

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

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

**POST-HEARING BRIEF IN SUPPORT OF THE RENEWED AND RESTATED
MOTION OF WILLIAM H. MALOOF TO REOPEN EXAMINER’S
INVESTIGATION AND FOR SUBSTITUTE EXAMINER**

“A Passion for Control: Recapitulation”

Now comes Maxus Leasing Group, Tal Financial Services and William H. Maloof, by and through counsel undersigned, and for their Post-Hearing Brief in Support of his Renewed and Restated Motion to Reopen Examiner’s Investigation and for Substitute Examiner state as follows:

1.) A brief recapitulation will assist the Court to assess the unfolding evidence: a number of the Equipment Lessors filed an Equitable Subordination action (Docket 1038), in which was alleged that the Bank Group took such control of the Debtor that it rights to any monies from the estate should come after the Equipment Lessors recovered on their

claims. In pursuit of this action, the Equipment Lessors filed a Request for Production which asked for documents reflecting the customer tanks in the Debtor's (Level Propane's) possession. The Bank-installed management of Level responded to this request was by balking the creation of a customer account/tank SN spread sheet, which could be created by a single keystroke, and by moving the entire pre-bankruptcy customer account reconciliation library out of the Level headquarters building. This library held the complete hard-copy history of the customer accounts as hundreds of thousands of paid self-mailing statements, which identified each leased tank by location for the 10 years preceding the bankruptcy and of such locations since the bankruptcy. With fully 90% of these records out of building, see Statement of Suzanne Arena (Sixth Supplemental Submission, Ex. "A," Paragraph 11) it could be claimed that it had only recent, scant, records of customer accounts. This library continued its operation off-premises, see above-mentioned Statement of Suzanne Arena, paragraph 10. As a result of these steps, the hard-copy records of 35,000 customer accounts were thereby hidden. When Debtor's Counsel declares that this was an "act of charity not collusion" in its Objection, and in the hearing of this Motion, they acknowledge that the customer account reconciliation library indeed left the building, but seek to negate its central role in the operation of the going concern, see above-mentioned Statement of Suzanne Arena, paragraph 10.

2.) When the first Examiner was appointed in April 2003, the Bank-installed management of Level sought to conceal the existence of all the customer accounts prior to April, 2002, by disabling the customer account database (the MODI functionality discussed in the Fourth and Fifth Supplements), so that information that might reveal the

leased customer tanks were exactly where they ought to be would be unavailable to him. The apparent collateral purpose of this customer account concealment was to conceal the approximately 35,000 leased tank locations, some of which had multiple tanks, so that the equipment lessors would be frustrated in their pursuit of a remedy, and the Banks could continue to represent that it was William Maloof who wrongfully took these many thousands of leased customer tanks. The leased customer tanks, however, were where they were supposed to be all the while: behind customers' houses. By making it all but impossible to identify the location of each particular leased customer tank, the Banks succeeded in hiding these tanks in plain sight. Meanwhile, a restricted-access database was brought back online after the Examiner had filed his report with the Court, so that it was possible to deal with these concealed customers' queries or problems, see above-mentioned Suzanne Arena Statement, paragraph 8.

3.) By their claim that the leased customer tanks were lost, the Banks were able to drive a cruelly lop-sided bargain in the Global Settlement. Bear in mind that a whirl-wind of activity took place to close the affairs of the Estate following this Court's April 14, 2003 appointment of the Examiner (Docket 1281) : on April 15 (Docket 1288, 1289), the Debtor filed its proposed Plan of Reorganization, on April 18 (Docket 1298), the Bank Group endorsed it without reservation, on April 28, the proposed Global Settlement was filed, on April 29 (Docket 1343), the proposed Sale of Assets to Eaglerock, and the Comments of BT Commercial regarding the scope of the Examiner's Investigation on April 29 (Docket 1351). When Eaglerock Propane purchased the assets of Level Propane for a tiny fraction of their value, the scheme had almost reached its end. The Equipment Lessors were punished by the loss of over \$20MM, and these hidden assets, 35,000

customers and 35,000 leased customer tank locations, passed out of Level's control. When these assets were packaged as Horizon Propane and Horizon sold to Amerigas, these 35,000 hidden customers and leased customer tanks passed to Amerigas as assets of Horizon. From Amerigas, the hidden tank inventory likely passed to its parent, UGI. In this way, the Banks were able to engineer the theft and secret sale of approximately 43,000 leased customer tanks at 35,000 customer locations without touching a single piece of equipment. While this claim might seem to be one of those "wild assertions of unsupported fact," its truth is again born out by the Statement of Suzanne Arena, submitted as the Seventh Supplement Submission. In this Statement, Ms. Arena describes the effort to recover Level customer managed by Andrew Green. As presumptively lost customers were contacted to return to Level Propane, they said uniformly that they had a Level tank in their yard and they were indeed Level customers, see the second (Seventh Supplemental Submission) Arena Statement, paragraph 4. The customers that so responded to this cosmetic effort to bring them back were among those whose tanks were furtively transferred first to Eaglerock and ultimately to Amerigas.

4.) These extraordinary events came to light as your initial Movant followed the trail of the evidence, and one incident led to further questions, which then led to further revelations. This Court has the power to address these piling outrages by seeing to it that the evidence and the facts are publicly laid out through the efforts of an Examiner. This unique and salutary power exercised in this case will protect the Court and the public from further depredations by those who have come to act as if the law existed for their convenience.

Wherefore, having further supported his Renewed and Restated Motion to Reopen Examiner's Investigation and for Substitute Examiner, the Movant prays that it be granted.

Respectfully Submitted,

/s/ David C. Eisler

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SERVICE

I hereby certify that on this 9th day of July, 2006, 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 William H. Maloof