

Below is the Order of the Court.



Christopher M. Alston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

Case No. 16-11767-CMA

PRETRIAL ORDER

I. FEDERAL JURISDICTION

Jurisdiction is vested in this court by virtue of 28 U.S.C. §1334 and 28 U.S.C. §157.

II. NATURE OF CONTESTED ACTION

The evidentiary hearing scheduled for June 22, 2016 is related to the question of the source of funds used to pay an advance fee retainer (the “Retainer Funds”) to The Tracy Law Group (“TTLG”). It is the position of Mark Calvert, the Chapter 11 Trustee (the “Trustee”) that the Retainer Funds constitute property of the bankruptcy estate of Northwest Territorial Mint, LLC (“NWTM”). He contends that the source of the Retainer Funds was precious metals and cash stolen from NTWM. Diane Erdmann asserts that the source of the Retainer Funds was life insurance proceeds received by Ms. Erdmann in 1993.

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III. ADMITTED FACTS

The following facts, unless otherwise indicated, are admitted by the parties:

A. Northwest Territorial Mint

1. NWTM is a private mint, and its business operations include custom minting of medals and commemorative coins as well as on-line and walk-in sales of precious metals and coins. Prior to filing bankruptcy, NWTM was a dealer of gold, silver, platinum, and palladium bullion (the “Bullion Business”).

2. In 2010 NWTM, leased a building in Federal Way, Washington (the “Federal Way Building”). As well as serving as NWTM’s corporate headquarters, the Federal Way Building is the site at which the majority of the Bullion Business was conducted. The Federal Way Building contains a vault room (the “Vault”), with several safes containing bullion, coins, and cash. The Vault also contains additional storage drawers that are not individually locked. Walk-in sales of bullion to customers of NWTM were also offered at the Federal Way Building.

B. The Life Insurance Proceeds

3. In 1993 Diane Erdmann’s husband passed away. On May 13, 1993, Ms. Erdmann received a check for \$133,900 (the “Life Insurance Proceeds”) from Servicemen’s Group Life Insurance.

C. Diane Erdmann

4. Diane Erdmann has worked at NWTM since 2000.

5. She received no salary for her work at NWTM.

6. When she started working at NWTM, Ms. Erdmann was given the responsibility and job title of “shipping manager.” In 2005, she was given the responsibility of managing NWTM’s vault, where her duties included managing the cash and bullion, and shipping for certain locations. In 2010, when NWTM moved into the Federal Way Building, Ms. Erdmann was put in charge of the Vault at that location.

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D. The Cohen Judgment

7. In August, 2012, Bradley Stephen Cohen and Cohen Asset Management Inc. (collectively, 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”).

8. 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 (the “Judgment”).

E. Payment of the Retainer Funds

9. On March 31, 2016, the Retainer Funds were paid to TTLG.

10. \$50,000 of the Retainer Funds were paid via a wire transfer from Ms. Erdmann’s bank account at Wells Fargo Bank (the “Retainer Wire Portion”).

11. On March 31, 2016, Diane Erdmann gave David Huffman a bag (the “Black Bag”) containing gold bullion. Mr. Huffman took the Black Bag to the Seattle Coin Shop in Wedgewood. There, John Drummey, the owner, “picked through” the bag and took eighty (80) 1 oz. gold coins.

15. Mr. Drummey and Mr. Huffman, who was carrying the Black Bag with the remaining bullion, walked to a nearby branch of Key Bank, where a cashier’s check in the amount of \$99,460 (the “Check”) was issued, made out to Diane Erdmann. Mr. Huffman took the Check back to the Federal Way Building, where Ms. Erdmann endorsed it to TTLG. Mr. Huffman drove the Check to Seattle and delivered it to Todd Tracy.

IV. STATEMENT OF TRIAL ISSUES

- 1) Does the NWTM bankruptcy estate have an interest in the Retainer Funds?
- 2) What is the nature of the estate’s interest in the Retainer Funds?
- 3) Whether any of Ms. Erdmann’s actions constitute violations of the automatic stay of

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1 11 U.S.C. 362?

2 4) Whether Ms. Erdmann should be sanctioned for violating 11 U.S.C. §362, and if so,
3 in what amount?

4 **V. WITNESSES**

5 The names and addresses of the witnesses to be used by each party at trial are:

6 (a). On Behalf of the Trustee

7 1. J. Todd Tracy. 720 Olive Way, Suite 1000, Seattle, WA 98101. Mr. Tracy will
8 testify, based on information and knowledge, about the agreement between TTLG and NWTM
9 regarding legal representation, the facts and circumstances regarding payment of the Retainer Funds,
10 communications between TTLG, Ross Hansen, and Diane Erdmann, and efforts made by Ross
11 Hansen and Diane Erdmann to compel turnover of the Retainer Funds.

12 2. Paul Wagner. c/o David C. Neu, Esq., K&L Gates LLP, 925 Fourth Avenue Suite
13 2900, Seattle, Washington 98104. Mr. Wagner will testify regarding the policies and business
14 procedures of NWTM, the scope of Ms. Erdmann's work at NWTM, and security and inventory
15 policies at NWTM.

16 3. David Huffman. c/o David C. Neu, Esq., K&L Gates LLP, 925 Fourth Avenue Suite
17 2900, Seattle, Washington 98104. Mr. Huffman will testify regarding security procedures at
18 NWTM, the facts and circumstances regarding the sale of bullion to the Seattle Coin Shop on March
19 31, 2013, and security footage from NWTM's surveillance cameras.

20 4. Anette Trunkett. c/o David C. Neu, Esq., K&L Gates LLP, 925 Fourth Avenue Suite
21 2900, Seattle, Washington 98104. Ms. Trunkett will testify regarding cash management procedures
22 of NWTM and records related thereto.

23 5. Erin Robinson. c/o David C. Neu, Esq., K&L Gates LLP, 925 Fourth Avenue Suite
24 2900, Seattle, Washington 98104. Erin Robinson will testify regarding Ms. Erdmann's work at
25 NWTM and records maintained by NWTM.
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1 6. Rhonda Yaskus. c/o David C. Neu, Esq., K&L Gates LLP, 925 Fourth Avenue Suite
2 2900, Seattle, Washington 98104. Ms. Yaskus may testify regarding policies and procedures
3 regarding tracking of bullion and cash at NWTM and the scope and nature of Ms. Erdmann's work.

4 7. Derin Tallman. c/o David C. Neu, Esq., K&L Gates LLP, 925 Fourth Avenue Suite
5 2900, Seattle, Washington 98104. Mr. Tallman is expected to testify regarding items seized from
6 Ross Hansen's residence by the King County Sheriff.

7 8. Don Schwenk. Unknown address.

8 9. The Trustee also reserves the right to call any of the witnesses identified by Ms.
9 Erdmann, to the extent Ms. Erdmann may not call them.

10 (b). On Behalf of Diane Erdmann

11 1. Diane Erdmann. c/o Daniel J. Bugbee, DBS Law, 155 NE 100th Street, Suite 205,
12 Seattle, Washington 98125. Ms. Erdmann will testify about her work at NWTM, her investments in
13 coins and precious metals, and her payment of the Retainer Funds.

14 2. Ross Hansen. c/o Ragan L. Powers, Davis Wright Tremaine LLP, 1201 3rd Avenue,
15 Suite 2200, Seattle, Washington 98101. Mr. Hansen will testify about Ms. Erdmann's work at NWTM,
16 her investments in coins and precious metals, and her payment of the Retainer Funds.

17 3. Patrick Ward. c/o David C. Neu, Esq., K&L Gates LLP, 925 Fourth Avenue Suite 2900,
18 Seattle, Washington 98104. Mr. Ward will testify regarding security practices at NWTM and his
19 observations of Ms. Erdmann at NWTM, including her hours and habits.

20 4. Eileen Dvornekovic. P.O. Box 5043, Hemet, CA 92544. Ms. Dvornekovic will testify
21 regarding Ms. Erdmann's purchases of bullion and records maintained regarding her investments.

22 5. Ms. Erdmann also reserves the right to call any of the witnesses identified by the
23 Trustee, to the extent the Trustee may not call them.

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Below is the Order of the Court.

VII. EXHIBITS

(a) Trustee's Exhibits:

| Trustee's Exhibit No. | Description | Admissibility Stipulated | Authenticity stipulated, admissibility disputed | Authenticity and admissibility disputed |
|-----------------------|---|--------------------------|---|---|
| T1 | Vault Log Sheets 2.16 and 3.16 | X | | |
| T2 | Pages from Vault Cash Spreadsheet for 1.1.16 to 2.17.16 (last entry) | X | | |
| T3 | Pages from Vault Cash consolidated 03.31.16 Spreadsheet for 2.17.16 to last entry | | | X |
| T4 | Vault Cash Spreadsheet (Excel document provided via CD) | X | | |
| T5 | Vault Cash consolidated 03.31.16 spreadsheet (Excel document provided via CD) | | | X |
| T6 | Todd Tracy Engagement Letter | X | | |
| T7 | Official Check to Diane Erdmann from John Drummey 3.31.16 | X | | |
| T8 | Wire Transfer confirmation | X | | |
| T9 | Seattle Coin Shop Purchase Order | X | | |
| T10 | Bullion Shipments 3-23 through 4-11 | | | X |
| T11 | Daily Cash Disbursement Form 4-19 thru 4-25 | X | | |
| T12 | Daily Cash Disbursement Form 5-19 thru 5-23 | X | | |
| T13 | Daily Cash Disbursement Form 5-31 thru 6-6 | X | | |
| T14 | Daily Cash Disbursement Form 6-21 thru 6-27 | X | | |
| T15 | Daily Cash Disbursement Form 8-4 thru 8-8 | X | | |
| T16 | Daily Cash Disbursement Form Unknown Date Range | X | | |

Below is the Order of the Court.

| Trustee's Exhibit No. | Description | Admissibility Stipulated | Authenticity stipulated, admissibility disputed | Authenticity and admissibility disputed |
|-----------------------|--|--------------------------|---|---|
| T17 | Daily Cash Disbursement Form Unknown Date Range-2 | X | | |
| T18 | Daily Cash Disbursement Form Unknown Date Range-3 | X | | |
| T19 | Weekly Deposit Form 2/17 - 2/21 | X | | |
| T20 | Weekly Deposit Form 4/19 - 4/25 | X | | |
| T21 | Weekly Deposit Form 5/31 - 6/6 | X | | |
| T22 | Weekly Deposit Form 7/21 - 7/25 | X | | |
| T23 | Weekly Deposit Form 8/4 - 8/8 | X | | |
| T24 | Security Camera Still Photos 3.26 | X | | |
| T25 | Security Camera Still Photo 3.31 | X | | |
| T26 | Security Video 20160326_20:12:25 | X | | |
| T27 | Security Video 20160326_20:13:27 | X | | |
| T28 | Security Video 20160326_20:13:38 | X | | |
| T29 | Security Video 20160327_20:16:49 | X | | |
| T30 | Security Video 20160327_20:22:17 | X | | |
| T31 | Security Video 20160327_20:22:19 (Video provided via CD) | X | | |
| T32 | Security Video 20160331_08:41:35 (Video provided via CD) | X | | |
| T33 | Security Video 20160331_09:56:09 (Video provided via CD) | X | | |
| T34 | Security Video 20160331_10:27:25 (Video provided via CD) | X | | |

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| Trustee's Exhibit No. | Description | Admissibility Stipulated | Authenticity stipulated, admissibility disputed | Authenticity and admissibility disputed |
|-----------------------|--|--------------------------|---|---|
| T35 | Security Video 20160331_10:56:02 (Video provided via CD) | X | | |
| T36 | Security Video 20160331_10:58:05 (Video provided via CD) | X | | |
| T37 | Security Video 20160331_15:03:09 (Video provided via CD) | X | | |
| T38 | Wells Fargo Bank Statements 2016 | | X | |
| T39 | Safety Deposit Box records | X | | |
| T40 | Federal Court Docket; Cohen v. NWTM | | X | |
| T41 | Cohen vs. NWTM Judgment | X | | |
| T42 | Declaration of D. Erdmann ISO Mtn Withdraw as Attorney | X | | |
| T43 | Cohen vs. NWTM Minutes Regarding Entry of Verdict | | X | |
| T44 | WA Attorney General Complaint 4.26.16 | X | | |
| T45 | Ltr WA Atty General re NWTM 5.13.16 | | X | |
| T46 | WSBA Bar Complaint | X | | |
| T47 | Response to NWTM Erdmann WSBA Grievance 5.13.16 | | X | |
| T48 | Ltr Erdmann to WSBA 6.3.16 | X | | |
| T49 | Ltr. Burke 6.10.16 re WSBA Greivance | | X | |
| T50 | Transcript from Deposition of Diane Erdmann 6.2.16 | | X | |
| T51 | Transcript from Deposition of Deposition of Diane Erdmann Cohen vs. Hansen Superior Court Case | | X | |
| T52 | Transcript of Supplemental Proceedings of R. Hansen 5.13.16 | | X | |

Below is the Order of the Court.

| Trustee's Exhibit No. | Description | Admissibility Stipulated | Authenticity stipulated, admissibility disputed | Authenticity and admissibility disputed |
|-----------------------|---|--------------------------|---|---|
| T53 | Transcript of 341 Hearing | | X | |
| T54 | Inventory of Ross Hansen Seized Property | | | X |
| T55 | Order for Supplemental Proceedings | | X | |
| T56 | Transcript from Deposition of Ross Hansen 6.16.16 | | X | |
| T57 | Stock Sheet | | X | |

(b) Ms. Erdmann's Exhibits:

| Ms. Erdmann's Exhibit No. | Description | Admissibility Stipulated | Authenticity stipulated, admissibility disputed | Authenticity and admissibility disputed |
|---------------------------|--|--------------------------|---|---|
| E1 | Email from Ross Hansen to Erin Robinson dated March 21, 2016, bates stamped CALV003386 – CALV003387. | | X | |
| E2 | Affidavit of Donald Schwenk, bates stamped CALV002109 – CALV002110. | X | | |
| E3 | Affidavit of Rod Lawrence, bates stamped CALV002117 – CALV002119. | X | | |
| E4 | Email from J. Todd Tracy to Ross Hansen dated March 31, 2016, bates stamped CALV002130. | X | | |
| E5 | Email from J. Todd Tracy to Ross Hansen dated March 28, 2016, bates stamped CALV002129. | X | | |
| E6 | Security video footage: "Fedway 192.168.6.234_13_20160410_2113 12" | X | | |
| E7 | NWTM Daily Cash Flow Report as of May 31, 2016 (Dkt. No. 36901 | X | | |
| E8 | NWTM Receipt dated 2-14-97, number 06356 | | | X |
| E9 | Buy Sheet | X | | |

Ms. Erdmann also cross-designates all of Trustee's exhibits to which she stipulated above, to the extent the Trustee chooses not to admit them.

Below is the Order of the Court.

1 This order has been approved by the parties as evidenced by the signatures of their counsel.
2 This order shall control the subsequent course of the action unless modified by a subsequent order.
3 This order shall not be amended except by order of the Court pursuant to agreement of the parties or
4 to prevent manifest injustice.

5 **///END OF ORDER///**

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7 Submitted by:

8
9 K&L GATES LLP

10
11 By /s/ David C. Neu
12 Michael J. Gearin, WSBA #20982
13 David C. Neu, WSBA #33143
14 Brian T. Peterson, WSBA #42088
15 Attorneys for Mark Calvert, Chapter 11 Trustee

16 DBS LAW

17 By /s/ Dominique R. Scalia
18 Daniel J. Bugbee, WSBA #42412
19 Dominique R. Scalia, WSBA #347313
20 Attorneys for Diane Erdmann