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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm. 7206
Hearing Date: Friday, October 18, 2019
Hearing Time: 9:30 a.m.
Response Date: October 11, 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 APPROVE SETTLEMENT
WITH BRADLEY STEPHEN COHEN AND
COHEN ASSET MANAGEMENT AND
KATHRYN A. ELLIS AND TO
AUTHORIZE SALE OF SEIZED
PROPERTY

16 **I. INTRODUCTION**

17 Mark Calvert, the Chapter 11 Trustee (the “NWTM Trustee”) of Northwest Territorial Mint,
18 LLC (“NWTM” or “Debtor”) files this motion seeking approval of the terms of a settlement with
19 Bradley Stephen Cohen and Cohen Asset Management, Inc. (collectively, the “Cohen Parties”) and
20 Kathryn A. Ellis in her capacity as the Chapter 7 Trustee of Diane Erdmann (the “Erdmann
21 Trustee”) in case no. 19-41238, United States Bankruptcy Court for the Western District of
22 Washington. As described below, the terms of the settlement (the “Settlement”) are in the best
23 interests of the estate and should be approved by this Court.
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II. EVIDENCE RELIED UPON

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

III. STATEMENT OF ISSUE

This Motion presents the issue of whether the Court should approve the terms of a settlement between the NWTM Trustee, the Erdmann Trustee and Bradley Stephen Cohen.

IV. STATEMENT OF FACTS

A. The Sheriff Seized Inventory

In August, 2012, the Cohen Parties 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 \$25,500,000.¹

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

¹ 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.

1 records (the “Seized Property”).² 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 prices for precious metal and numismatics was approximately
4 \$155,000. The Cohen Parties incurred no less than \$15,000 in attorney fees in their efforts to
5 execute on the Seized Property.³

6 Diane Erdmann filed a motion in the above-captioned proceeding (the “NWTM Bankruptcy
7 Case”) for instruction regarding the applicability of the automatic stay as to the Cohen Creditors’
8 Litigation, in which she asserted that most of the Seized Property belongs to her. [Dkt. No. 337].
9 On June 22, 2016, the Bankruptcy Court entered an Order Determining Applicability of Automatic
10 Stay. [Dkt. No. 435]. The court ordered that the Seized Property be turned over to the Trustee
11 pending a determination whether the Bankruptcy Estate owns an interest in the Seized Property. The
12 Trustee continues to hold the Seized Property.

13 B. Diane Erdmann’s Bankruptcy Filing.

14 On March 12, 2019, the NWTM Trustee filed his Motion to Approve Settlement with
15 Bradley Cohen Regarding Seized Personal Property [Dkt No. 2051] (the “Original Settlement
16 Motion”). The Original Settlement Motion was scheduled for hearing on April 19, 2019. On
17 April 18, 2019, Diane Erdmann filed for Chapter 13 relief under case no. 19-41238 (the “Erdmann
18 Bankruptcy Case”, and its estate, the “Erdmann Bankruptcy Estate”). On June 14, 2019, the
19 Erdmann Bankruptcy Case was converted to a Chapter 7 proceeding, and the Erdmann Trustee was
20 appointed as the Chapter 7 Trustee.

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25 ² 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. 334
and 337.

³ See Declaration of Bradley Cohen, Docket No. 2050.

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C. The Coin Sale Related Claims.

Diane Erdmann testified in deposition in June 2016, that she had no paying job since at least the late 1990s, and that she was effectively without assets.⁴ Even though she allegedly owned no significant assets and only a *de minimis* amount of bullion, beginning in late June, 2016, Diane Erdmann began liquidating precious metals and using the proceeds to pay legal fees incurred by Ross Hansen or a company which he owned, Medallic Art Company, LLC. In total, between June, 2016 and March, 2017, she liquidated approximately \$700,000 in precious metal (the “Liquidated Metal”) and transferred several hundred thousand dollars of the proceeds of the Liquidated Metals to several law firms (the “Transfers”).

The NWTM Trustee asserts that the Liquidated Metal was property of the NWTM Bankruptcy Estate. Diane Erdmann has asserted that the Liquidated Metal belonged to her.

The Erdmann Trustee believes she holds claims arising under 11 U.S.C. §548 and RCW Ch. 19.40 arising from the Transfers (the “Avoidance Causes of Action”). The NWTM Trustee believes he holds coextensive causes of action, including but not limited to conversion, arising from the Transfers (the “NWTM Causes of Action” and together with the Avoidance Causes of Action, the “Transfer Claims”).

D. The Settlement.

a. Settlement regarding Seized Property.

The NWTM Trustee continues to believe that the Seized Property is property of the NWTM bankruptcy estate. However, the ownership of the Seized Property remains disputed. Diane Erdmann has previously claimed ownership of most of the Seized Property, and, accordingly, the

⁴ A copy of the excerpt from the deposition is attached to the Declaration of Joseph A. Hammel in Support of Motion for Examination of Renton Coin Ship, Inc., Bryan D. Geraghty d/b/a Northgate Rare Coin, the Gold Center, Inc., and Victoria Diamonds, LLC d/b/a Cash 4 Gold Pursuant to Rule 2004 and Subpoenas Pursuant to Rule 9016 [Dkt. No. 1016].

1 Erdmann Trustee asserts that the Seized Property is property of the Erdmann Bankruptcy Estate. The
2 Cohen Parties take the position that some or all of the Seized Property may belong to Ross Hansen
3 and therefore should be available to satisfy their judgment against Hansen. At a minimum, they
4 assert that they hold a claim under 11 U.S.C. §503(b)(3)(D) for the fees and costs they incurred in
5 having the King County Sheriff seize the Seized Property. In order to resolve issues with the Cohen
6 Parties and the Erdmann Trustee regarding whether the Seized Property is property of the NWTM
7 Bankruptcy Estate, the Erdmann Bankruptcy Estate, or whether it is subject to execution to partially
8 satisfy the judgment held by the Cohen Parties against Hansen, the NWTM Trustee, the Erdmann
9 Trustee and the Cohen Parties negotiated the terms of a settlement, memorialized in the Settlement
10 Agreement attached to the Declaration of Mark Calvert. Under the terms of the Settlement, the
11 Erdmann Trustee and the Cohen Trustee consent to the liquidation of the Seized Property by the
12 NWTM Trustee. The NWTM Trustee, the Erdmann Trustee and the Cohen Parties agree that the
13 Cohen Parties will receive the first \$25,000 of the proceeds of the liquidation of the Seized Property,
14 with the remainder of the proceeds to be split evenly (50/50) between the NWTM Trustee and the
15 Erdmann Trustee. Under the terms of the Settlement, the NWTM Trustee and the Erdmann Trustee
16 will release claims against the Cohen Parties.

17 b. Settlement regarding Transfer Claims.

18 In order to resolve disputes over ownership and prosecution of the Transfer Claims, the
19 Erdmann Trustee and the NWTM Trustee have agreed to the terms of a settlement under which the
20 NWTM Causes of Action will be assigned to the Erdmann Trustee. The Erdmann Trustee will then
21 pursue recovery based on the Transfer Claims, as she deems prudent and reasonable in consultation
22 with the NWTM Trustee, including through litigation or settlement. Any monies recovered based on
23 the Transfer Claim or any other claims arising from or related to the Transfers, net of attorney fees
24 and costs, will be split evenly (50/50) between the NWTM Trustee and the Erdmann Trustee.
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E. Sale of the Seized Property.

Prior to the filing of this Motion, the NWTM Trustee received an offer from Bellevue Rare Coins to purchase the Seized Property⁵ for the amount of \$142,095.77 as of September 19, 2019 (the “Original Offer”)⁶. A copy of the offer is attached to the Declaration of Mark Calvert as Exhibit C.⁷ Bellevue Rare Coins is a BBB A+ accredited business, with five locations in the greater Puget Sound Area, that has been in business since 1979. Bellevue Rare Coins is in the business of purchasing precious metal and numismatics. Neither the NWTM Trustee or the Erdmann Trustee have any relationship or other agreements with Bellevue Rare Coins.

The offer from Bellevue Rare Coins is based on the market value of the Seized Property. For bullion (e.g. items with no separate numismatic value), the amount offered is based on the spot price of precious metal on the day of the offer less a 4%-5% discount. For items with numismatic value, the price is based on industry price guides and publications which provide values based on the type, condition, and quality of the numismatic and the knowledge and experience of the buyer. Because the offer is based on either spot prices of metal, or independent pricing guidelines, there is no reason to believe that a marketing process would result in an offer significantly different than that obtained from Bellevue Rare Coins, however the Trustee will entertain any higher or better offers.

Because there will be fluctuations in the prices of the commodities between the date of the Original Offer and the date of closing of the transaction, the NWTM Trustee seeks authority to liquidate the Seized Property for no less than ten percent (10%) less than the Original Offer. The NWTM Trustee will file a statement with the Court notifying the Court of the final sale price.

⁵ The sale will exclude the cash that was seized by the Sheriff, which are deemed “proceeds” under the Settlement Agreement, and will be divided accordingly. The sale will exclude an iPad and Dell desktop computer which are in the possession of the FBI.

⁶ Because the value of precious metal and numismatics fluctuates, the offer is based on prices as of the date of the offer, and may be higher or lower on the date of closing based on changes in the market.

⁷ Bellevue Rare Coin added a column to an inventory of the Seized Property, highlighted in yellow. The column is the amount that Bellevue Rare Coin is offering for each item.

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V. ARGUMENT

A. Approval of the Settlement.

Compromises are a “normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The Court has great latitude in approving compromise agreements and may approve a compromise if it is “fair and equitable.” *Woodson v. Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The Court does not have to decide the numerous questions of fact and law raised by objecting parties. *In re Planned Protective Serv., Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991). The focus of the Court’s inquiry is whether the settlement entered into by the Trustee was reasonable given the particular circumstances of the case. *Bache & Co. v. Loeffler (In re Equity Funding Corp. of Am.)*, 519 F.2d 1274, 1277 (9th Cir. 1975). An order approving a compromise will be upheld absent abuse of discretion. *Goodwin v. Mickey Thompson Entm’t Group, Inc. (In re Mickey Thompson Entm’t Group, Inc.)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003). In considering whether to approve a compromise, the Court should apprise itself of:

all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties in collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

TMT Trailer Ferry, 390 U.S. at 424. Specifically, to determine whether a compromise is “fair and equitable,” the Court should consider: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in collection; (3) the litigation’s complexity and its attendant

1 expense, inconvenience and delay; and (4) the paramount interest of the creditors with a proper
2 deference to their reasonable view. *Martin v. Kane (In re A & C Prop.)*, 784 F.2d 1377, 1381 (9th
3 Cir. 1986).

4 There are multiple potential claims of an interest in the Seized Property. While the NWTM
5 Trustee continues to believe that the Seized Property is property of the NWTM Bankruptcy Estate,
6 the Erdmann Trustee asserts that it is property of the Erdmann Estate. Because the Seized Property
7 was seized from a house which Ross Hansen occupies, it could also be subject to a sheriff's sale to
8 partially satisfy the Cohen Parties' judgment. Unfortunately, there are significant evidentiary issues
9 for all parties regarding ownership of the Seized Property. In addition, The Cohen Parties could be
10 entitled to a claim under § 503(b)(3)(D) for their efforts in preserving the Seized Property for the
11 benefit of the bankruptcy estate. Given these evidentiary and other legal issues, and the potential
12 cost of an evidentiary hearing or litigated determination of ownership of the Seized Property, the
13 NWTM Trustee, in his business judgment, believes a negotiated resolution to be in the best interest
14 of the estate. The terms of the Settlement, under which the estate would receive a significant portion
15 of the proceeds of the liquidation of the Seized Property, are reasonable under the circumstances
16 taking into account the likelihood of the NWTM Trustee succeeding on the merits, and the inherent
17 cost of litigation. Accordingly, the NWTM Trustee requests that the Court approve the settlement
18 with the Cohen Parties and the Erdmann Trustee regarding the Seized Property and further authorize
19 him to liquidate the Seized Property through a rare coin and currency dealer such as Bellevue Rare
20 Coins or a similar entity.

21 Both the Erdmann Trustee and NWTM Trustee believe they have independent, but
22 coextensive, claims against parties that received the proceeds of the Liquidated Metal. The Erdmann
23 Trustee has agreed to take the risk of pursuit of such causes of actions, and under the terms of the
24 Settlement, if she is successful, the NWTM Bankruptcy Estate will receive half of the net proceeds.
25 Under this agreement, the NWTM Bankruptcy Estate bears no risk, but will receive half of the net

1 upside in the event the Erdmann Trustee recovers on the claims. Such an agreement is certainly in
2 the interest of the NWTM creditors.

3 B. Sale of the Seized Property.

4 While the text of the Bankruptcy Code does not provide the standard for determining when it
5 is appropriate for a court to authorize the sale of property of the estate, courts often approve a
6 proposed sale if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers*
7 *v. Martin (In re Martin)*, 9 F.3d 389, 395 (3d Cir. 1996); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir.
8 1983). Here, there can be no doubt that the proposed sale is in the sound business judgment of the
9 NWTM Trustee and the Erdmann Trustee. The only logical way to consummate the Settlement, and
10 to resolve the dispute between the parties asserting an interest in the Seized Property, is to reduce the
11 Seized Property to cash so that the cash can be divided in accordance with the terms of the
12 Settlement. As noted above, the value of the non-cash Seized Property is based on the spot price of
13 precious metal, or, in the case of numismatics, the type, condition, and quality of the coin. As a
14 result, there is no reason to believe a marketing process would substantially change the amount
15 which the estate could realize from the Seized Property. Moreover, because the valuation of the
16 numismatics requires that each piece be independently evaluated so that it could be priced pursuant
17 to industry pricing guides, obtaining offers from other coin buyers would be burdensome, as each
18 potential buyer would need to inventory and value the items. Given this, the Trustee believes that a
19 sale to a reputable coin dealer is the most effective way to liquidate the Seized Property.

20 The NWTM Trustee requests that the sale be free and clear of liens, interests, and
21 encumbrances. Pursuant to 11 U.S.C. § 363(f), a trustee may sell property of the estate under
22 11 U.S.C. § 363(b) free and clear of any interest in such property of any entity other than the estate
23 only if (1) applicable non-bankruptcy law permits sale of such property free and clear of such
24 interest; (2) such entity consents; (3) such interest is a lien and the price at which the property is to
25 be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona

1 fide dispute; *or* (5) such entity could be compelled, in a legal or equitable proceeding, to accept a
2 money satisfaction of such interest. 11 U.S.C. § 363(f). Here, there are multiple bases upon which
3 the Court should authorize the NWTM Trustee to sell the Debtor’s Remaining Property “free and
4 clear.”

5 If no creditors object to the sale, the sale free and clear will be permitted under 11 U.S.C. §
6 363(f)(2). The NWTM Trustee is unaware of any party that could assert a security interest in the
7 Seized Property, however even if alleged secured creditors object to the sale, the sale free and clear
8 is permissible under 11 U.S.C. § 363(f)(5) because there are legal and equitable proceedings in
9 which a lienholder could be compelled to accept a money satisfaction of such lien, including the
10 disposition of collateral under the default remedies provided in Washington’s Uniform Commercial
11 Code (Chapter 62A.9A RCW) or in a receivership proceeding pursuant to RCW 7.60.260.

12 Furthermore, section 363(f) of the Bankruptcy Code is satisfied because any lienholder also
13 will be adequately protected by having its liens, if any, attach to the proceeds of the sale in the same
14 order of priority, with the same validity, force, and effect that such creditor had prior to such sale,
15 subject to any claims and defenses that the NWTM Trustee and the Debtor’s bankruptcy estate may
16 possess with respect thereto. For all of these reasons, the proposed sale free and clear of liens should
17 be approved. Pursuant to Fed. R. Bankr. P. 6004(h), any order authorizing the use, sale, or lease of
18 property other than cash collateral is stayed for 14 days, unless the court orders otherwise. As noted
19 herein, it is necessary for the NWTM Trustee to quickly consummate the sale of the Seized Property
20 and conclude his administration of the estate. It is therefore in the best interests of the estate to waive
21 the 14 day stay under Fed. R. Bank. P. 6004(h).

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VI. CONCLUSION

Based on the above, the NWTM Trustee respectfully requests that the Court approve the terms of the Settlement and authorize liquidation of the Seized Property.

DATED this 2nd day of October, 2019.

K&L GATES LLP

By: /s/ David C. Neu
Michael J. Gearin, WSBA # 20982
David C. Neu, WSBA #33143
Brian T. Peterson, WSBA #42088
Attorneys for Mark Calvert, Chapter 11 Trustee

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CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a paralegal in the law firm of K&L Gates LLP, and on October 2, 2019, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

Also on October 2, 2019, she caused the foregoing document to be placed in the mail to the Parties at the addresses listed below:

Northwest Territorial Mint LLC
PO Box 2148
Auburn, WA 98071-2148

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

Executed on the 2nd day of October, 2019 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz