" Enhancing that joy, the sale was structured so that their donation would consist of the full profit, with nothing lost to taxes.

Rather than selling the artworks themselves, the Jonases donated them to the Jewish Communal Fund, a public charity based in New York that administers philanthropic money on behalf of donors. The fund in turn agreed to sell the work through Christie's.

Because the fund is a charitable foundation, the sale incurred no capital-gains tax. And because the proceeds went to the Barbara and Donald Jonas Family Fund, a donor-advised fund within the charity, the Jonases, with their heirs, get to recommend how the capital is invested and how profits will be disbursed. "I have two broken arms from patting myself on the back for that one," said the Jonases' longtime estate lawyer, C. Michael Spero, a partner in the New York branch of Loeb & Loeb, who helped make the arrangement.

At the time of the sale, the Jonases were already renowned for their small but top-notch collection. They began collecting nearly 30 years ago, first acquiring Abstract Expressionist

paintings and moving on to related artists, like Isamu Noguchi and Joseph Cornell. "We never, ever bought with an investment view," Mrs. Jonas said. "We bought because we loved the work, and we never sold anything."

But the Jonases have another love: philanthropy. Mr. Jonas, a retired retailing executive, said he had been strongly influenced by two mentors renowned for philanthropy - the retailer Sol Price, founder of the Price Club, and the New York real estate magnate Lawrence Wien. "They used to tell me, give while you're alive," Mr. Jonas said.

Mrs. Jonas, 71, has served on the boards of several arts organizations, including the Alvin Ailey dance company and the Guggenheim Museum. Together, the Jonases have been benefactors to a variety of medical, cultural and civic causes.

The decision to combine the two interests arrived as their collecting was winding down and the art market was booming.

"The idea hatched in the summer of 2004, when I was updating their insurance appraisal," said Laura Paulson, international director of postwar and contemporary art at Christie's, who has worked with the couple for about 15 years. "They both realized that the collection had come to levels of value they had never anticipated." Since the last appraisal in 2000, it had increased by about 20 percent.

When the Jonases broached the subject a few months later, their lawyer, Mr. Spero, recalled, they knew "they wanted to have a fund to give away money, and they were going to use a gift of art as the vehicle to establish it." He added, "The question was, what would lead to the result they wanted?"

One possibility was to donate the work to a museum or another nonprofit organization, in which case the Jonases could have taken a full-value tax deduction but would have had no money to disburse. Another was to sell the work outright and donate the proceeds, less total capital-gains taxes of roughly 40 percent, Mr. Spero said. Eventually, "I suggested giving it to the J.C.F., where I knew they already had an account." Like other donor-advised funds, the charity charges a relatively small administrative fee - about three-quarters of a percent of the asset value.

The fund was only too happy to oblige, as was Christie's, which put the 15 artworks - half the Jonases' collection - into its spring sale, listing the charity as the seller. "They really wanted the sale to be about the pictures and about the charitable donation," said Ms. Paulson, who termed the whole arrangement, considering the size of the gift, "unprecedented." But the story got out soon after Christie's began publicizing the highly recognizable work.

The two-day postwar and contemporary art sale, of which the Jonas collection was an important part, was a glowing success, achieving \$170,955,400 - setting a record in the category. The Jonas lots achieved three Top 10 prices (for the de Kooning, the Rothko and the Kline) and broke a number of artists' records (for Arshile Gorky, Kline, Cornell and Noguchi) - results that surprised even Christie's staff members, Ms. Paulson said.

The secret, she thinks, was a combination of "spot-on" estimates and "the power of the work." But in several cases "the tax issue was an incentive." Because the charity is registered as a nonprofit corporation in New York State and holds a New York sales tax exemption, the purchase was tax-free for buyers who took possession in New York. And because Christie's toured the work widely, taking pains to explain the philanthropic mission, "when it came to the final moment of people's bidding," Ms. Paulson said, "there was a very good feeling over all, and that added to the motivation."

In tax terms, the Jonases were less lucky. "There is a terrible consequence taxwise by doing it the way we did," Mr. Jonas said. "People think, 'Oh, that's a smart guy - he's getting a huge tax write-off.' Baloney. We get no credit at all for present-day value of the art - it's original cost only." Their deduction, Mr. Spero said, amounted to only several hundred thousand dollars. But, as Mr. Jonas said, "This is strictly charitable."

Of course, their cherished art is gone. "We miss it a lot," Mrs. Jonas said. "But the potential of doing wonderful things will ultimately help us to deal with the ambivalence."

With their children and grandchildren, the couple have been meeting regularly with the Rockefeller Philanthropy Advisers, an organization that consults families on charitable giving, to decide how to invest and allocate the money. "One of the reasons I wanted to do this was I thought it would be a great thing for the family to join with Barbara and myself in deciding how the grants would be made," Mr. Jonas said. So far, medical research, mental health, public education and world poverty and hunger causes seem likely to be beneficiaries.

But there may be an additional benefit: encouraging others to take the same step. In the last year, Ms. Paulson said, she has seen several single consignments structured in the same way to benefit charitable donations. And since the Jonas sale, she has had conversations with collectors who are considering something similar.

She added, "I think we will definitely see more of this as the value of blue-chip art continues to appreciate."