THE SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE NUMBERS: CHI/00HC/LVL/2005/0002 – VARIATION OF A LEASE & CHI/00HC/LAM/2005/0005 – APPOINTMENT OF A MANAGER

IN THE MATTER OF THE HALL, 10 MEADOWS CLOSE, PORTISHEAD, BRISTOL

B E T W E E N:

(Case 0002)	**THE LESSEES C/0 MR R STRIBLEY**	Applicant
	-and-	
	MR WESTON	Respondent
	-and-	
(Case 0005)	**MR WESTON**	Applicant
	-and-	
	THE LESSEES C/0 MR R STRIBLEY	Respondent

Preliminary

The Tribunal had originally been requested to deal with two separate applications both concerning the property known as, The Hall, 10 Meadow Close, Portishead, Bristol. The applications were as follows:

1) Case number CH1/00HC/LVL/2005/0002, an application under Part IV of The Landlord and Tenant Act 1987 for the Variation of the Lease.

2) Case number CH1/00HC/LAM/2005/0005, an application pursuant to Section 24 of The Landlord and Tenant Act 1987 for the Appointment of a Manager.

A Pre Trial Review in respect of both matters was held on 18th June 2005. Directions were issued. A Hearing date was set for 12th September 2005 in respect of both applications and this was to be preceded by an inspection of the property.

On 12th September 2005, the Tribunal met, with the parties, for the purposes of the inspection at The Hall, 10 Meadows Close, Portishead, Bristol. The findings of the inspection were detailed in the decision dated 20th October 2005 which has already been circulated to all parties.

Following the inspection a hearing was held to hear both applications. The application for the Appointment of a Manager was concluded. The application for Variation of the Lease was "part heard" and was adjourned for further consideration at a hearing re-listed for 25th October 2005.

The application for the Variation of the Lease had been made by all the members of Down Hall Management Company Limited except the Respondent Mr Weston. The relevant term of the lease is set out in paragraph seven of the seventh schedule and reads as follows:

"To engage as Managing Agents a member of any recognised body of Estate Agents and to charge all expenses fees and costs connected therewith to the Maintenance Fund."

The Directors of Down Hall Management Company Limited wished the lease to be amended to read:

"To engage Managing Agents and to charge all expenses fees and costs therewith to the Maintenance Fund."

During the course of the Hearing on 12th September 2005 the Respondent made concessions in his evidence to the application for the Variation of the Lease. The Respondent stated in his evidence that he was not prepared to accept the Applicant's proposed variation but said, "...If you couple, 'Managing Agents with National Association of Estate Agents,' you should get a good result..."

As a result of this concession the Tribunal invited the parties to try and agree a new clause there and then in an attempt to conclude the issue without a further Hearing. The Respondent stated as follows, "I have no objection to the clause wording being changed but not to the wording on the application."

The Tribunal adjourned for a period for the parties to attempt to resolve the issue. The parties were not able to agree a revised clause on that day and the Hearing was adjourned. The Tribunal were not minded to alter the existing wording to the proposed draft in the application. The case was adjourned to the 25th October 2005 and the Applicants were invited to submit a revised clause that would hopefully meet with the Respondent's observations for a more widely drafted clause.

Hearing 25th October 2005

The Tribunal sat again on 25th October 2005 to consider the application to vary the lease. The Applicants had submitted a further amendment for consideration and this read as follows:

"To engage as Managing Agents a member of any recognised body of Estate Agents, Property Management Agents, or Landlords Associations, and to charge all expenses fees and costs therewith to the Maintenance Fund."

The Applicants argued there was a need to vary the existing clause as they considered it restricted the lessees' choice of Managing Agents and this had a direct impact on maintenance costs. They submitted that when the lease was drawn up property management was in its infancy and that the lease reflected the agencies involved in this type of service at that time but no longer reflected the range of service providers in the market today.

The Respondent at the second Hearing represented to the Tribunal that he was confused about the purpose of the Hearing. He made representations that he had not at any time during the earlier Hearing made any concessions to the Applicants concerning their application. The Chairman read to the Respondent a note of his evidence from the earlier

Hearing but the Respondent could not recall his previous comments and went on to refuse to accept that he had made these concessions at all.

The Respondent went on to produce to the Tribunal correspondence he had engaged in with Sheppards Solicitors. The Respondent had written to these solicitors on 19th October 2005. The Respondent, in that letter, advised the solicitors he, "on behalf of the Company", was opposing the application for Variation of the Lease. The solicitor to whom this correspondence was addressed was not called to give evidence in the case. The Respondent had not served this evidence prior to the Hearing on the Tribunal or the Applicants. The Applicants challenged the representations the Respondent had made to the solicitors that he was writing, "on behalf of the Company."

Decision

The Tribunal grant the application to vary the lease in the terms proposed by the Applicants on the 25th October 20095 so that the clause will now read:

"To engage as Managing Agents, a member of any recognised body of Estate Agents, Property Management Agents, or Landlords Associations, and to charge all expenses fees and costs therewith to the Maintenance Fund."

The existing clause was found to be restrictive resulting in a limitation of choice and a consequent risk of unnecessarily high costs arising from that lack of choice.

Evidence at the hearing on 12th September 2005 showed that only one agent in that area was willing to provide this service.

The existing clause limited service provision to Estate Agents only. The reality of the market is that many firms of Estate Agents are not involved in property management. There are no mandatory requirements placed upon Estate Agents that would ensure for the lessees a more professional level of service than that which could be provided by Property Management Agents or a member of the Landlord Association.

The Tribunal in making its decision took into account the Provisions of Section 87(7) and (8) of The Leasehold Reform Housing and Urban Development Act 1993. These Sections make provision that any codes of management practice approved by the Secretary of State concerning management functions of residential properties see Section 87(1) paragraphs (a) to (c) shall be taken into consideration in any proceedings before a Court or Tribunal where management issues are relevant in the case. Failure to comply would not in itself render a person liable to proceedings but any breach of the code would be taken into account if it appears relevant to any question in the proceedings see Section 87(7) and 87(8).

The evidence of the Respondent caused the Tribunal concern, particularly with regard to his failure to recall the concessions he had made to the application at the earlier Hearing. In addition, he had taken it upon himself to seek legal advice in relation to the application purporting to be acting on behalf of the Company but not having in fact consulted with

any other member of the Company and further failing to file his evidence upon the Tribunal or the other party prior to the Hearing. These issues caused the Tribunal significant concern and they allocated weight to the Respondent's evidence accordingly.

The Tribunal concluded that they must look to the future and the longer term for the benefit of existing and future leaseholders. The expansion of the existing clause would serve the purposes of, and be advantageous to all current and future lessees.

Signed: ....Siobhan Casey

Dated This 24th Day of November 2005