

N.A.S.D. REGULATION, INC. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Level Propane Gases, Inc.

96-04412

Name of Respondents

Smith Barney Shearson, Inc., now known as
Smith Barney Inc.;
Lawrence J. Milne;
Fareed Siddiq

REPRESENTATION

For Claimant: Level Propane Gases, Inc. ("Level Propane") was represented by Hugh McKay, Esq. of the Law Offices of Porter, Wright, Morris & Arthur, located in Cleveland, Ohio.

For Respondents: Smith Barney Shearson, Inc., now known as Smith Barney Inc. ("Smith Barney"), Lawrence J. Milne ("Milne") and Fareed Siddiq ("Siddiq") were represented by Jeffrey L. Friedman, Esq., of Smith Barney, Inc. located in New York, New York.

CASE INFORMATION

Statement of Claim filed: October 3, 1996.

Claimant's Submission Agreement signed on: October 1, 1996

Statement of Answer filed by Respondents on: January 14, 1997.

Respondent Smith Barney's Submission Agreement signed on: January 9, 1997 by Jeffrey L. Friedman, Esq., Senior Vice President and Associate General Counsel of Smith Barney, Inc.

Respondent Milne's Submission Agreement signed on: January 10, 1997.

Respondent Siddiq's Submission Agreement signed on: January 10, 1997.

HEARING INFORMATION

Pre-Hearing Conference:	October 8, 1997 before One (1) arbitrator; October 22, 1997 before One (1) arbitrator.
Hearing Dates/Sessions:	November 14, 1997 for Two (2) sessions; November 17, 1997 for Two (2) sessions; and February 11, 1998 for Three (3) sessions.
Hearing Location:	Cleveland, Ohio.

CASE SUMMARY

Level Propane alleged that the Respondents engaged in the wrongful conversion of assets, fiduciary violations, bad faith and other actionable misconduct. The Claimant specifically alleged the following:

An essential aspect of carrying out Level Propane's business was to hedge propane as a futures commodity. In 1991, Level Propane turned to Smith Barney to handle its commodities hedging account because of the brokerage firm's vast resources and highly touted expertise in futures commodities. Smith Barney knew that Level Propane would take and make deliveries of propane depending on its business cycle and market conditions, especially in the colder fall and winter months. By December 1995, Smith Barney and Level Propane had established a pattern of allowing Level Propane to take and make delivery of propane without prepayment.

In December 1995, Level Propane had built up open positions in 63 propane futures contracts for January delivery which Smith Barney knew or should have known Level Propane would take delivery on. Nevertheless, in the critical winter month of December 1995, without advance notice and having violated its own internal policies, Smith Barney willfully refused to permit Level Propane to take delivery on the very propane contracts Smith Barney had brokered for Level Propane. Smith Barney demanded advance payment by January 2, 1996, then unilaterally moved the deadline up first from January 2 to the end of business on December 29, 1995. Then, failing to give Level Propane the time which had been promised and without authorization, Smith Barney liquidated Level Propane's 63 January propane contracts during the morning of December 29, 1995, wrongfully converting Level Propane's contracts and deliberately preventing Claimant from taking delivery of its propane at the most crucial time of its business year.

Level Propane has brought this action against Respondents for the following claims: conversion, breach of fiduciary duty, breach of contract, breach of good faith and fair dealing, gross negligence, and negligence.

Respondents denied all of Claimant's claims in its Answer, alleging that Claimant's claims were meritless.

Respondents contended that they were told on Tuesday, December 26, 1995 by Claimant's owner and President that Level Propane intended to take physical delivery of approximately \$1.1 million of liquid propane pursuant to 63 January 1996 liquid propane futures contracts held in Claimant's account. In response, Claimant was advised by Respondents that it had to pay for the propane prior to taking delivery and ultimately by Friday, December 29, 1995—the last trading day for the contracts at issue. In the alternative, Respondents advised Claimant that it could provide a letter of credit, transfer the futures contracts to another firm or liquidate the contracts by Friday, December 29, 1995.

Respondents contended that its actions were consistent with the parties' contracts and that Level Propane violated the parties' prior course of dealing under the facts of the case. Respondents also

contended that Level Propane inappropriately relied on NYMEX Rules 230.14 and 9.04 (P)(1) to support Level Propane's claims in the Statement of Claim.

Respondents also claimed that Level Propane did not suffer any monetary damages resulting from any act of Respondents, and failed to mitigate any damages that it suffered under the facts of the case.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$500,000, punitive damages, attorneys' fees, expert witness fees and interest.

Respondents requested that the Statement of Claim be dismissed in its entirety, that the costs of this proceeding be assessed against Claimant, and that this matter be expunged from the records of Respondents Milne and Siddiq.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Prior to the commencement of the hearings, Claimant made a motion to file an Amended Statement of Claim. The panel denied the motion.

At the conclusion of Claimant's case at hearing, Respondents made a motion for a directed verdict which the panel denied.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein;
3. The undersigned arbitrators hereby order the expungement of this arbitration case from the Central Registration Depository ("CRD") of the National Association of Securities Dealers, Inc. for the record of Lawrence J. Milne (CRD number 336225) and Fareed Siddiq (CRD number 726409); and

4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$1,000.00 postponement fee and the \$135.00 cost for audiotapes paid by Respondent Smith Barney Inc. In addition, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$150.00 cost paid by Claimant Level Propane Gases, Inc. for the speaker phone used at the hearing.

FORUM FEES

Pursuant to Rule 10332[c] of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) pre-hearings before One (1) arbitrator x \$300.00 = \$600.00; Seven (7) hearing sessions x \$1,000.00 per session = \$7,000.00; Total forum fees = \$7,600.00.

The NASD Regulation, Inc. Office of Dispute Resolution shall retain the \$250.00 non-refundable claim filing fee and, as forum fees, the \$1,000.00 hearing session deposit previously paid by Claimant Level Propane Gases, Inc. In addition, Claimant Level Propane Gases, Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$6,600.00 as additional forum fees.

Concurring Arbitrators' Signatures
Name

Date

/s/ Robert C. Devlin, Esq.
Robert C. Devlin, Esq.
Public Arbitrator

April 6, 1998

/s/ Lawrence M. Oberdank, Esq.
Lawrence M. Oberdank, Esq.
Public Arbitrator

April 3, 1998

/s/ David A. Rodriguez
David A. Rodriguez
Industry Arbitrator

April 3, 1998

For ODR Use Only

Date of Decision: April 7, 1998