

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In Re:	)	Case No. 07-CV-0153
	)	
LEVEL PROPANE GASES, INC., et. al.	)	
	)	Bankruptcy Case No. 02-16172
Debtors.	)	
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	)	JUDGE ANN ALDRICH
WILLIAM H. MALOOF,	)	
Appellant,	)	MAGISTRATE JUDGE PERELMAN
	)	
vs.	)	
	)	
LEVEL PROPANE GASES, et. al.	)	
Appellees	)	

ON APPEAL FROM THE UNITED STATES BANKRUPTCY COURT FOR THE  
NORTHERN DISTRICT OF OHIO EASTERN DIVISION

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**APPELLANT'S SUPPLEMENTAL SUBMISSION IN SUPPORT OF HIS  
MOTIONS FOR EVIDENTIARY HEARING, TO VACATE THE ORDER OF  
THE BANKRUPTCY COURT SUBJECT TO THIS APPEAL PURSUANT TO R.  
60(b)(2), F. R. Civ. P., AND TO WITHDRAW THE REFERENCE PURSUANT TO  
28 U.S.C. Sec. 157(d)**

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Now comes William H. Maloof, by and through counsel undersigned, and for his Supplemental Submission in Support of his Motions for Evidentiary Hearing, to Vacate the Order of the Bankruptcy Court subject of this appeal pursuant to R. 60(b)(2), F.R. Civ. P., and to Withdraw the Reference Pursuant to 28 U.S.C. Sec. 157(d), states as follows:

In June, 2003, Brian Salvagni testified before the Examiner at length regarding the disposal of corporate documents in March, 2003. Upon completing this testimony, while still under oath, he was asked “Is there anything else about the document destruction issue or any other issue that you think the examiner should be aware?” To this question, Mr. Salvagni replied at length concerning the conduct of Benesch, Friedlander, Coplan & Aronoff’s between June 4, 2002 and June 6, 2002, concluding that the conduct “clearly created a significant problem for the company.” (Salvagni Statement to Examiner Docket Item No. 1630, June 2, 2003 at 78, 1.19-79 1.7, Ex. “A.”) Almost three years later, Patrick Tighe testified that he had observed massive document disposal in December, 2002. He further testified that he had informed Mr. Salvagni immediately upon so observing it. (Tighe Deposition, March 29, 2006, Docket Item No.2960, at 14.11 5-15., Ex. “B.”) Clearly, Mr. Salvagni knew of the December, 2002 document disposal, but held his silence concerning it (for context see footnote 1, *infra*.) Since so testifying in 2006, Mr. Tighe has been unable to reach Mr. Salvagni, with whom he had maintained a casual, but regular, business relationship as an insurance broker and safety consultant. He

brought this circumstance recently to the attention of Mr. Maloof, in an effort to ascertain whether Mr. Salvagni might be avoiding him for any reason.

When Suzanne Arena informed the Appellant several days later that Mr. Salvagni's spouse had threatened divorce over an "illicit legal deal" in which he was said to have received "a million dollars" but abandoned the threat once she became pregnant, the Appellant attempted to find out what that "illicit deal" might have been. A search of Mr. Salvagni's name on the Google.com search engine revealed a most extraordinary coincidence: that Mr. Salvagni was named as an un-indicted co-conspirator in *United States v. Triana* 468 F.3d 308 (6<sup>th</sup> Cir., 2006) More extraordinary, the conduct in which he was involved, Medicare fraud, occurred in 1998 through 2004, simultaneously with and subsequent to Mr. Salvagni's employment at Level Propane Gases, Inc.

Dr. Triana, a podiatrist, had been previously convicted of Medicare fraud, and as a condition of probation, he was not to bill Medicare or participate as a principal in any Medicare provider in any manner.

"Nonetheless, *with the help of Salvagni, his corporate attorney and friend*, Triana was able to create two new companies, Footcare and Podiatry Admin., and use them in a scheme that would enable him to participate, benefit from, and control a podiatry practice that billed Medicare." *Triana, supra*, at 311, emphasis supplied.

Mr. "Salvagni stated that though he helped to create Footcare and Podiatry Admin., he informed Triana that to comply with the law" *Triana, supra*, at 317. Nevertheless,

"At trial, Peck testified that both *Triana and Salvagni* had assured her that after signing the appropriate paperwork, she would be "relieved of all responsibilities" regarding Podiatry Admin., including ever having to visit the company headquarters in Ohio. In return for permitting Triana to use her name, Peck received a \$500 monthly stipend from the Podiatry Admin. account" at 312, emphasis supplied.

more vitally, his prior conduct with respect to Dr. Triana is indeed a telltale that a conspiracy existed to destroy Level Propane as a going concern from March, 2002 to the Bank Group's ultimate success in June, 2003, when all its going-concern assets were sold, and it was stripped of any capacity to do any business whatsoever. Indeed, had Mr. Salvagni addressed the December, 2002, document destruction, he would have pointed to a pattern, instead of away from it, he would have spoken to the cover-up, instead of away from it, and the Examiner, fortified with the knowledge of a continuing cover-up, would have had to have reached a different conclusion than that he "discovered no evidence that any documents were improperly shredded or discarded by the Debtors," Examiner's Report at 104, Docket Item No. 1616, USBC, NDO Case No. 02-16172.

Had this different conclusion been reached, Level Propane would have been spared its dismemberment and the millions of dollars in 2002-2003 heating season receipts would have been in the Debtors' account, where they belonged, rather than in the going-concern asset-purchaser's account at another bank entirely, as stated by Jeff Kessler.

Thus, Mr. Salvagni's conduct, as in the *Triana* case, *supra*, while suspect in itself, is more significant for what it indicates: that there was indeed a pattern of destruction to hide and that those with the means and the will to hide it were determined to do so. Moreover, the facts of record in the *Triana* case, *supra*, and what has been related to the Appellant as stated above, point to the dismemberment of Level Propane Gases, Inc. as Mr. Salvagni's "million-dollar" deal.

Mr. Salvagni's role in the *Triana* conspiracy makes an uneasy parallel to his role at Level Propane Gases, Inc. during its dismemberment in the Bankruptcy Court.<sup>1</sup> Not only was he actively present in both, but Ms. Peck's coerced role parallels that of Leah Foster, who observed that "Mr. Salvagni was not forthcoming about the documents," and that Mr. Angart's office "had been cleaned out," but could not speak up because, she, like Ms. Peck, was in straightened financial circumstances. While Ms. Peck needed the money, Ms. Foster needed to keep her job as the paralegal at Level Propane. Whatever Mr. Salvagni's role in the cover-up at Level Propane, that he had a role speaks emphatically to the cover-up's existence, especially when he complained to Patrick Tighe, who advised Mr. Salvagni of the December, 2002, document destruction, that "everyone was making a fortune off this bankruptcy but me."

While it might be said that his participation in the Triana Medicare fraud indicates lack of mistake on his part in a conspiracy at Level Propane, see R. 404(b), Fed. R. Evid.,

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1. The March 1, 2003 attempt at document disposal that was the subject of Mr. Salvagni's testimony to the Examiner was concomitant with the intense press scrutiny (see Crain's Cleveland Business News Article "Fired Benesch Attorney Alleges Firm Misconduct" March 3, 2003 issue, released February 28, 2003, Ex. "C") arising from the briefly unsealed cross-claim of Marc Schlachet against BFCA, James Hill and Jeffrey Schwartz in *Safeco et al. v. BT Commercial et al.*, Adv. Proceeding Case No. 03-1009 USBC, NDO, Docket Item No. 24. To assure that his efforts to cover-up the document destruction succeeded, the document destruction which, with the mountain of customer checks concealed in the basement of the headquarters building (see Kessler Statement, Ex. "D") were vital to misrepresentation of the assets of the Debtor Level Propane, Mr. Salvagni had to be certain that Anthony Pressly never told his account of the March, 2003 document disposal to any investigator. To accomplish this end Mr. Salvagni set up an interview of Mr. Pressly, with men not even known to Debtors' Counsel, who advised Mr. Pressly to obtain counsel (see Pressly Deposition, Docket 2960, at 15, l 21- 16, l. 13, Ex. "E") and then be outside the door of the interview room with a list of criminal defense lawyers for Mr. Pressly. The lawyer that Mr. Pressly hired succeeded in keeping all the investigators away from him (Pressly Deposition Docket 2960 at 27 ll.5-7, Ex. "F.") Mr. Salvagni, having procured Pressly's silence just a day prior to Mr. Salvagni's placement on administrative leave, he was able to easily divert the Examiner's attention from any possible pattern of document destruction after he resigned as General Counsel for Level Propane. Thus, Mr. Salvagni, working, as to this particular project, in concert with Mr. Sues, Mr. Anter and Mr. Angart, took the initiative that was expected of him by the Bank Group: he silencing Mr. Pressly and misdirecting the Examiner, as Mr. Sues gave an affidavit (Docket Item No. 1160, at 21-22, Ex. "G") to vouch for the progress of the document disposal investigation that permitted Mr. Pressly, the person assigned by Mr. Angart to dispose of the documents in question, to go without an interview by Mr. Kirsanow (Pressly Deposition, Ex. "F," *supra*), just as Mr. Anter's precipitous resignation as President of Level may have shielded Mr. Anter from both Kirsanow and the Examiner.

It is well established that an attorney is capable aiding in a client's fraud, *United States v. Connery* 867 F2d 929 (6<sup>th</sup> Cir., 1989), and that whether he had the knowledge of the facts, and the intent to advance the scheme of those with whom he was intimate may be reasonably inferred from the whole of circumstances, *United States v. Brown* 943 F2d 1246 (10<sup>th</sup> Cir., 1991), or when he had "his foot in all the elements of transaction that led to the fraud," *Wallace v. United States* 281 F2d 656, 659-60 (4<sup>th</sup> Cir., 1960), see footnote 1, *supra*. Mr. Salvagni, failing to disclose the facts at his disposal, requested by the Examiner, volunteered an answer that sent the Examiner in a direction away from the inquiry as to whether the March, 2003 document disposal was an isolated instance or part of a sustained effort to cover up the active scheme to destroy Level Propane as a going concern, *United States v. Schafrick* 871 F2d 300 (2d Cir., 1989). That he did so, in light of his conduct in *Triana, supra*, was not a mistake, R. 404(b), Fed. R. Evid.

In conclusion, for the additional reasons set out above, based on inferences and information not previously available to the Appellant, Appellant hereby urges this Court to grant the relief requested in his initial Motions for Evidentiary Hearing, to Vacate the Order of the Bankruptcy Court subject of this appeal pursuant to R. 60(b)(2), F.R. Civ. P., and to Withdraw the Reference Pursuant to 28 U.S.C. Sec. 157(d).

Respectfully Submitted,

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SERVICE

I hereby certify that on this 13<sup>th</sup> day of June 2007, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/David C. Eisler

David C. Eisler, Counsel for the Appellant