

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

CIVIL NO. 1:08CV230

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 3039.375 POUNDS OF COPPER COINS, )  
 )  
 5930.32 TROY OUNCES OF SILVER COINS, )  
 )  
 63.24 TROY OUNCES OF GOLD COINS, )  
 )  
 3 PLATINUM COINS, )  
 )  
 168,599 SILVER TROY OUNCE COINS, )  
 )  
 147 GOLD TROY OUNCE COINS, )  
 )  
 17 GOLD .05 TROY OUNCE COINS, )  
 )  
 710 SILVER .5 TROY OUNCE COINS, )  
 )  
 11 SILVER BARS AND SILVER SCRAP )  
 TOTALING 10,720.60 TROY OUNCES, )  
 )  
 1,000.5 TROY OUNCES OF SILVER COINS, )  
 )  
 1,000.5 TROY OUNCES OF SILVER COINS, )  
 )  
 DIES, MOLDS, AND CASTS SEIZED AT )  
 SUNSHINE MINTING, INC. ON )  
 NOVEMBER 14, 2007, )  
 )  
 16,000.05 TROY OUNCES OF RAW SILVER, )  
 )  
 100 OUNCES OF COPPER COINS, )

REPLY TO  
MOTION  
TO LIFT STAY AND TO UNSEAL  
ORDERS, MOTIONS, PLEADINGS,  
EXHIBITS, AND TRANSCRIPTS  
CIVIL PROCEEDINGS  
(DOCUMENT 35)

**and** )  
 )  
**\$254,424.09 IN UNITED STATES** )  
**CURRENCY,** )  
 )  
**Defendants.** )  
 )  
 )  
 )

NOW COMES the United States of America, plaintiff herein, by and through Gretchen C. F. Shappert, United States Attorney for the Western District of North Carolina, and herewith replies to the Motion to Lift Stay and to Unseal Orders, Motions, Pleadings, Exhibits, and Transcripts Civil Proceedings (Document 35) by Bernard von NouHaus *et al.* and asks the Court to deny the Motion, and shows the Court the following:

1. This civil forfeiture action was filed on May 29, 2008, (Document 1), and an Order staying “discovery and as well as all other proceedings” was issued by the Court on June 20, 2008. (Document 7). The United States had requested the Order of Stay pursuant to 18 U.S.C. § 981(g)(1) on the grounds that civil discovery in this civil case would adversely affect the ability of the United States to conduct a related criminal investigation. (Documents 3, 4, 5).

2. Now Bernard von NouHaus *et al.*, in their Motion to Lift Stay and to Unseal Orders, Motions, Pleadings, Exhibits, and Transcripts Civil Proceedings (Document 35), have asked the Court to lift the Stay.

3. The United States answers that Motion with six reasons why the Court should deny the Motion.

4. First, in their Motion, Bernard von NouHaus *et al.* describe themselves as “Claimants.” The same persons have filed Claims and Answers (Document 13-28). However,

the United States has not responded to the those filings **because this case is stayed**. The United States still retains the right to challenge those filings for substantive and procedural validity under, among other statutory provisions, Rule G(5) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims, Title 28, U.S.C. Appendix. Likewise, the United States may challenge the standing of the filers. *Via Mat International South America, Ltd. v. United States*, 446 F.3d 1258, 1262 (11<sup>th</sup> Cir. 2006) (standing is a threshold question in every federal case); *United States v. Real Property Located at 5208 Los Franciscos Way*, 385 F.3d 1187, 1191 (9<sup>th</sup> Cir. 2004) (standing is a threshold issue on which the claimant bears the burden of proof in every civil forfeiture case). Thus, the filers may not be properly before the Court, and no questions about standing or similar issues can be resolved at this time.

5. Second, the property sought to be returned is contraband; it cannot be returned. The Complaint alleges (§ 143), *inter alia*, that the coins are counterfeit coins, coins resembling coins of the United States, and devices used in counterfeiting and manufacturing of resembling coins, violations of 18 U.S.C. §§ 470, 471, 472, 473, 474, 485, 486, 487, and 489.<sup>1</sup> By itself, the simple possession of counterfeit coins is a crime. 18 U.S.C. §§ 472 and 485. *Von Hofe v. United States*, 492 F.3d 175, 184 (2d Cir. 2007) (“Pure contraband-child pornography, counterfeit currency, and unregistered hand grenades, for instance-are objects, ‘the possession of which, without more, constitutes a crime.’”) (citation omitted).

Statutory forfeiture law itself provides for the same result:

Notwithstanding any provision of this subsection [i.e. providing for “innocent ownership”], no person may assert an ownership interest in property under this subsection in contraband or other property that it is illegal to possess.

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<sup>1</sup>The Complaint itself has Attachments that contain pictures of the coins.

18 U.S.C. § 983(d)(4).

6. Third, as permitted by 18 U.S.C. § 981(g)(5),<sup>2</sup> the United States has previously filed *ex parte* evidence in its Motion to Seal Document and Sealed Document with the Court. (Documents 3, 5). The Court reviewed the contents of that Document and used it as the basis for its findings in its Order of Stay. (Document 7). Now, the United States submits new evidence in its new Motion to Seal Document and Sealed Document in connection with this Reply.

7. Fourth, in their Motion (¶ 10), the alleged Claimants have asserted the hardship of two of themselves. However, they have not offered any proof or documentation of the hardships that would serve to justify the convening of a hearing by the Court. The other twelve alleged Claimants have not asserted any specific hardships. A sufficient factual showing has not been made.

8. Fifth, likewise, the alleged Claimants have not cited any legal authority that would serve as a basis for their Motion.

9. Sixth, under 18 U.S.C. § 981(g)(1) (“the court shall stay”), when the Court makes a finding that civil discovery would adversely affect a related criminal investigations, a stay is mandatory. *United States v. All Funds on Deposit in Business Marketing Account*, 319 F. Supp. 2d 290, 294 (E.D.N.Y. 2004) (once the court is satisfied that routine civil discovery would compromise the identities of confidential informants, stay of the civil case is mandatory under section 981(g)). The Stay is still mandatory in this case, regardless of any allegations of hardship.

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<sup>2</sup>18 U.S.C. § 981(g)(5) provides that “[i]n requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence *ex parte* in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.”

WHEREFORE, the United States requests that the Court deny the Motion and continue the Stay until December 20, 2008, the date already established by the Court for its expiration.

Respectfully submitted this the 2d day of October, 2008.

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