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Foundation Fights Fees for Artist's Trustees

By [PATRICIA COHEN](#)

Before he died in 2008, the brashly inventive artist [Robert Rauschenberg](#) appointed three of his dearest friends and longtime business associates as trustees to administer his \$600 million-plus estate and protect the charitable foundation he had created in his name.

But now, that foundation and the three men entrusted with its welfare are engaged in a court battle in Florida over the trustees' claim that they are entitled to at least \$60 million in fees — a sum that an expert hired by the [Robert Rauschenberg Foundation](#) maintains is “unconscionable,” amounting to a \$40,000-an-hour wage. On Wednesday, the foundation took the feud to a court in New York, where one trustee, Rauschenberg's companion and assistant [Darryl Pottorf](#), is seeking an additional payment for handling Manhattan property of the artist.

“You scratch your head and say, ‘What are they thinking?’ ” said Christopher Rauschenberg, the artist's son and the foundation's president, who also considers the three trustees friends. Primarily concerned with having the foundation get on with its work, Mr. Rauschenberg said, “If a judge says \$60 million is fair, we'll put it behind us and continue with the charitable stuff.”

The three trustees all had decades-long associations with Rauschenberg, a loquacious and bighearted man who, during his lifetime, donated millions of dollars to causes like AIDS research and treatment, the environment and dance. One trustee, Bill Goldston, first met Rauschenberg in 1969, and the two were partners in a fine-art-print publishing company. Another, Bennet Grutman, was the artist's accountant since 1989.

Mr. Pottorf, an artist, worked with Rauschenberg for 30 years and lived down the street from him on [Captiva](#) Island, off the west coast of Florida. The two made art and traveled together, Mr. Pottorf explained in a 2011 deposition, saying, “It was a wonderful life.” After the aging Rauschenberg was partly paralyzed from a stroke and grew feeble, Mr. Pottorf said, he often helped a nurse put him to bed.

The trustees concede that they did not keep records of their work, and that they did not try to reconstruct or account for the hours they say they put in. Nonetheless, they have stated in court papers in Florida that they deserve \$60 million or more.

Mr. Pottorf testified in the deposition that at first the figure seemed “a little high to me,” but that given “the hell I’ve been through” and the toll that the trusteeship has taken on his own health and career, \$60 million was “reasonable.” Referring to Rauschenberg, he said, “Bob wanted to give me a lot more money, and he said not to worry because I would be getting executor and trustee’s fees.”

Mr. Goldston, also in a 2011 deposition, said he felt a small percentage of the estate’s assets would be “an adequate salary.”

“I lost 12 pounds,” he said. “I developed a stomach issue just feeling the responsibility of taking care of that work and that image.”

Ted Edwards, a lawyer for the trustees in Florida, declined to comment.

On Wednesday, the foundation filed papers in New York Surrogate’s Court relating to Mr. Pottorf’s work on the New York portion of the estate. A commission of \$284,000 was approved by the Surrogate’s Court in April.

Rules for how executors and trustees should be paid vary from state to state. In New York, for example, executors typically receive a percentage of certain kinds of assets in an estate. Florida law says trustees are entitled to a “reasonable fee.”

[Laird A. Lile](#), an expert hired by the foundation who is also a governor of the Florida Bar, filed an affidavit saying a reasonable fee would run about \$250 an hour. According to his calculations of the work involved, the three Rauschenberg trustees were seeking \$40,000 an hour for their services, an amount he labeled “unconscionable.”

Mr. Lile’s affidavit also stated that Mr. Pottorf had harassed the staff at the Rauschenberg Foundation with obscene and threatening phone calls, adding that in just one week in May, for example, Mr. Pottorf left more than 75 voice mails. In a 2011 deposition, Mr. Pottorf said he left messages because he was angry and because the foundation’s executive director “would never return my calls.”

Court papers filed in Florida show that the trustees had contracted out many of their duties, hiring nine law firms that were paid more than \$691,000, as well as an accounting firm, three auction houses and others. To date, Mr. Pottorf, Mr. Goldston and Mr. Grutman have paid themselves a total of \$5.7 million of the \$60 million in trustee fees that they say they are due — a sum that was not approved by any court and which Mr. Lile said he also considered “grossly excessive.” Aside from those fees, they received \$3.9 million for work that they continued to do as consultants and employees of Rauschenberg’s business.

When Rauschenberg was alive, Mr. Pottorf received \$120,000 a year net in salary, he said in his deposition. He was also named in the will, inheriting Rauschenberg’s Gulf House in Captiva, one of many properties he owned on the island. According to a federal estate tax return filed in 2009, the house was worth \$3.6 million.

Artist foundations have increasingly found themselves embroiled in lawsuits in recent years. In March, for example, two directors of the Cy Twombly Foundation sued two trust administrators, accusing them of taking unauthorized fees and of inflating the value of Twombly's paintings to generate excessive fees and commissions. The administrators dismissed the charges as ridiculous.

Estimating the value of works by even well-established artists like Twombly or Rauschenberg is notoriously difficult given how fickle the art market can be. In the 2009 federal tax return prepared by Mr. Grutman's firm, the value of Rauschenberg's estate was listed as nearly \$606 million. When the trust finally turned over the majority of the assets to the foundation three years later, in May 2012, it listed the estate's value as more than \$2.3 billion.