

FILED

2008 Jun 18 AM 01:21

CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

EXHIBIT 7

Brokmond Interview

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

3 IN RE:)
4 LEVEL PROPANE GASES, INC., et al,)
Debtor,)
5

6

7

8

9

10 STATE OF ILLINOIS)
11 COUNTY OF C O O K) SS.

12 The interview of SHAY BROKEMOND taken
13 before Christine Bechtold, Certified Shorthand
14 Reporter and Notary Public within and for the County
15 of Cook and State of Illinois at 77 West Wacker
16 Drive, Chicago, Illinois, commencing at the hour of
17 2:50 p.m., on the 2nd day of June, A.D., 2003.

18

19

20

21

22

23

24

1 A P P E A R A N C E S:

2 GREENBERG TRAURIG PC, By
3 MS. NANCY A. PETERMAN
MR. JOHN T. GREGG
4 77 West Wacker Drive, Suite 2500
Chicago, Illinois 60601
(312) 456-8400

2 there still more work going on?

3 A. This wasn't the end of the process.
4 This was -- this appears to be a summary of the
5 stalking horse bids that we received. So we
6 requested that bidders -- when you're trying to
7 identify a stalking horse, we requested that people
8 submit definitive bids and this appears to be a
9 summary of those bids.

10 Q. So this is a summary put together in an
11 effort to identify a stalking horse?

12 A. Yes.

13 Q. Was a stalking horse ever identified?

14 A. No. After these bids were received, it
15 was determined that a stalking horse would not be
16 selected. So letters were subsequently sent to all
17 of these bidders informing them that no stalking
18 horse would be selected.

19 Q. Who decided not to select a stalking
20 horse?

21 A. I'm not sure who actually made the
22 decision. I know that there was a lot of discussion
23 about it, and I know that several people spoke up and
24 waited on the decision. I'm not sure exactly who

13

1 made the final decision.

2 Q. Do you remember who was involved in the
3 decision-making process?

4 THE WITNESS: Do you mind if I
5 consult?

6 MS. PETERMAN: Do you want to take a
7 break off the record for a moment?

13 process?

14 A. Mostly on the weekly calls we would walk
15 away from the calls with certain instructions, and
16 those instructions were -- I don't want to say that
17 Jeff Marwil personally instructed us, but decisions
18 were made on the calls, I guess by the group, and
19 Jeff Marwil definitely, in my opinion, influenced
20 those decisions based on participating in the call.
21 I mean, he always spoke frequently and quite often
22 the decision was in line with his desires.

23 Q. Okay. After September 3, 2002, which is
24 the date of the e-mail that we've been talking about
20

1 which is Exhibit 120, you mentioned that you had
2 contacted other potential buyers for the company and
3 some of them had submitted bids or expressions of
4 interest. What was the next step in the process?
5 Was there an auction held?

6 A. There was an auction held, yes.

7 Q. Do you remember when that was?

8 A. That auction was on -- I think the date
9 was September 23.

10 Q. Okay.

11 A. Well, there was a scheduled auction.
12 The auction was never actually held.

13 Q. What do you mean by that?

14 A. I mean the auction was scheduled,
15 bidders submitted bids in advance of the auction. As
16 a matter of fact, they were due, I think, the Friday
17 before the auction, and interested bidders were
18 required to submit a deposit as well. Many of them

□

1 STATE OF ILLINOIS)
 2 COUNTY OF C O O K) SS:

3

4 CHRISTINE BECHTOLD, being first duly
 5 sworn on oath says that she is a court reporter doing
 6 business in the City of Chicago; that she reported in
 7 shorthand the proceedings given at the taking of said
 8 interview and that the foregoing is a true and
 9 correct transcript of her shorthand notes so taken as
 10 aforesaid and contains all the proceedings given at
 11 said interview.

12

13

14

15

CHRISTINE BECHTOLD, RPR
 License No. 084-003575

16

17

18

19

20

21

22

23

24

□

19 did not simply because of logistical issues.

20 we did show up. The auction was to be
21 held at Benesch Friedlander's office. We went there
22 and we had discussions with the bidders who were
23 there, but there was -- the auction was actually
24 canceled before it was held.

21

1 Q. You mentioned that some bids were
2 submitted, and you indicated others weren't because
3 of logistical issues. What did you mean by that?

4 A. We actually received the letters with
5 marked up contracts, but many parties did not submit
6 the actual deposits because the wiring instructions,
7 quite frankly, were sent out really late on Friday,
8 the day that the deposit was due. So it simply
9 didn't allow people enough time.

10 Q. To get in the deposit?

11 A. Right.

12 Q. Why were the wire instructions sent out
13 so late?

14 A. Because we received them that afternoon
15 from Benesch Friedlander. We received them late, so
16 as soon as we received them we forwarded them on. I
17 don't know why we received them late.

18 Q. You were waiting for them from Benesch
19 Friedlander?

20 A. We were waiting for them from Benesch.

21 Q. Do you remember what bidders showed up
22 at the auction?

23 A. Yes. United Propane, Wynnchurch, and --
24 Eagle Rock showed up, but they actually withdrew

8 THE WITNESS: Please.

9 (whereupon a short break was
10 taken, after which the
11 following proceedings were
12 had:)

13 MR. OPINCAR: Thank you.

14 BY MS. PETERMAN:

15 Q. Okay. I forgot my question. Do you
16 remember the question or should we read it back?

17 A. I think so.

18 (whereupon the question
19 portion of the record was
20 read as requested.)

21 THE WITNESS: That's the decision not
22 to select a stalking horse. I know that there was a
23 lot of discussion around that. I'm not sure who made
24 the decision. I know it involved the debtor's

14

1 counsel, obviously a representative from the debtor,
2 Steve Sues, as well as bank representatives and their
3 counsel.

4 BY MS. PETERMAN:

5 Q. Is debtor's counsel Benesch Friedlander?

6 A. Yes.

7 Q. Bank's counsel you mentioned was
8 involved in the discussion, is that Jenner & Block?

9 A. Yes.

10 Q. Was that Jeff Marwil?

11 A. Yes.

12 Q. And you mentioned bank representatives
13 were involved in the discussions. Do you remember

14 who the representatives were?

15 A. I know that their bank representatives
16 were Bill Howe and Wayne Hillock. I don't remember
17 all of the details as to who specifically was
18 involved in all of these discussions and exactly when
19 the decision was made.

20 Q. Okay. Once the decision was made, let's
21 say sometime in early September 2002, not to select a
22 stalking horse, what happened next?

23 A. We sent a letter to the parties who
24 submitted bids for stalking horse and we gave them
15

1 instructions, as well as publicized -- provided other
2 people instructions as well for the auction that
3 would actually occur later in September.

4 Q. And did you continue contacting
5 potential buyers?

6 A. We did, yes. We continued contacting
7 potential buyers. We continued to assist potential
8 buyers in follow-up due diligence as well.

9 Q. Do you remember if you received any bids
10 in addition to what's listed on this sheet, on
11 Exhibit 120?

12 A. There was actually another bid deadline
13 after this one. I think the issue, from what I
14 recall, with the stalking horse bids is that in this
15 phase of the process we asked bidders to submit bids
16 as if the assets were owned free and clear, which
17 they obviously weren't, you know.

18 So we did ask other parties in other --
19 yes, these bidders as well as any other to submit