

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL
re: 6 Palmeira Square, Hove, East Sussex ("the Premises")
Case Number LR93/ES/193**

BETWEEN:

**Betty Audrey Cawthorne
Simon James Maurice
Nicola Anne Maurice
Guity Saadat
M & P Properties Limited
("the Applicants")**

and

**Micha'al Hamdan
("the Respondents")**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
(COSTS APPLICATION)**

1. INTRODUCTION

Following the Decision of the Tribunal made on 10th February 2003 the Applicants made an application for the Tribunal to decide the costs associated with the enfranchisement proceedings as the parties had been unable to agree them. The Tribunal's jurisdiction in these matters is to be found in section 91 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The matters before the Tribunal were the amounts of:

- a. Any valuation fees properly incurred by the Landlord
- b. The legal costs of the enfranchisement including conveyancing costs and disbursements.

2. Both parties had made written submissions which were before the Tribunal. The Landlords were claiming valuation fees of £1,800 plus VAT and disbursements and legal costs of £2,820 plus VAT and disbursements. The Tenants challenged the right of the Landlord to have his valuation fees reimbursed as all these appear to have been incurred after the commencement of the LVT proceedings. The Tenants also challenged the amount of the legal costs and consider them to be excessive. They considered a sum of £1,400 plus VAT to be more appropriate.

VALUERS FEES

3. Firstly the Tribunal reviewed the law relating to the reimbursement of the valuation fees. Sub-section (5) of Section 33 of the Act specifically exempted the Tenants from being liable for any costs which a party to any proceedings incurs in connection with the LVT proceedings. The Tribunal reviewed the evidence which it had seen at the Hearing of the enfranchisement application. The Tenants Initial Notice was dated 25th July 2001. This proposed a price of

£92,704. The Landlords Counter Notice was dated 27th September 2001 and this proposed a figure of £200,000. The LVT Application was dated 5th December 2001 and this date was the commencement of the LVT proceedings. The only Valuation Report presented to the Tribunal on behalf of the Landlords was that dated February 2002 by Mr R.O.J. Paine MRICS. That was dated after the date when the LVT proceedings had commenced and as such were costs incurred in connection with the proceedings. The narrative in Clause 1.02 of Mr Paine's Report said "I have been requested to prepare a Report and Valuation of the freehold interest for presentation to the Southern LVT" This confirmed the Tribunal's view that the costs of that report were incurred in connection with the proceedings. No other valuation report or evidence on behalf of the Landlords was before the Tribunal and none had been produced since. The Landlords Solicitors had said in a Statement that "a valuation was carried out by Mr Richard Jenkins for the purpose of preparing the Respondent's Counter-Notice." However despite requests from the Tenants Solicitors to produce evidence of such valuation none had been produced. The Landlords Solicitors had originally produced one Invoice from Graves Jenkins dated 13th June 2002 in which the narrative read "Providing a Southern Leasehold Valuation Tribunal report and carrying out negotiations with the Leaseholders Surveyor and attending the Tribunal on 12th June 2002." That Invoice was for the sum of £1,800 plus VAT. Subsequently another Invoice was produced also dated 13th June 2002 which carried the same reference and in which the narrative read "Inspecting the property and providing a Valuation Report" The fee remained at £1,800 plus VAT. No further evidence was supplied as to the date on which that valuation advice had been given or what advice had been given. There was no evidence to link the valuation advice given with the preparation of the Landlords Counter-notice.

For these reasons, the Tribunal decided, on the balance of probabilities, that due to the absence of any documentary evidence from the Landlords to support their claim for reimbursement for such a Valuation Report for the purposes of their counter-notice, their claim for valuation fees must fail.

LEGAL COSTS

4. Turning to the matter of legal costs the Landlords Solicitors had set out in their written submissions the details of their claim. They split the figure of £2,820 plus VAT into the following:

a. Matters referred to in Section 33 (1) (a) & (b)	-	£1,350 plus VAT
b. Balance of legal costs relating to drafting of contract and correspondence		£1,470 plus VAT
	TOTAL	£2,820 plus VAT

The claim was calculated by multiplying the time spent by the hourly charging rate. The Landlords Solicitors claimed to have spent 6 hours on the work set out in a. above at a charging rate of £225 per hour. The second part of the work set out under b. above was as further 6 hours work at the charging rate of £245 per hour. They supported these charging rate figures with evidence of central London charging rates for Solicitors over 8 years post qualification experience. In this case the matter had been dealt with by a Partner in a London firm whose charging rate was currently £263 per hour.

5. In their written submissions the Tenants Solicitors accepted that the Landlords were entitled to instruct London Solicitors and that London rates were higher than those in Brighton, where they were based. They argued that as the property in question was based in Hove, the Hearing had been in Hove and there were several firms in the Brighton and Hove area who were

experienced in such matters, a lower charging rate should be applied. They suggested that a compromise rate of £200 per hour would be fair and reasonable. They commented that the Landlords Solicitors had not supported their claim with any detailed breakdown of the details of the time spent. They suggested that the figure of 6 hours should be reduced to 3 hours and suggested the following breakdown would seem to be fair and reasonable.

Time spent perusing Initial Notice	30 minutes
Time spent perusing office copy entries (4 flats)	30 minutes
Correspondence with Applicants Solicitors and Client	60 minutes
Time spent drafting Counter-notice	30 minutes
Sundry time not claimed about	30 minutes
Total	3 hours

6. Further the Tenants Solicitors said that the Landlords had claimed for perusal of statutory declarations from the Applicants, but no such declarations were served. Further they said that they had only received four letters from the Landlords Solicitors from the 4th September 2001 and the date of service of the Counter-Notice. They also maintained that the landlords Solicitors should not be entitled to charge for any time spent on researching the provisions of the 1993 Act (if they were claiming such time) given their experience in that field and the fact that their request for Statutory Declarations was made out of time.

7. In respect of conveyancing costs the Tenants Solicitors suggested that these were normally on a fixed fee rate and suggested a figure of £800, rather than £1,470 which was being claimed. There was no leaseback of any of the flats in the block and the conveyancing was straightforward. The Tenants Solicitors also referred the Tribunal to a number of Decisions by the Lands Tribunal and the LVT relating to similar costs applications. In the Lands Tribunal Case of Shulem B Association Limited's Appeal (2000) (a case in London) the legal costs were assessed at £1,028.13 including VAT and the conveyancing costs were assessed at £763.75 including VAT. In the LVT case of Shaw and Ors v. Linkproud (1998) (a case in London) the legal costs were assessed at £670 plus VAT and the conveyancing costs were assessed at £350 plus VAT. In the Southern LVT case of Rene & Ors v. Brooks Herrington (2003) (a case in Brighton) the valuation fee was disallowed upon the basis that it was incurred in connection with the LVT proceedings. In that case the matter included a leaseback of one of the flats and the total legal costs including the leaseback was decided at a figure of £1,100 including VAT.

DECISION

8. The Tribunal reviewed the written representations they had read.

- They confirmed that for the reasons given above no valuation fees would be allowed.
- In respect of legal costs the Tribunal decided that the Landlords were entitled to choose a firm of London Solicitors to carry out the work, even though the fees may have been higher than those charged by Solicitors who practice in the provinces. The fact that the Landlord could have obtained such advice at a cheaper rate was considered irrelevant.

Breaking the work down into the "non-conveyancing" and the "conveyancing" parts the Tribunal considered that the importance of the matter to the Client and the technical expertise needed was higher in dealing with the "non-conveyancing" work than the pure "conveyancing" work. The consideration of the initial notice, correspondence and attendances on the client and advice given, as well as the preparation of the counter-notice was more complex than the pure conveyancing

aspect of the transfer of a registered land freehold title. For these reasons the Tribunal allowed a Partner's charging rate for the "non-conveyancing" work and a qualified Assistant's charging rate for most of the pure "conveyancing" work. The time estimate suggested by the Tenants Solicitors of a total of 3 hours for the "non-conveyancing" aspect was accepted as fair and reasonable in all the circumstances. So far as the pure "conveyancing" work was concerned the Tribunal considered a reasonable time spent on what would normally be a straight-forward non-contentious matter such as this would be, say, 3 ½ hours work by a qualified Assistant plus say ½ hour's supervision by a Partner. The charging rates were to be those at the dates when the work was carried out. The "non-conveyancing" work was carried out in 2001 when the Partners charging rate was £225. The pure "conveyancing" work was carried out in 2002/3 when the Partners charging rate would be £263 per hour and the Assistant Solicitors charging rate was estimated at £200 per hour. Both figures would of course be subject to VAT.


This calculates at:

"Non-conveyancing" work 3 hours at £225 per hour =	£675.00
"Conveyancing" work	
3 ½ hours at (say) £200 per hour =	£700.00
½ hour at Partner rate £263 per hour =	£131.50
Total	£831.50
Plus disbursements	
Say	£850.00
Total	£1,525.00 plus VAT

9. Accordingly the Tribunal certifies the amounts payable by the Tenants to the Landlord shall be:

Valuation fees	Nil
Legal costs	£1,525.00 plus VAT.

Dated this 24th April 2003



 J.B. Tarling MCMI
 (Chairman)