

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993
(AS AMENDED)

Ref: LON/NL/5523/06

Re: FLAT 5, 18 DOWNSIDE CRESCENT, LONDON NW3 2AP

APPLICANT: TALIA ZUBLI

RESPONDENT: ELIZABETH HODDY

APPEARANCES: TALIA ZUBLI
THE APPLICANT IN PERSON

REBECCA D MACE F.Inst.L.Ex, of Rosemary E. Hensby,
Solicitors
FOR THE RESPONDENT

MEMBERS OF THE LEASEHOLD VALUATION TRIBUNAL

MISS A SEIFERT FCI Arb
Mr J C AVERY FRICS

DATE OF HEARING: 28TH NOVEMBER 2006

DATE OF DECISION: 29TH NOVEMBER 2006

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Re: Flat 5, 18 Downside Crescent, London NW3 2AP

The Tribunal's decision

1. A Notice of Claim to exercise the right to acquire a new lease under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended ("the Act") dated 14th February 2006, was served by the Applicant, Talia Zubli, on the Respondent, Elizabeth Hoddy, in respect of Flat 5, 18 Downside Crescent, London NW3 2AP "the premises". Miss Zubli is the leasehold owner of the premises pursuant to a lease dated 5th July 1974 between Densham Slowe Developments Limited of the first part and Jacqueline Marie-Louise Messerli, Pierre Salvator Messerli and Marcelle Eugenie Messerli of the other part, for the term of 99 years from 25th March 1974.
2. In the Notice of Claim Miss Zubli, represented by B.D. Laddie Solicitors, proposed a premium for the grant of the new lease of £5000. The proposed terms of the new lease were:
 - (i) a term of years expiring on 24th March 2163 (an additional 90 years).
 - (ii) a peppercorn rent per annum.
 - (iii) the demise and the other terms as in the existing lease.
3. A Landlord's Counter-Notice under section 45 of the Act was served dated 18th April 2006. By the Counter-Notice the landlord admitted Miss Zubli's right to acquire a new lease of the premises, and also accepted Miss Zubli's proposals in the Notice of Claim in respect of the term, rent, demise and all other terms, save for the proposed premium. The landlord's counter proposal for the premium to be paid was £17,000.
4. By an Application dated 4th August 2006, Miss Zubli applied to the Leasehold Valuation Tribunal for a determination as to the premium to be paid. The parties were also unable to agree the Respondent's costs to be paid under section 60(1) of the Act.
5. Following Directions from the Tribunal, Miss Zubli provided a statement of case dated 17th October 2006. The Respondent provided a Statement in Reply dated 23rd October 2006.

6. A bundle of documents were provided to the Tribunal. This included correspondence between the parties' representatives commencing with a letter dated 13th June 2006. By a letter dated 14th November 2006 from the Applicant's Solicitors, B.D. Laddie, to the Respondent's Solicitors, Rosemary E Hensby, it was confirmed that the premium of £14,500 in respect of the lease extension had been agreed. The remaining outstanding issue was therefore the reasonable costs payable to the Respondent under the Act.

6. Section 60 of the Act provides that:

(1) "Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely -

(a) any investigation reasonably undertaken of the tenant's right to a new lease;

(b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;

(c) the grant of a new lease under that section;..... "

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs."

7. A hearing was held on 28th November 2006. Miss Zubli attended the hearing and made representations. The Respondent was represented by Miss R. D. Mace F.Inst. L. Ex. of the Respondent's Solicitors.

8. A Schedule of Costs was provided by the Respondent's Solicitors to the Tribunal. This set out the costs sought as follows:

"Investigation of Title of Tenant's right to a new Lease:-

Consideration of Lease, notices, advising and correspondence with client and Tenant's Solicitors, instructing surveyor, considering report	£500.00 (plus VAT)
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(charged less than 3 hours work)

Valuation fee:	Knight Frank	£1175.00 (inc. VAT)
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Grant of a new Lease:

(again less than 3 hours work)

£500.00 (plus VAT)"

9. Miss Mace told the Tribunal that she had been employed by Rosemary E Hensby LLB, Solicitor, practising at Goring by Sea, Worthing, West Sussex, for eighteen years. She mainly dealt with civil litigation, matrimonial and costs issues. The work in respect of the subject case had been carried out by Mrs Hensby herself. Mrs Hoddy was a long standing client of Mrs Hensby, who had acted for her in respect of other properties. The figures charged for that firm's professional fees were global figures. Miss Mace said that the charge would not have been any different had she done the work at her charging rate. The work in respect of the grant of the new lease would be carried out by Mrs Hensby herself as there was no one else currently at the firm capable of carrying this out. Miss Mace said that the statements on the schedule of costs "charged less than 3 hours" should have stated 2 ½ hours in each case. She said that this roughly equated to her charging rate of £170 per hour. She did not produce any time sheets in support of the fees claimed because the fee had been agreed on a global basis.
10. In respect of the professional fees of the Surveyors, Miss Mace produced an invoice for £1,175 including VAT from Knight Frank LLP, a well known firm of Chartered Surveyors, situated in central London, dated 29th April 2006. She produced a copy of a valuation report provided by Mr David Radford, an Associate at that firm. She also produced a copy of an e-mail from Mr Radford in which he stated the following:

"Further to your call to me earlier this morning I am writing to you in connection with the application by the claimant of the above in relation to the recoverable legal and valuation fees under S.60 of the 1993 Act.

Upon receipt of the papers I agreed a fixed fee for carrying out the valuation of the premium for the statutory lease extension of the above of £1,000 plus VAT. I should first say that this is below the minimum fee we quote of £1,500, but was offered on the basis that I had been instructed some time earlier in relation to another flat in the building. I was therefore familiar with the area and did not need to duplicate parts of the report.

The fee is the equivalent of 4 hours time at my current rate of £250 per hour, which is not excessive for a surveyor with the necessary expertise based in the West End. For this I had to carry out an inspection, reference the lease, research the latest evidence of sales, settlements and decisions, write the report with the accompanying valuation, all the time

liaising with you from time to time as appropriate. As I carried out the instruction on a fixed fee basis, I did not complete time sheets. However, I can assure you that it takes at least 4 hours, which is the equivalent of just one morning's work. Any report of this nature typically takes a day to finish, even if one is familiar with the area, so in the circumstances the fee is less than I might have charged.

On balance, as the premium agreed is very close to that which I had valued on your behalf, and nearly 300% higher than the figure first advanced by the tenant, it seems to me that the conclusion I came to in my report justified the time spent."

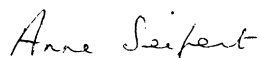
Miss Mace pointed out that the premium proposed by Miss Zubli on the advice of her valuer had been £5,000. Mr Radford's valuation of the premium in his report was £16,000. The premium finally agreed between the parties was £14,500. She submitted that this result justified using the expertise of Mr Radford of Knight Frank.

11. Miss Zubli, having heard the explanation provided by Miss Mace, told the Tribunal that she considered the first fee of £500 plus VAT on the Schedule of Costs (in respect of investigation of the tenant's right to a new lease etc.) to be reasonable. However she considered that the second figure of £500.00 plus VAT for work to be carried out in respect of the grant of the new lease was excessive and unreasonable. Miss Zubli had discussed this proposed charge with her own Solicitor who considered that the time taken would be no more than half an hour to one hour to complete the work. The demise and the terms of the lease were as contained in the existing lease, and the Solicitors would be familiar with any formalities required and have precedents available. She considered that the Respondent's long standing relationship with Rosemary E. Hensby did not justify the use of a Partner in a firm of Solicitors to carry out straightforward work. She also contended that she had found the approach of the Respondent and her Solicitors to be obstructive. However this was strenuously denied by Miss Mace.
12. In respect of the professional fees of Mr Radford, Miss Zubli said that the inspection of the premises had been very brief and had taken about seven minutes. She submitted that the valuation had been very straightforward and that it was not necessary for it to have been undertaken by a person of Mr Radford's seniority in a Central London firm. She had obtained quotations from other firms, the highest being £500 plus VAT. She considered that a reasonable charge for the work would have been £500 plus VAT.
13. The Tribunal considers that the charge of £500 plus VAT for the work in respect of the new lease is not a reasonable fee. The demise and terms

are as in the existing lease, and the variation to reflect the peppercorn rent and statutory requirements are minimal.

14. The fee charged by Knight Frank is, in the Tribunal's experience, at the high end of the range of fees charged by valuers for relatively straightforward valuations. However, the law and practice of valuation under the Act has, in the last two years, been under particular scrutiny by the Lands Tribunal, and it is necessary that valuers be fully acquainted with the implications for the parties. Knight Frank are known to have been involved in the relevant appeals to the Lands Tribunal and it is reasonable for the Respondent to have employed them. The valuation by Mr Radford assisted with the reaching of an agreed premium figure. The Tribunal considers that £1,000 plus VAT for Knight Frank's fees is reasonable.
15. The Tribunal finds
 - (1) The first Solicitor's fee of £500.00 plus VAT (in respect of investigation of the tenant's right to a new lease etc.) is a reasonable fee.
 - (2) The reasonable fee for the work to be undertaken in respect of the new lease is £340.00 plus VAT.
 - (3) The Valuer's fee of £1,175.00 (£1,000 plus VAT) is a reasonable fee.

CHAIRMAN: Anne Seifert



DATE: 29th November 2006

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCI Arb
Mr J C Avery FRICS