

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

2006 JAN 31 AM 10:16

In Re:)
Level Propane, Gases, Inc., et. al.) Case No. 02-16172
)
) Ch. 11
)
) Hon. Randolph Baxter
)

CLERK OF THE COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

MOTION OF WILLIAM H. MALOOF TO REOPEN EXAMINER'S
INVESTIGATION AND FOR SUBSTITUTE EXAMINER

Now comes William H. Maloof, pro se, and for his Motion to Reopen Examiner's Investigation and for substitute Examiner states as follows:

1.) On pages 102-105 of his report, the Examiner addresses the document destruction by Bob Angart and others relating to the business affairs of the then Debtor in Possession, Level Propane Gases, Inc. It is of note that the name Angart and Anter, are used interchangeably throughout the report. It is of further note that the Examiner's report is silent as to the conduct of Paul Lowe, a manager for Dick Jacobs, who destroyed Level Propane documents during this Bankruptcy proceeding, see submissions made *in camera*. The Examiner relied on the Affidavit of Steven Sues, the Chief Executive Officer of the Debtor in Possession at the time, and interviews with employees John Verbos, Brian Salvagni, and Glenn Pollack as to a single incident of document disposal. Your Movant asks this Court to address multiple instances of document disposal and shredding.

2.) Relying on these statements, the Examiner stated on page 104 of his Report that he

“is aware of no allegation that the retrieved documents were subsequently discarded or destroyed or that there were any other instances of improper document destruction by the debtors.”

The examiner further states that “No other witnesses reported that any documents were destroyed.” The examiner noted that such destruction would have been a violation of 18 USC Sec. 1819, a criminal offense.

3.) However, new evidence has recently come to Movant’s attention that demonstrates conclusively that *repeated document destruction took place*, a possible criminal offense under 18 USC 1819, and that the documents destroyed were critically important customer and financial records which, were they disclosed to this Court, would have established that, at the time of the filing of the involuntary petition, the Debtor was solvent but for the misconduct of its lenders, see Exhibits “A” and “B,” submitted *in camera*. Such document destruction was clearly improper as it went to the very justification for the filing and maintenance of the present bankruptcy case in this Court, see, generally, *Hazel-Atlas Glass Co. v. Hartford-Empire Co*, 322 U.S. 238 (1944).

4.) Further, it has come to the attention of your Movant that the *evidence here presented was available to Mr. Kirsanow’s firm, but was deliberately suppressed and the witnesses silenced by sustained and emphatic coercion, thereby stonewalling the investigation*. More corrosive to the public confidence in the Courts and the legal profession than bribery, which involves the voluntary corruption of both the party offering and the party receiving the bribe, the coercion to which the witness was subjected was the sustained threat that were he to break his silence, he would be subjected to criminal prosecution for unspecified crimes which, it was suggested, he may have had already committed, and that they ought seek legal counsel to manage their

exposure. Such coercion consisted of a threat to the victim's livelihood, his personal freedom, and the survival of his family. In this instance, one of the witnesses whose evidence has been submitted, hired counsel at the suggestion of the Benesch firm and to which he was directed by Bryan Salvagni, at a cost to him of over \$4,000.00.

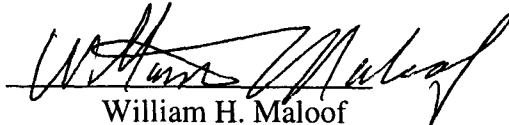
5.) Further, upon information and belief, this new evidence compels the Examiner to review the conduct of Peter Kirsanow, a partner of the Benesch firm, as to his role in condoning this document destruction. Mr. Kirsanow stood before this Bankruptcy Court to personally assure it that he would make a full investigation of any impropriety, see attached transcript, Exhibit "C". At the time of the incidents, upon information and belief, he was the Debtor's direct link with the Benesch firm and rendered legal advice as to every aspect of this operation. .

6.) Further, upon information and belief, Movant submits that the appointment of a new Examiner would be prudent, one who is a career federal civil servant, in order to assure fresh impartiality in the investigation of the conduct above described, 28 USC Sec. 455. The present Examiner relied on the word of those who may be involved in multiple frauds and now, it is disclosed, possible multiple crimes, and that reliance may lead to an appearance of acquiescence to Mr. Kirsanow's whitewash of his confederates. The most effective means to cut off the appearance of any such acquiescence would be the appointment of a substitute examiner.

WHEREFORE, for the reasons set forth above, Movant prays that the examination of the Debtor's management teams conduct with respect to the Debtor in Possession be reopened as to the document destruction these new affidavits establish. Further, Movant requests the appointment of a new examiner untainted by the appearance

of acquiescence to Mr. Kirsanow's bullying tactics to whitewash his confederates' misdeeds. Further, Movant requests an hearing on this motion be set at the Court's earliest opportunity.

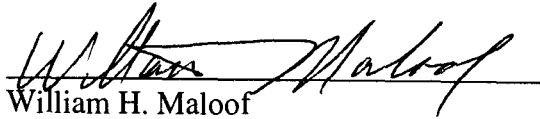
Respectfully Submitted,


William H. Maloof

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SERVICE

Service has been made on those listed on the attached form, by ordinary mail according to Rule, this 31 day of June, 2006.


William H. Maloof