

LON/ENF/1138/04

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL.

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER S. 60 OF THE LEASEHOLD REFORM HOUSING
AND URBAN DEVELOPMENT ACT 1993.**

Premises: 36 Collingwood Avenue, London N10

Applicant: Edward Piers Alexander Bearne and Rebecca Promitzer
David Vincent Scotts and Jilly Glynne Evans

Represented by: Cree Godfrey & Wood, Solicitors

Respondent: F & C Shaw Limited

Represented by: LMK Solicitors

Date of Hearing: 7th October 2004

Appearances: Mr. I Rennie BSC FRICS.

Members of the leasehold valuation tribunal:

Miss A Hamilton-Farey FRICS, FCIArb
Mr. D. Edge FRICS
Mr. L. Jarero BSc FRICS

Date of tribunal's decision: 16 NOV 2004

Background:

1. This application is made under the provisions of s. 60 of the Leasehold Reform Housing and Urban Development Act 1993. The section requires, that '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;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

The Hearing:

- (1) Mr. Rennie BSc, FRICS on behalf of the landlord attended the hearing. Messrs Cree Godfrey & Wood submitted written representations.
- (2) Mr. Rennie presented to the Tribunal the three invoices on behalf of the respondent's solicitors and himself in carrying out the work prior to agreement of the price for the enfranchisement. These were £1,586.25, £1,521.63 plus £954.68 respectively.
- (3) Messrs Cree Godfrey & Wood in their representations considered both fees to be excessive for the following reasons:

"We take the view that the costs incurred by the Landlord's solicitor and surveyors are far too high considering the building consists of two flats with straightforward leases and no complications...the solicitor acting on behalf of the Landlord LMK submitted an invoice the total of which amounts to £1,586.25. It is understood that the partner in charge of the matter charged an hourly rate of £215.00 per hour and that he spent a total of 6.5 hours. We think that the time spent bearing in mind the matter was dealt with by a Partner as opposed to an assistant solicitor with less experience should not have taken any more than (*sic*) 3.5 hours to deal with.....there was nothing unusual about the work carried out or the final conveyancing.

The surveyor acting on behalf of the Landlord also submitted 2 invoices the first indicating 9.25 hours spent. The second invoice for £954.68 where a further 6.25 hours were spent are in our view excessive."

(4) Mr. Rennie helpfully took the Tribunal through a schedule itemising his costs and those of his instructing solicitor. These showed that he charged £130.00 per hour for inspecting the properties and providing a valuation after considering appropriate comparables. This led to an amount of £812.50 with a total 5.5 hours expended. In February 2004 his fees increased to £140.00 per hour and he spent a total of 9.25 hours negotiating with the Applicants, their representatives and finally reaching agreement. This produced an amount of £1,295.00; both of these amounts are exclusive of VAT. In addition, Mr. Rennie produced documents from which the Tribunal saw that he informed his client that he would charge £130 per hour and that the charge should not exceed £1,000. He explained to the Tribunal that this was for the valuation work only and not for any negotiations that might be required.

(5) Mr. Rennie also informed the Tribunal that he keeps his own schedule of relativities for enfranchisement, but also relied on the John D Wood graphs and those of Mr. Peter Beckett. He had a computer programme that would produce the valuation, given yield,

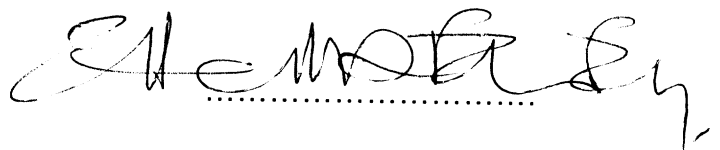
existing and extended lease values. Finally he informed the Tribunal that his firm in London comprised 2 surveyors, 1 trainee and support staff and that his fees were cheaper than others who appeared before the Tribunal on similar cases.

- (6) In support of his fees, Mr. Rennie informed the Tribunal that he had had to spend more time than usual, explaining to the applicant the law and process and finally negotiating directly with him, when he was unable to do so with his representative Mr. Arnold.
- (7) Mr. Rennie also took the Tribunal through the time records of Mr. Klarfeld of LMK whose account amounted to £1,586.25 inclusive of VAT. He could not elaborate on the charge or the time spent.

Decision:

- (8) The Tribunal considered the fee accounts submitted and agreed with the Applicants.
- (9) The Tribunal considers that the time spent on legal fees was excessive and that it was not necessary to use a partner to carry out this work. The Tribunal therefore allows the sum of £750.00 plus VAT for the legal fees in this matter.
- (10) The Tribunal considers that the fee for valuation for a property of this type should not take more than 3 hours and therefore allows the sum of £390.00. In addition, in recognition of the additional negotiation that Mr. Rennie was obliged to undertake, the Tribunal allows a sum of £490. A total fee for surveying/negotiation of £880, say £900 plus VAT.

Chairman:



Date:

16/11/04