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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm. 7206
Hearing Date: Friday, April 19, 2019
Hearing Time: 9:30 a.m.
Response Date: April 12, 2019

8 UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 In re:
12 NORTHWEST TERRITORIAL MINT, LLC
13 Debtor.

Case No. 16-11767-CMA
MOTION TO AUTHORIZE
LIQUIDATION OF SEIZED PROPERTY
AND DISTRIBUTION OF PROCEEDS
TO TRUSTEE

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15 **I. INTRODUCTION**

16 Plaintiff and Judgment Creditor Mark Calvert as the Chapter 11 Trustee (the “Trustee”) of
17 Northwest Territorial Mint, LLC (“NWTM”) moves the Court for an order authorizing him to
18 liquidate precious metals currently in his possession, to which the Defendant/Judgment Debtor,
19 Diane Erdmann, has asserted an ownership interest.¹ The Trustee further requests that the Court
20 authorize the Trustee to distribute the proceeds to the Trustee, subject to a settlement with Bradley
21 Stephen Cohen and Cohen Asset Management, Inc. (the “Cohen Settlement Agreement”) to be
22 submitted for approval concurrently with this motion.

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25 ¹ It is the Trustee’s belief that the Seized Property is property of the NWTM bankruptcy estate and that Diane Erdmann asserts an interest to thwart the Trustee or, alternatively, Bradley Stephen Cohen, from obtaining possession of the Seized Property.

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II. EVIDENCE RELIED UPON

This Motion is based on the Declaration of Mark Calvert (the “Calvert Decl.”), and the other pleadings and papers filed in this case.

III. STATEMENT OF ISSUE

This Motion presents the issue of whether the Trustee should be authorized to liquidate precious metal, held in his possession and distribute the proceeds from such liquidation to the bankruptcy estate and the Cohen entities in accordance with the terms of the Cohen Settlement Agreement..

IV. STATEMENT OF FACTS

A. The Sheriff Seized Inventory

In August, 2012, Bradley Stephen Cohen and Cohen Asset Management Inc. commenced a lawsuit in the United States District Court for the District of Nevada, under case no. 12-01401 (the “Cohen Lawsuit”). On February 17, 2016, the jury empaneled in the Cohen Lawsuit returned a verdict finding Ross Hansen, NWTM, and the other defendants liable for damages. On March 1, 2016, a judgment was entered in the Cohen Lawsuit. Judgment was entered in the amount of \$12,500,000 as to NWTM, and judgment was entered against Ross Hansen in the amount of \$25,500,000.²

On April 27, 2016 the King County, Washington, Sheriff executed a personal property writ of execution at Ross Hansen’s residence in Auburn, Washington (“Writ of Execution”). In May, 2016, the Sheriff executed a second personal property writ of execution (the “Second Writ of Execution”) at Hansen’s residence in Auburn, Washington. The Second Writ of Execution was accompanied by an Order Authorizing Sheriff to Break and Enter order by the court on May 13, 2016. The Sheriff seized personal property including coins and bullion, computers and paper

² A copy of the Judgment is appended to the Opposition by Creditors Bradley S. Cohen and Cohen Asset Management, Inc. to Debtor’s Emergency Motion Authorizing Retention of CRO’s and in Support of the *Sua Sponte* Appointment of a Chapter 11 Trustee, filed at Docket No. 24, Case No. 16-11767-CMA.

1 records (the “Seized Property”).³ A list of the Seized Property is attached to the Declaration of Mark
2 Calvert (the “Calvert Decl.”) as Exhibit A. As of the time of the seizure, the value of the Seized
3 Property, based on then-current spot prices for precious metal was approximately \$155,000.

4 Diane Erdmann filed a motion in the Bankruptcy Case for instruction regarding the
5 applicability of the automatic stay as to the Cohen Creditors’ Litigation, in which she asserted that
6 most of the Seized Property belongs to her. [Dkt. No. 337, Case No. 16-11767-CMA]. On June 22,
7 2016, the Bankruptcy Court entered an Order Determining Applicability of Automatic Stay. [Dkt.
8 No. 435, Case No. 16-11767-CMA]. The court ordered that the Seized Property be turned over to
9 the Trustee pending a determination whether the Bankruptcy Estate owns an interest in the Seized
10 Property. The Trustee believes the Seized Property is estate property. The Trustee continues to hold
11 the Seized Property, and bring this motion to allow the liquidation of the Seized Property and
12 distribution of the proceeds to the bankruptcy estate and the Cohen entities in accordance with the
13 terms of the Cohen Settlement Agreement.

14 B. The Judgment.

15 On September 9, 2016, the Trustee filed a complaint against Diane Erdmann seeking
16 avoidance of certain fraudulent transfers made by NWTM for her benefit. On March 28, 2018,
17 following trial, a judgment was entered in favor of the Trustee in the amount of \$430,462 (the
18 “Judgment”). [Dkt. No. 98, Adv. Proc. No. 16-01217].

19 Diane Erdmann did not file a timely appeal of the Judgment, and brought a motion seeking
20 leave to file a late appeal (the “Late Appeal Motion”). [Dkt. No. 105, Adv. Proc. No. 16-01217].
21 The Court denied the Late Appeal Motion. [Dkt. No. 114, Adv. Proc. No. 16-01217]. Diane
22 Erdmann then filed an appeal of the denial of the Late Appeal Motion (the “Appeal”). [Dkt. No. 115,
23 Adv. Proc. No. 16-01217]. On November 27, 2018, the Bankruptcy Appellate Panel for the Ninth
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25 ³ Factual support regarding the execution of the personal property writs is contained in the Motion to Determine
Applicability of Stay filed by Diane Erdmann and the accompanying Declaration of Daniel J. Bugbee, Docket Nos. 337
and 334, Case No. 16-11767-CMA.

1 Circuit reversed the denial of the Late Appeal Motion. [Dkt. No. 124, Adv. Proc. No. 16-01217].
2 Mandate issued on January 4, 2019. [Dkt. No. 125, Adv. Proc. No. 16-01217].

3 Defendant Diane Erdmann has failed to timely appeal the Judgment. The Judgment remains
4 wholly unsatisfied.

5 **V. ARGUMENT**

6 The Trustee believes that the Seized Property is property of the bankruptcy estate. Multiple
7 parties have expressed interests in the Seized Property. The Trustee has separately resolved, subject
8 to Court approval, the interests expressed by the Cohen Parties. The Trustee does not know whether
9 Ms. Erdmann continues to express an interest in the Seized Property, but to the extent she does, the
10 Trustee has filed a motion to execute on any interest that Erdmann may hold in enforcement of the
11 Judgment.

12 The Trustee respectfully requests that the Court authorize him to liquidate the Seized
13 Property and to distribute the proceeds of such liquidation to the bankruptcy estate and the Cohen
14 Parties in accordance with the terms of the Cohen Settlement Agreement.

15 DATED this 12th day of March, 2019.

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17 K&L GATES LLP

18 By: /s/ David C. Neu

19 Michael J. Gearin, WSBA # 20982

20 David C. Neu, WSBA #33143

21 Brian T. Peterson, WSBA #42088

22 Attorneys for Mark Calvert, Chapter 11 Trustee

1 **CERTIFICATE OF SERVICE**

2 The undersigned declares as follows:

3 That she is a paralegal in the law firm of K&L Gates LLP, and on March 12, 2019, she
4 caused the foregoing document to be filed electronically through the CM/ECF system which caused
5 Registered Participants to be served by electronic means, as fully reflected on the Notice of
6 Electronic Filing.

7 Also on March 12, 2019, she caused the foregoing document to be placed in the mail to the
8 Parties at the addresses listed below:

9 Northwest Territorial Mint LLC
10 325 E Washington St. #225
11 Sequim, WA 98382

12 I declare under penalty of perjury under the laws of the State of Washington and the United
13 States that the foregoing is true and correct.

14 Executed on the 12th day of March, 2019 at Seattle, Washington.

15 */s/ Denise A. Lentz* _____
16 Denise A. Lentz