The Case of the Missing Double Eagle Coins

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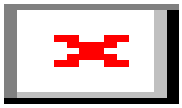

By Peter J. Gallagher

It's not every day that you find a case that starts with Depression-era monetary policy, ends with a relatively obscure federal statute, and in between tells the tale of the alleged theft of a coin considered to be "the most valuable ounce of gold in the world." Did I mention that the case also involves both Presidents Roosevelt, King Farouk of Egypt and the Sept. 11, 2001, terrorist attacks? A case recently decided by the U.S. Court of Appeals for the Third Circuit, *Langbord v. U.S. Dept. of Treasury*, has all of this and more.

Langbord involved the 1933 Double Eagle gold coin. It is a $20 gold piece that was designed by famed artist Augustus Saint-Gaudens after he was commissioned by President Theodore Roosevelt to help beautify American coinage. Almost a half million Double Eagles were minted, but none were ever officially released into circulation. Shortly after they were minted, newly-elected President Franklin D. Roosevelt, seeking to stem a run on the banks, issued Executive Order 6102, which made it illegal to "hoard" large amounts of gold. Accordingly, the U.S. Mint was ordered to stop issuing gold coins and to melt down any gold coins in its possession, including the Double Eagle. As part of this process, two Double Eagles were sent to the Smithsonian Institution for posterity, but the rest were supposed to have been melted down.

This is where the story gets interesting. Approximately 20 Double Eagles were smuggled out of the U.S. Mint in Philadelphia. One was sold to King Farouk of Egypt, a noted coin collector, in 1944. Although it had been unlawfully smuggled out of the mint, the Government "improvidently issued an export license, which muddied the issue of who rightfully possessed the coin." In 1952, King Farouk was exiled and, two years later, his coin collection was auctioned off. The U.S. State Department requested that the Double Eagle be removed from the auction and returned to the United States. The Egyptian government removed the coin but did not return it to the United States. Its location remained a mystery for 40 years.

Then, in 1995, Stephen Fenton, who had been purchasing coins from King Farouk's collection, purchased the Double Eagle for $200,000. Fenton contacted a coin dealer in the United States, who arranged to sell the Double Eagle to a Texas collector. Fenton flew on the Concorde to the United States to meet with the dealer and the collector at the Waldorf Astoria. Unbeknownst to Fenton, however, the collector had notified the Secret Service about the proposed transaction, and the meeting was a sting that ended with the Secret Service seizing the Double Eagle. After being seized, the coin was stored in a Secret Service vault at the World Trade Center.

A lawsuit followed that was settled in early 2001. Pursuant to the settlement, Fenton and the Government agreed to sell

the Double Eagle at auction and split the proceeds. Prior to the auction, and just a few short months before the Sept. 11, 2001, terrorist attacks, the coin was transferred from the World Trade Center to Fort Knox. In 2002, the Double Eagle sold for almost $7.6 million, more than twice the world record for any coin sold at auction. (The government insisted that $20, the coin's face value, be added to the winning bid so that the Treasury could officially issue the coin.)

Nine other Double Eagles were seized by, or relinquished to, the Secret Service in the 1940s and 1950s. The remaining 10 Double Eagles were found by Joan Langbord in a safe-deposit box belonging to her father, Israel Switt, shortly after Fenton's coin was sold. According to the government, however, this discovery was hardly fortuitous. The government claims that all of the Double Eagles that escaped its control went through Switt's hands. It claims that he worked with a corrupt cashier at the U.S. Mint in Philadelphia to smuggle Gold Eagles out of the Mint before they could be melted down. The government investigated Switt in the 1940s but did not prosecute him because the statute of limitations had expired. For their part, Switt's heirs claim that he acquired the coins legitimately through a gold-for-gold exchange program used at the U.S. Mint in the 1930s, and Switt's involvement in the alleged scheme with the cashier was never proven.

The government also questioned the timing of Joan Langbord's discovery. She worked with her father until his death, and admitted that she looked in the safe deposit box many times over the years, including the day before Fenton's Double Eagle was auctioned. Nonetheless, she maintained that she knew nothing about the coins until she discovered them at the bottom of the safe deposit box, wrapped in a folded Wanamaker's department store bag, in 2003. This discovery came shortly after Joan's son, Roy Langbord and Switt's grandson, read an article about Fenton and his Double Eagle and called his mother to see if Switt had kept any more of the coins. The district court that presided over the litigation between the Langbords and the government noted that, "[Joan] Langbord asked the jury to believe that she never knew about the coins until 2003, a year after the only publicly known '33 Double Eagle sold for millions." It then observed that "the jury was not impressed" with this version of events.

Regardless of the circumstances surrounding their discovery, in 2004, an attorney representing Joan Langbord and her sons, David and Roy, notified the U.S. Mint that his clients were in possession of 10 Double Eagles. The attorney, who had previously represented Fenton, indicated that the Langbords were interested in an arrangement similar to the one the government had entered into with Fenton. The U.S. Mint was "amenable" to that possibility. The Langbords made their Golden Eagles available for authentication but expressly reserved their rights to the coins. Shortly thereafter, all of the agencies involved—the U.S. Mint, the U.S. Attorney's Office, the Secret Service and the Department of Treasury—met to discuss how to proceed. All of the agencies, except the U.S. Mint, were in favor of pursuing forfeiture. The U.S. Mint argued that the coins were government property, stolen from the U.S. Mint, and therefore should be returned without the need for forfeiture.

After the coins were authenticated, the Langbords requested that they be returned, but the U.S. Mint refused. The Langbords responded by submitting a "seized asset claim" demanding the return of the coins. Under the Civil Asset Forfeiture Reform Act (CAFRA), which was passed in 2000 as a reaction to "public outcry over the government's too-zealous pursuit of civil and criminal forfeiture," this filing started the 90-day clock within which the U.S. Mint had to either file a judicial civil forfeiture proceeding or return the coins. When the U.S. Mint refused to do either, the Langbords sued, alleging, among other things, that the Government violated CAFRA and violated their Fourth and Fifth Amendment rights.

Both sides moved for summary judgment. The district court ruled in favor of the government on the Langbords' CAFRA claim, holding that the 90-day deadline to return the coins or file a forfeiture action did not apply because it only "applies to non-judicial civil forfeitures and no such forfeiture had occurred here." The district court reasoned that a nonjudicial civil forfeiture is commenced when the government sends notice of the forfeiture proceedings to potential claimants. Since the government never sent this notice to the Langbords, the government never commenced a nonjudicial civil forfeiture, and

the 90-day deadline did not apply. But, the district court ruled in favor of the Langbords on their Fourth and Fifth Amendment claims. Somewhat ironically, the district court held that the remedy for this violation was for the government to return the coins or file a judicial civil forfeiture proceeding. In other words, the district court held that the government had to do exactly what CAFRA required, just without the 90-day deadline.

The government then filed a judicial civil forfeiture complaint, which (1) alleged that the Double Eagles should be forfeited because they were stolen and (2) sought a declaratory judgment that they were, and had always been, government property. The first claim was tried to a jury, which concluded that the Double Eagles had been stolen. As a result of this verdict, the district court entered judgment for the government on the forfeiture claim and the related declaratory judgment claim.

The Langbords appealed. In a 2–1 decision, a three-judge panel of the Third Circuit reversed the district court's decision on the CAFRA claim; vacated all decisions that followed that decision, including the jury verdict; and ordered that the government return the Double Eagles to the Langbords. The Third Circuit's decision can be boiled down to a relatively simple rationale—the district court misinterpreted CAFRA's plain language.

The Third Circuit held that the 90-day time limit set forth in CAFRA applies, not only to nonjudicial forfeitures, but whenever someone claiming that their property has been seized files a seized asset claim. The Third Circuit held that the government "cannot unilaterally ignore a seized asset claim" and thus avoid these requirements. Accordingly, the Third Circuit held that the government violated CAFRA. Based on this holding, the Third Circuit vacated the resulting declaratory judgment and ordered the Golden Eagles returned to the Langbords. At the end of its opinion, the Third Circuit offered a parting shot at the U.S. Mint's approach to the dispute: "At the insistence of the Mint and against the wisdom of the Secret Service and multiple other agencies, the government opted to ignore CAFRA. Now, the Langbords are entitled to the return of the Double Eagles."

The Third Circuit's decision will probably not be the last chapter in this saga. The government recently requested additional time to consider whether to seek en banc review of the panel's decision. This request was granted. Assuming that the government seeks review from the full Third Circuit, the next stop for the case, regardless of who prevails at an en banchearing, would be the U.S. Supreme Court, which seems like the most appropriate finale for a case that has already enjoyed a Forrest Gump–like journey through almost 100 years of history. Stay tuned.

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