

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
DOCKET NO. 5:09CR27

UNITED STATES OF AMERICA)
)
 v.) **CONSOLIDATED REPORT ON**
) **PENDING PETITIONS**
)
BERNARD VON NOTHAUS)

NOW COMES the United States of America, by and through Jill Westmoreland Rose, Acting United States Attorney for the Western District of North Carolina, and files this Consolidated Report on Pending Petitions, as ordered (Docs. 589, 619) by the Court.

This Report sets forth the United States' positions and recommendations on three hundred and twenty-seven (327) Petitions by three hundred and two (302) Petitioners for property identified in the Amended (Third) Preliminary Order of Forfeiture (Doc. 297).

I. INDICTMENT AND TRIAL

On November 17, 2010, the Grand Jury for the Western District of North Carolina returned a Superseding Bill of Indictment (Doc. 103; "Superseding Indictment") against the defendant. In the Superseding Indictment, Counts One, Two, and Three charged the defendant with conspiracy and substantive offenses related to counterfeit Liberty Dollar coins, all such conduct in violation of 18 U.S.C. §§ 371, 485, 2, and 486. In the Superseding Indictment, the Grand Jury found probable cause pursuant to, amongst other statutes and rules, 18 U.S.C. § 492, 18 U.S.C. §§ 982(a)(2) and (b)(1), 21 U.S.C. § 853, and Fed. R. Crim. P. 32.2, for forfeiture of certain coins, metals, funds, and other assets as proceeds constituting or derived from any proceeds the defendant obtained, directly or indirectly, as a result of such violations; and/or all property involved in, used, intended to be used, made, or possessed in any manner or part to commit or facilitate the commission of the

violations. On March 18, 2011, a jury returned a Verdict (Doc. 191) of guilty on Counts One, Two, and Three. On November 10, 2014, the Court entered a Memorandum and Order (Doc. 270) affirming the guilty verdicts.

II. PRELIMINARY ORDERS OF FORFEITURE

On December 1, 2014, the Court entered a Memorandum and Order (Doc. 285; the “First Preliminary Order”) providing for forfeiture of almost all of the property (excluding “16,000.5 Troy Ounces of Raw Silver” and Hawaii Dala coins) listed and described in the Notice of Forfeiture and Finding of Probable Cause in the Superseding Indictment. On December 2, 2014, the Court entered a short Order (Doc. 286) clarifying some aspects of applicable forfeiture law. On February 25, 2015, the Court entered the Amended (Third) Preliminary Order of Forfeiture (Doc. 297; “Third Preliminary Order”) in which it forfeited, subject to third-party petitions, numerous assets, including funds, coins that were not contraband *per se*, items used to make coins, and raw metals. On January 8, 2015, and February 20, 2015, the United States filed Notices (Docs. 289 and 293) with the Court that the “16,000.5 Troy Ounces of Raw Silver” that was not subject to forfeiture had been returned to Mary S. Nothhouse through her estate.

This Consolidated Report on Pending Petitions concerns the three hundred and twenty-seven (327) Petitions filed pursuant to the Amended (Third) Preliminary Order of Forfeiture.

III. FINAL CONTRABAND ORDER

The First Preliminary Order also required the United States and the Defendant to consult and determine, based on criteria described by the Court, what assets were contraband, that is, illegal *per se*, and to report back to the Court. The criteria set forth in the First Preliminary Order for the definition of contraband were: (1) Liberty Dollar coins that were admitted into evidence via

representative samples, comported with the definition of “counterfeit” submitted to the jury, were definitely minted after 2006, bore a dollar sign or denomination, and did not bear competing insignia or characteristics of multiple entities of Defendant; and (2) dies, molds, and casts used to make such coins. *See* First Preliminary Order at Pages 16-19. (Doc. 285) Based on those definitions, the parties identified the contraband *per se* items (using their descriptions in the Superseding Indictment and evidence identifications) and jointly proposed disposal of those items to the Court.

On February 25, 2015, the Court entered the Consent Order for Final Disposal and Final Forfeiture of Contraband (Doc. 296; “Contraband Order”) against certain assets that are illegal *per se* and that, consequently, cannot be subject to ownership claims by third parties in this judicial action under 21 U.S.C. § 853(n). The items identified in the Contraband Order include, *inter alia*, gold, silver, and copper coins almost entirely consisting of Liberty Dollar coins and Liberty Dollar Peace Dollar coins dated 2007 or later¹ and items used to make those coins. The items identified in the Contraband Order do not include coins such as Ron Paul Dollars and Chiropractic Dollars, as well as Liberty Dollars dated 2006 or earlier, since none of those coins met the criteria of illegal *per se* contraband set forth by the Court.

IV. NOTICE OF THE AMENDED THIRD PRELIMINARY ORDER

Since the entry of the Amended Third Preliminary Order on February 25, 2015, the United States, pursuant to 18 U.S.C. § 853(n) and Fed. R. Crim. P. 32.2(b)(6), has sent personal notice, that is, “direct written notice,” of the Amended Third Preliminary Order to a total of 2494

¹ The United States and the Defendant conservatively defined illegal *per se* contraband as anything minted 2007 or later, even though, under the Court’s criteria, some coins dated 2006 and minted in 2006 after the warning would be contraband if the parties were able to determine precisely when, in 2006, the coins were minted. This led to a relatively small list of illegal *per se* contraband items that cannot be claimed in this ancillary hearing and a relatively large list of items that third party petitioners may claim. Nonetheless, as detailed below, some Petitioners have asserted interest in property that is illegal *per se*.

“potential claimants.” The United States obtained the names and contact information of these potential claimants from letters and other communications that the United States had received beginning in 2008 and from a list supplied by the defendant. The same direct written notice was sent to the sixteen (16) persons who had filed claims in the related civil forfeiture case of *United States v. 3039.375 Pounds of Copper Coins, et al*, 1:08CV230 (stayed), which case concerns the same seized property listed in the Notice of Forfeiture and Finding of Probable Cause in this criminal case. In addition, the United States also provided public notice of the forfeiture pursuant to 18 U.S.C. § 853(n) and Fed. R. Crim. P. 32.2(b)(6) via publication (Doc. 616) of the forfeiture on www.forfeiture.gov. As of the date of this Report, all time periods for filing Petitions pursuant to both direct notice and notice by publication have expired.

V. PENDING PETITIONS

As of this date, three hundred and twenty-seven (327) Petitions by three hundred and two (302) Petitioners have been filed with the Court. Many Petitions were filed by individuals who received notice directly from the United States. Some Petitions were filed by persons who were unknown to the United States and who presumably received notice of forfeiture from sources other than the United States. Herein the United States categorizes the Petitions and forecasts the United States’ litigating positions on the Petitions. The Petitions are categorized and the United States proposes its course of action as to each category below. The names of each Petitioner are listed by category in the attached Appendices.

A. Petitions by Liberty Dollar customers that should be granted in their entirety

Two hundred and sixty five (265) petitions are based on claims for forfeited property, that is, silver, copper, and gold, evidenced by warehouse receipts and electronic Liberty Dollars (ELD’s), and unfulfilled but paid-for orders for forfeited property such as Ron Paul dollars,

Chiropractic and Hawaii Dala coins, and other coins that are not contraband *per se*., These Petitions are largely supported by documentation and/or plausible factual explanations that comport with the information known to the United States and that satisfy 21 U.S.C. § 853(n)(6).

In its contemporaneously filed Motion to Grant 265 Petitions, the United States asks the Court to grant the Petitions set forth in Appendix A. Therein, the United States requests that final disbursement by the United States be deferred until a comprehensive final order of forfeiture has been entered in this case. In addition, the United States asks the Court to order Petitioners whose petitions are based on warehouse receipts to send in the original warehouse receipts in order to receive the silver equivalent from the United States. This requirement will not only confirm the amounts claimed in each filed Petition, it will also serve the additional purpose of removing these negotiable instruments from circulation, thereby preventing both counterfeiting and fraud.

B. Petitions by Liberty Dollar customers that should be denied because the Petitions seek contraband or because the submitted documentation is fraudulent.

Seven (7) petitions seek the return of contraband or are based on fraudulent documentation. As such, these Petitions, set forth in Appendix B, should be dismissed in their entirety. The United States has this date filed contemporaneous Motions to Dismiss and/or for Summary Judgment concerning these Petitions.

C. Petitions by individuals that should be granted in part and denied in part

Twenty seven (27) petitions, as set forth in Appendix C, should be granted in part and denied in part. They should be granted in part because they legitimately seek forfeited property on one or more of the following bases:

- warehouse receipts;
- electronic Liberty Dollars; and/or

- unfulfilled orders for property that is not contraband *per se*.

On the other hand, these same Petitions should be dismissed or denied in part because

- they seek contraband;
- they are based on documentation that is obviously fraudulent and constitutes neither warehouse receipts nor electronic Liberty Dollars;
- they claim damages and/or interest that are not compensable under Section 853(n);
- they do not delineate what property is claimed; and/or
- they claim property that the United States never seized.

To the extent that the United States disputes these Petitions in part, the United States will file the appropriate motions concerning these Petitions no later than August 28, 2015.

D. Petitions that require further investigation/discovery and for which a second reporting deadline should be set

Four (4) petitions require further investigation and/or discovery. The United States has set forth these Petitions and their status at Appendix D. The United States has this date filed contemporaneous Motions for Discovery concerning these Petitions.

E. Petition by Elavon, Inc. that should be granted

One (1) Petition (Doc. 624) for reimbursement of expenses to Elavon, Inc. (Elavon) a credit card processor for Liberty Services, should be granted. Pursuant to a contractual arrangement with Liberty Services, Elavon processed credit card transactions for Liberty Services and, ultimately, reimbursed Liberty Dollar customers for charge-backs. In return, Elavon held a security interest in the Liberty Services merchant account from which United States currency was preliminarily forfeited. In its Petition, Elavon has described these circumstances and provided documentation. Elavon has satisfied Section 853(n)(6)(A) and has a secured interest in funds

preliminarily forfeited from the merchant account of Liberty Services up to the amount necessary to repay Elavon for its security interest by virtue of the charge-backs.

The United States has proposed a settlement Consent Order for Third Party Petition to Elavon and anticipates forwarding a settlement, in the form of a signed Consent Order, to the Court in the near future once the United States and Elavon reach agreement on the terms of settlement.

F. Petition by Royal Hawaiian Mint that should be dismissed

The Royal Hawaiian Mint Petition (Doc. 534) was filed by a corporate entity without an attorney and thus, as set forth in the United States' Motion filed contemporaneously with this Report, should be denied. Further, by the terms of the Royal Hawaiian Mint Petition, even if the Royal Hawaiian Mint Petition was adjudicated, it should not be finally adjudicated until all other petitions have been adjudicated.

VIII. SUMMARY AND CONCLUSION

In summary, the United States has this date reported to the Court the status and its recommendations concerning all three hundred and twenty-seven (327) Petitions filed as of this date.

The United States is this date filing accompanying Motions, to wit:

- Motion to Grant 265 Petitions, together with a proposed Order, as described in Section V.A., above;
- Seven (7) separate Motions to deny Petitions, together with a Memorandum of Law, as described in Section V.B., above;
- Four (4) separate Motions for Limited Discovery, together with proposed Orders, concerning the Petitions described in Section V.D., above;

- A single Motion to deny the Petition of the Royal Hawaiian Mint, as described in Section V.F., above.

Concerning the Petition of Elavon, Inc., the United States, as described in Section V.E., above, will notify the Court if and when a settlement is reached with that Petitioner.

Concerning the twenty-seven (27) Petitions in Section V.C., above, the United States will file separate motions by August 28, 2015.

The United States thinks that hearings are not necessary at this time and notes that the vast majority of Petitioners do not request a hearing. The United States also points out that attending and administering such a hearing would be prohibitively expensive for the Petitioners, most of whom do not reside in North Carolina. The United States remains ready to brief the Court on any other matters of interest not addressed herein.

Respectfully submitted, this, the 14th day of August, 2015.

JILL WESTMORELAND ROSE
ACTING UNITED STATES ATTORNEY

s/THOMAS R. ASCIK
ASSISTANT UNITED STATES ATTORNEY
North Carolina Bar No. 17116
Attorney for the United States
100 Otis Street
Asheville, North Carolina 28801
Telephone: 828-259-0644
Fax: 828-271-4670
E-mail: thomas.ascik@usdoj.gov

s/BENJAMIN BAIN-CREED
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. 21436
Attorney for the United States
227 West Trade Street, Suite 1650
Charlotte, North Carolina 28202
Telephone: 704-344-6222
Fax: 704-344-6629
Email: benjamin.bain-creed@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that this Motion for Leave to File Consolidated Report will be served this date via United States Mail on all Petitioners on the docket.

JILL WESTMORELAND ROSE
ACTING UNITED STATES ATTORNEY

s/ THOMAS R. ASCIK
ASSISTANT UNITED STATES ATTORNEY
North Carolina Bar No. 17116
Attorney for the United States
100 Otis Street
Asheville, North Carolina 28801
Telephone: 828-259-0644
Fax: 828-271-4670
E-mail: thomas.ascik@usdoj.gov