

Deception

Ref. No. LON/NL/1838/03

**LEASEHOLD VALUATION TRIBUNAL
for the
LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 91 OF THE
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993**

Applicant: Mr. W.E.G. Morrison

Respondent: The Incorporated Trustees of the Dulwich Estate

Re: 6 Cobb Court, Burbage Road, Dulwich, London SE24

Application to Tribunal by Mr. Morrison: 30 January 2003

Hearing date: 12 August 2003

Appearances: No appearance for the Applicant

Mr. N.R. Robinson FCI Arb of Sandom Robinson, Solicitors
Mr. R.A. Bennett BA, FRICS, Residential Management Surveyor for the Dulwich
Estate

for the Respondent

Members of Leasehold Valuation Tribunal: Mr. P.D. Wulwik LLB (Chairman)
Mr. J.R. Humphrys FRICS
Mr. J.J. Tomalin

Date of Tribunal's decision: 28 August 2003

6 Cobb Court, Burbage Road, Dulwich, London SE24

A. Introduction

1. This was a hearing to determine the amount of the costs to be paid by the Applicant tenant Mr. Morrison to the Respondent landlord the Incorporated Trustees of the Dulwich Estate in connection with the grant of a new lease under Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993.

2. The Respondent's Solicitors by a letter dated 25 April 2003 indicated that the costs claimed inclusive of VAT were as follows:-

Landlord's administration fee	£ 100.00
Valuation fee	£ 597.84
Solicitors' fees	£ 940.00
Counsel's fees	<u>£ 470.00</u>
	<u>£2,107.84</u>

3. Following directions by the Tribunal on 3 June 2003, the Respondent's Solicitors provided a breakdown of their fees. A revised breakdown including further work done to date and still to be completed was forwarded by the Respondent's Solicitors on 6 August 2003.
4. The Applicant's Solicitors provided their comments by way of a statement in reply to the original breakdown of the work done by the Respondent's Solicitors. The Applicant's

Solicitors thereafter wrote to the Tribunal on 5 August 2003, stating that the Applicant agreed the valuation fee of £597.84 and that he would not be disputing the landlord's administration fee of £100 in the light of the Tribunal's decision relating to 5 Cobb Court dated 29 June 2003 (Ref. No. LON/NL/1781/02). The Applicant disputed liability for part of the costs of the Respondent's Solicitors and for Counsel's fees for the reasons set out in their letter and previous statement.

5. The Applicant's Solicitors objected to the late production of the revised breakdown of the work done by the Respondent's Solicitors.

B. Hearing

6. A hearing took place on 12 August 2003. The Applicant was not present or represented, the Applicant's Solicitors having indicated in their letter to the Tribunal dated 5 August 2003 that they would not be attending due to holiday arrangements and would be relying on the documentation previously submitted to the Tribunal. The Respondent was represented by Mr. N.R. Robinson FCI Arb of Sandom Robinson, Solicitors. Mr. R.A. Bennett BA, FRICS, Residential Management Surveyor for the Dulwich Estate, was also in attendance.
7. Mr. Robinson did not pursue items 10 and 12-16 of the breakdown of work done by the Respondent's Solicitors. He sought to include additional items 24-29 from the revised breakdown, but confined the Solicitors' costs to the sum of £800 plus VAT (£940) allowed by the previous Tribunal. He maintained that the remaining items of work were recoverable under Section 60 of the Act.
8. With regard to the fees of Counsel Mr. Radevsky, Mr. Robinson contended that the Respondent was entitled to obtain Counsel's Opinion in relation to the terms of the new

lease in view of the terms of the new lease sought by the Applicant's Solicitors, even though the Respondent's Solicitors had previously obtained Counsel's Opinion in relation to the same points in other cases when raised by the Applicant's Solicitors. The Respondent's Solicitors were of the view that the Applicant's Solicitors should not have sought the terms of the new lease that they did and that the Respondent's Solicitors were entitled to confirm that the position was the same in this case as in other cases in which Counsel had advised the Respondent.

C. Decision

(a) Solicitors' fees

9. The Tribunal's decision in relation to the Solicitors' fees is as follows:-

Item 1

The costs claimed for namely perusing notice, writing initial letter of acknowledgment to the landlord and letter to Claimant's Solicitors requesting deposit were part of or incidental to the investigation reasonably undertaken of the tenant's right to a new lease. The time spent of 18 minutes (3 units) is reasonable.

Item 2

The costs claimed for namely receiving letter from the tenant's Solicitors with deposit, acknowledging and reporting to the landlord were not properly part of or incidental to the investigation of the tenant's right to a new lease. That item is disallowed.

Item 3

The costs claimed for namely receiving instructions from the Surveyors, drafting counter-notice and a letter to the landlord for confirmation of premium followed after the investigative process. That item is disallowed.

Item 4

The costs claimed for namely preparing counter-notice and draft lease and sending to the tenant's Solicitors and sending copies of the counter-notice to the landlord and the

Surveyors were only recoverable to the extent that they related to the draft lease. The Tribunal allow 12 minutes' work as reasonable (2 units).

Items 5-9

These items were agreed and involve a total of 42 minutes' work (7 units).

Item 10

This item was not pursued by the Respondent's Solicitors.

Item 11

The costs claimed for namely replying to letter from the tenant's Solicitors relating to the terms of the draft lease and letter to the Surveyors with copy counter-notice were recoverable insofar as they related to the draft lease but not the counter-notice. However the Tribunal are satisfied that by far the majority of time was spent in replying to the letter from the tenant's Solicitors relating to the terms of the new lease and that the time spent on that item alone justified the claim for 12 minutes' work (2 units).

Items 12-16

These items were not pursued by the Respondent's Solicitors.

Items 17-18

These items were agreed and involve a total of 12 minutes' work (2 units).

Item 19

The item claimed for namely reply to letter from the tenant's Solicitors relating to Counsel referred in part to the dispute concerning the terms of the new lease and the correspondence received from the tenant's Solicitors in that regard. The Tribunal are satisfied that the time spent on that item justified the claim for 6 minutes' work (1 unit).

Item 20

The item claimed for namely dictating brief to Counsel to advise on the amendments made by the tenant's Solicitors in the light of a decision of the LVT in September and preparing papers to go with the brief was not reasonably incurred, bearing in mind that the Respondent's Solicitors had previously obtained an opinion from Counsel on the

same points on two previous occasions, once in 2002 and again in 2003. The claim is disallowed.

Item 21

The item claimed for namely perusing Opinion of Counsel and sending copy to the landlord is similarly disallowed.

Item 22

The item claimed for namely replying to letter from the tenant's Solicitors relating to the costs to be included in the completion statement were part of the costs of and incidental to the grant of a new lease. The time spent of 6 minutes is reasonable (1 unit).

Item 23

This item was agreed and involves a total of 6 minutes (1 unit)

Items 24-29

These items are part of the continuing costs of and incidental to the grant of a new lease. The time spent or estimated for totalling 66 minutes is reasonable (11 units).

10. The total number of minutes allowed is 180 minutes (30 units of 6 minutes each). This breaks down as to 72 minutes in 2002 when the hourly rate of Mr. Robinson the partner dealing with the matter was £210 per hour being £252 plus VAT and a further 1 hour 48 minutes in 2003 when Mr. Robinson's hourly rate was £215 per hour being £387 plus VAT. The Tribunal consider that these hourly rates are reasonable for this type of work, bearing in mind that Mr. Robinson was admitted as a Solicitor in March 1977.
11. The total allowed for Solicitors' fees is therefore £639 plus VAT of £111.83 giving a figure of £750.83, which the Tribunal round down to £750.

(b) Counsel's fees

12. The Tribunal disallow Counsel's fees of £470. It was not reasonable for the Respondent's Solicitors to seek an Opinion from Counsel on the same points as Counsel had advised on two previous occasions in 2002 and 2003. Nothing had changed to warrant obtaining Counsel's Opinion for a third time. The item is therefore disallowed.
13. This is in no way to be seen as condoning the fact that the Applicant's Solicitors appear to have persisted in taking points that they should have properly conceded at an earlier stage.

D. Conclusion

14. The costs payable by the Applicant to the Respondent in connection with the new lease under Section 60 of the 1993 Act are therefore as follows: -

Landlord's administration fee	£100.00
Valuation fee	£597.84
Solicitors' fees	£750.00
Counsel's fees	<u>£Nil</u>
	<u>£1,447.84</u>

Chairman *P. Wulwik*
Peter Wulwik

Date: *28 August 2003*