

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00BK/OC9/2009/0049**

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 60 OF THE LEASEHOLD REFORM,  
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Applicant: Leslie Frank Bergman and Dymphna Anne Leane

Respondent: Howard de Walden Estates Ltd

Premises: 3 Wimpole Mews, London W1G 8PA

Date of Application: 4 June 2009

Date of Paper Determination: 21 July 2009

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Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B  
Mr W. J Reed FRICS

1. This is an application under Section 60 of the Leasehold Reform, Housing and Urban Development Act 1993, to determine the costs payable by the applicant consequent on an application under Section 42 of the Act .
2. The initial Section 42 notice of claim was dated 18 January 2008, the landlord's counter notice was dated 20 March 2008. The applicants withdrew their application on 2 March 2009.
3. The respondents sought costs in the sum of £10,353.67p. This was made up of investigation charges of £1,837.70p, valuation fees of £3,525 and £2,572.22p respectively and conveyancing costs of £2,418.75p. The detailed breakdown is attached at Annex 1.
4. Solicitors for the applicants produced a detailed response in which they indicated that costs, exclusive of VAT, of only £2,690 were agreed. This was made up of £950 in respect of investigation charges, £1,140 for conveyancing charges and £600 in respect of only one valuation fee (£3,525).
5. They reminded the Tribunal that the respondent was entitled under Section 60 to reasonable costs to the extent that they had been incurred in pursuance of the applicant's Section 43 notice but that the costs had also to satisfy four conditions;-
  - (a) They must be of and incidental to the reasonable investigation of the applicant's right to a new lease, or
  - (b) They must relate to the valuation of the applicant's flat 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) They must be reasonable and will be regarded as reasonable only if and to the extent that they might reasonably be expected to have been incurred by the respondent if it were to be personally liable for such costs
  - (d) They must have been incurred prior to withdrawal of the Section 42 notice.
6. With regard to the investigation charge the applicant considers the time spent excessive for a firm familiar with such claims and that there had been duplication of effort between the assistant and the partner.
7. The Tribunal agrees with this view and determines £950 to be a reasonable cost.
8. With regard to the valuation fees the respondent claims that the valuation fees are excessive. He points out that whilst the respondent cites a Leasehold Valuation Tribunal determination where the costs of two valuers were allowed, they had failed to cite two other determinations where the Tribunal had disallowed dual fees. Copies of those decisions were attached to the submission..
9. The Tribunal considers that the approach taken by the Tribunal in June 2009 (*Lakshmi Walia and others v. Howard de Walden Estates Ltd*) is correct and that duplication is unnecessary since one firm could cover both aspects of valuation. If the respondent chooses to use two it is unreasonable to expect the applicant to pay the additional costs involved.
10. The applicant also disputes the basis of the calculation claiming that a fixed fee rather than a fee based on a percentage of the valuation is appropriate. In support of his contention he cites the Lands Tribunal case of *Blencrown Ltd v. Church Commissioners for England*.



<b><u>INVESTIGATION CHARGES</u></b>	
Respondent's Solicitors' costs (including VAT)	£1,837.70
<b><u>VALUATION FEES</u></b>	
Fees of Carter Jonas (including VAT)	£3,525.00
Fees of Gerald Eve (including VAT)	£2,572.22
<b><u>CONVEYANCING COSTS</u></b>	
Respondent's Solicitors' costs (including VAT)	£2,418.75
<b>Total:</b>	£10,353.67 =====

The basis on which these costs have been calculated is as follows:

**Investigation Charges**

**Applicant's Solicitors' costs**

Fee Earners: JCH - Partner Hourly rate £290 plus VAT  
 EMM - Assistant Hourly rate £180 plus VAT

Date	Description of Work	Fee Earner	Time Spent
24/01/08	Receiving tenant's Notice of Claim for a new lease. Logging the same. Diarising the deadline for service of Counter-Notice. Reporting to client.	JCH	18 mins
28/01/08	Reviewing the tenant's Notice of Claim and calculating statutory deposit. Letter to Lawrence Stephens, Solicitors for the tenant. Reporting to client.	EMM	24 mins
01/02/08	Receiving letter from Lawrence Stephens and drafting letter in response to the same.	EMM	24 mins

11/02/08	Considering the law in respect of claims relating to flats and garages. Receiving facsimile from Lawrence Stephens.	EMM	30 mins
12/08/08	Reviewing the tenant's lease and further considering the law relating to flats and garages in order to discover whether area under flat is excluded from the lease. Considering email dated 5 February from tenant's valuer regarding area below basement that is excluded from the lease and further, property demised in an additional garage lease. Reviewing lease plans. Letter to Lawrence Stephens in response to facsimile.	EMM	1 hour 12 mins
13/02/08	Considering claim with property colleague, in particular the lease plan. Advising client of issues raised in advance of inspection. Seeking instructions. Further email in reply from the client. Considering information provided for the purposes of investigating the claim.	EMM	48 mins
13/02/08	Considering briefly with EMM the tenant's claim.	JCH	12 mins
14/02/08	Further emails (various) with the client in advance of and following the inspection. Considering findings regarding access to the basement and the potential undercut. Considering further the law relating to flats and discussing the validity of tenant's claim.	EMM	54 mins
20/02/08	Considering with property colleague issues raised following inspection as part of investigation of Claim.	EMM	18 mins
21/02/08	Further consideration of the validity of the tenant's claim following findings on investigation and email to the client.	EMM	1 hour 18 mins
29/02/08	Discussions with EMM regarding investigation of	JCH	18 mins

	claim and inspection.		
29/02/08	Discussions with JCH. Further consideration of the validity of tenant's claim. Email to client requesting plans of the demised premises in order to consider validity of tenant's claim.	EMM	42 mins
06/03/08	Email to client and client's valuers reminding them of the deadline for service of the Counter-Notice.	EMM	18 mins
07/03/08	Email from client in respect of Licence for Alterations and attached plans. Considering information given.	EMM	18 mins
10/03/08	Email to client responding to email of 07/03/08. Letter to Lawrence Stephens requesting Licence for Alterations and attached plans.	EMM	18 mins

JCH            48 minutes @ £290 per hour            £ 232 plus VAT

EMM            7.4 hours @ £180 per hour            £ 1,332 plus VAT

VAT @ 17.5%    £ 273.70

**Total    £ 1,837.70**

### **Valuation Fees**

Carter Jonas are estate agents specialising in the area in which the subject premises are located. They advised the Respondent on the open market value of the tenant's existing leasehold interest and the extended leasehold value. Gerald Eve are specialists in enfranchisement and provide the Respondent with the specialist knowledge and experience required to complete the statutory valuation. The Respondent considers it more cost effective to use two valuers to undertake these separate tasks. The Respondent's standard practice of using two valuers for the statutory valuation was approved by the Leasehold Valuation Tribunal in *Davies v Howard de Walden Estates Limited (unreported, 1998, LVT)*.

Carter Jonas charged a scale fee agreed with the Respondent of 0.15% on the value of the freehold as valued by them, subject to a fee cap of £3,000.

Carter Jonas valued the extended lease term of 3 Wimpole Mews at £2,630,000. 0.15% of this would have been greater than the fee cap, so Carter Jonas' fee was therefore reduced to £3,000.

Fee capped at £3,000	£ 3,000.00
VAT @17.5%	£ 525.00
<b>Total</b>	<b>£ 3,525.00</b>

Gerald Eve likewise charge a scale fee agreed with the Respondent based on the amount of the premium determined or agreed between the parties. Their scale is as follows:

2% on the first £25,000 of the premium

1.5% on the next £25,000

1% on the next £25,000

0.75% on the next £25,000

0.5% on the next £50,000

0.4% on the next £50,000

0.3% on the next £50,000

0.25% on the balance of the premium payable.

In this case, as the Claim was withdrawn before the premium was agreed or determined, Gerald Eve based their fees on their original target premium of £360,650. Their fee was therefore as follows:

2% on the first £25,000	£ 500.00
1.5% on the next £25,000	£ 375.00
1% on the next £25,000	£ 250.00
0.75% on the next £25,000	£ 187.50
0.5% on the next £50,000	£ 250.00
0.4% on the next £50,000	£ 200.00
0.3% on the next £50,000	£ 150.00
0.25% on the next £110,650	<u>£ 276.63</u>
	£2,189.13
Plus VAT @ 17.5%	<u>£ 383.09</u>
<b>Total:</b>	<b>£2,572.22</b>

Invoices for both Carter Jonas and Gerald Eve are attached to this Statement.

### Conveyancing Costs

Fee Earner: CES - Assistant Hourly rate £180/202.50\* plus VAT (\*following rate change from January 2009)

Date	Description of Work	Fee Earner	Time Spent
29/01/08	Receiving details of tenant's Claim. Requesting copies of relevant documents once received from tenant.	CES	18 mins
01/02/08	Reviewing copy documents once received from tenant.	CES	12 mins
07/02/08	Commencing drafting lease.	CES	1 hour 12 mins
08/02/08	Continuing drafting lease. Completing Land Registry and Index map searches.	CES	1 hour 30 mins
11/02/08	Continuing to draft lease.	CES	1 hour 12 mins
12/02/08	Reviewing emails from client relating to the conversion of the ground floor garage and further, additional garage space excluded from the lease. Discussing with litigation colleague and reviewing the law relating to the definition of a flat and appurtenant property.	CES	24 mins
13/02/08	Reviewing various emails from client and litigation colleague relating to the basement level of the premises and whether the premises forms a flat for the purposes of the Act.	CES	12 mins
14/02/08	Considering further the issues raised regarding premises included in the demise and whether the property is a flat following the inspection.	CES	18 mins
15/02/08	Emails relating to the demise and whether the property is a flat.	CES	12 mins



20/02/08	Further discussions with litigation colleague regarding plans provided by the client and findings on inspection.	CES	12 mins
19/03/08	Finalising the draft lease. Memo to litigation colleague regarding service of counter-notice. Reviewing various emails regarding the validity of the tenant's notice of claim.	CES	30 mins
31/07/08	Reviewing progress on the matter. Diarising the deadline for the tenant's application to LVT.	CES	12 mins
30/09/08	Liaising with litigation colleague regarding progress on the lease and possible deemed withdrawal of tenant's notice of claim.	CES	12 mins
01/10/08	Emails from litigation colleague regarding possible deemed withdrawal.	CES	12 mins
02/10/08	Emails from litigation colleague regarding tenant's application to the LVT.	CES	12 mins
03/10/08	Letter to Lawrence Stephens requesting a response on the draft lease.	CES	12 mins
23/10/08	Email from litigation colleague relating to directions received from the LVT. Diarising entries relating to the directions. Further letter to Lawrence Stephens requesting a response on the lease.	CES	12 mins
21/11/08	Receiving letter from Lawrence Stephens enclosing draft lease with amendments. Reviewing amendments and mark up, letter in response.	CES	24 mins
12/12/08	Receiving a letter from Lawrence Stephens with further comments and amendments on the draft lease. Reviewing amendments and drafting a letter in response. Emails to and from client	CES	24 mins

	regarding a copy of the existing lease plan.		
17/12/08	Receiving notification of the LVT hearing. Making diary entries accordingly.	CES	12 mins
21/01/09	Emails from valuers regarding progress on the premium. Emails with litigation colleague regarding progress on the lease terms. Considering preparation needed for LVT hearing. Reviewing outstanding points on the lease and drafting letter to Lawrence Stephens requesting a response on the lease.	CES	30 mins
22/01/09	Emails regarding possible adjournment of hearing.	CES	12 mins
27/01/09	Further letter to Lawrence Stephens for a response on the outstanding lease provisions.	CES	12 mins
28/01/09	Telephone call with Lawrence Stephens regarding LVT hearing, outstanding terms of the lease and whether claim will be withdrawn. Discussions with litigation colleague.	CES	18 mins
28/01/09	Emails and copy correspondence from litigation colleague regarding progress on premium and adjournment of LVT hearing.	CES	12 mins
29/01/09	Further emails regarding valuation negotiations and progress generally and considering preparation required for the LVT hearing.	CES	12 mins
04/02/09	Emails regarding adjournment of LVT hearing.	CES	12 mins
09/02/09	Further emails regarding adjournment of LVT hearing.	CES	12 mins
10/02/09	Letter from Lawrence Stephens with amendments to the lease. Reviewing tenant's	CES	36 mins

	amendments, marking up draft lease and letter in response. Various emails regarding forthcoming LVT hearing and conference with Counsel.		
11/02/09	Various emails regarding adjournment and new LVT hearing date.	CES	12 mins

CES 6.2 hours @ £180 per hour £1,116 plus VAT

VAT @ 17.5% £ 195.30

CES 2.2 hours @ £180 per hour £ 396 plus VAT

CES 2.8 hours @ £202.50 per hour £ 567 plus VAT

VAT @ 15% £ 144.45

**Total £ 2,418.75**

Dated the 18 day of June 2009

Signed... *Speechly Birchan LLP*  
 Speechly Birchan LLP  
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 London EC4A 3LX  
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 Tel: 020 7427 6400  
 Solicitors for the Respondent

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