

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



**Residential  
Property  
TRIBUNAL SERVICE**

**S.24 (9) of the Landlord & Tenant Act 1987**

<b>Case Number:</b>	<b>CHI/43UD/LVM/2009/0002</b>														
<b>Property:</b>	<b>Fiona House 67 York Road Guildford Surrey GU1 4DG</b>														
<b>First Applicant:</b>	<b>Nicholas Faulkner (Manager)</b>														
<b>Second Applicant:</b>	<b>Purewish Limited (Freeholder)</b>														
<b>Respondents:</b>	<table> <tr> <td><b>Mr G. Prassinos</b></td> <td><b>Flat 1</b></td> </tr> <tr> <td><b>Mr K. Makela</b></td> <td><b>Flat 2</b></td> </tr> <tr> <td><b>Mr F. Aziz</b></td> <td><b>Flat 3</b></td> </tr> <tr> <td><b>Mr &amp; Mrs Aziz</b></td> <td><b>Flat 4</b></td> </tr> <tr> <td><b>Mr P. Melia &amp;</b></td> <td></td> </tr> <tr> <td><b>Mr R. Mumford</b></td> <td><b>Flat 5</b></td> </tr> <tr> <td><b>Ammar Homes Ltd</b></td> <td><b>Basement Flat</b></td> </tr> </table>	<b>Mr G. Prassinos</b>	<b>Flat 1</b>	<b>Mr K. Makela</b>	<b>Flat 2</b>	<b>Mr F. Aziz</b>	<b>Flat 3</b>	<b>Mr &amp; Mrs Aziz</b>	<b>Flat 4</b>	<b>Mr P. Melia &amp;</b>		<b>Mr R. Mumford</b>	<b>Flat 5</b>	<b>Ammar Homes Ltd</b>	<b>Basement Flat</b>
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<b>Application:</b>	<b>20<sup>th</sup> August 2009</b>														
<b>Determination</b>	<b>17<sup>th</sup> February and 23<sup>rd</sup> August 2010</b>														
<b>Appearances for Respondents:</b>	<b>Mr Aziz Day 1 only</b>														
<b>Appearances for Applicant:</b>	<p><b>Helen Macrae &amp; Sarah Baylis of Leasehold Legal Services. Days 1 &amp; 2</b></p> <p><b>Mr G Brown of hmlandertons Property Management .Day 2 only</b></p>														
<b>Tribunal:</b>	<p><b>Mr R T A Wilson LLB (Lawyer Chairman)</b></p> <p><b>Mr R.A. Potter FRICS (Surveyor Member)</b></p> <p><b>Mrs J E S Herrington (Lay Member)</b></p>														
<b>Date of the Tribunal's Decision:</b>	<b>9<sup>th</sup> September 2010</b>														

## **INTRODUCTION**

1. This is an application made by the first Applicant under section 24 (9) of the Landlord and Tenant Act 1987 (as amended) ("The Act") to vary an order previously made by the Tribunal under this section.
2. The order in question is dated 11th June 2003 and appointed the first applicant, Mr N Faulkner as a manager and receiver of the property known as Fiona House 67 York Road, Guildford, Surrey. ("The Management Order")
3. By an application received by the Tribunal on 20th August 2009 the first Applicant applied to discharge the Management Order on the grounds that due to a change in circumstances Mr. Faulkner was no longer able to devote adequate attention to managing the property.
4. On 22nd February 2010 following the first day of the hearing, the Tribunal had concerns that if they discharged Mr. Faulkner as the manager then the same unacceptable situation which led to Mr Faulkner's appointment might arise again. Accordingly the Tribunal issued further directions that the parties should co-operate with each other with a view to finding a suitable substitute manager. When a suitable candidate had been found, full details of his experience should be lodged with the Tribunal to include the full name and address and qualifications of the proposed manager; details of the manager's professional indemnity cover and details of the client bank account arrangements that would exist for the holding of service charge money. The directions further provided for a signed statement from the proposed manager confirming that he or she was prepared to be appointed by the Tribunal on such terms as the Tribunal should direct. If amendments to the Management Order were required, full details of such amendments should be supplied. Finally the directions provided that if the Respondents objected to the proposed manager then they should file with the Tribunal particulars of their objections together with details of their own candidate.
5. Prior to the second day of the hearing the first Applicant had filed with the Tribunal a statement from Mr G Brown confirming his willingness to act and providing details of his qualifications as set out in the directions. None of the Respondents had filed with the Tribunal any objections to his appointment and none of the Respondents appeared at the second day of the hearing.

## **DECISION.**

6. The Tribunal's determination took place on 17th February and 23rd August 2010. The Tribunal had inspected the property prior to the first day of the hearing and saw that the property comprised of a standalone substantial property built circa 1920s which had been converted into five self-contained flats. The Tribunal noticed that the basement of the property was in the course of reconstruction and the Tribunal was told that the owner was halfway through a program to convert this area into a unit of accommodation and a long lease had been granted.
7. The Tribunal's determination was based on the documentary evidence filed by the parties and also on the oral evidence given on the first day of the hearing by the first Applicant and Mr Aziz joint owner of flat 4 with his wife. Only the first Applicant's representatives attended the second day of the hearing.
8. The test to be applied by the Tribunal in this instance is set out in section 24 (9A) of the Act which provides:-

*the Tribunal shall not vary or discharge an order under subsection (9) on the application of any relevant person unless it is satisfied-*

*(a) that the variation or discharge of the order will not result in a re-occurrence of the circumstances which led to the order being made, and*

*(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.*

9. The Tribunal first considered the application made by the first Applicant in which they sought to have the Management Order set aside. Having heard the evidence of the first Applicant the Tribunal was concerned that the discharge of the Management Order might result in a re-occurrence of the circumstances which led to the Management Order being made in the first instance. For these reasons the Tribunal had indicated to the parties at the end of the first day of the hearing that they were not minded simply to discharge the Management Order and that the parties should find a substitute manager prepared to act as manager subject to any reasonable variations to be agreed by the Tribunal.
10. On 23rd March 2010 the first Applicant had filed with the Tribunal a sworn statement of Mr Gareth John Weston Brown a senior property manager and associate director of Messrs HML Anderton's of 117 High Street, Croydon. The statement contained all of the information set out in the directions including details of the professional indemnity cover held by his firm, description of the relevant management experience of Mr Brown and concluded with a signed statement from him confirming that he was prepared to be appointed by the Tribunal on such terms as the Tribunal shall direct.
11. In evidence given on the second day of the hearing, Mr Brown confirmed that he had 33 years of experience in the field of property management at senior level and in day to day management of varied properties. His experience included managing central London and southern county properties and his firm currently managed some 14,000 units. His firm had 61 staff with 25 property managers supported by a finance team and they also had legal and administrative support available.
12. Mr Brown confirmed that he had read the Management Order and was prepared to accept these terms subject only to some minor variations relating to the remuneration and authority of his firm to manage the property.
13. On the evidence before it, the Tribunal concluded, on balance, that the Management Order should be varied by the appointment of Mr Brown in the place of Mr Faulkner as the LVT manager. The Tribunal was satisfied that the tests set out in section 24 (9A) (a) and (b) were variously met for the following reasons:
  - (a) Mr Brown had consented to this proposed appointment and was able to demonstrate considerable experience in the management of comparable residential property. He also had previous experience as a LVT manager and was fully aware of his obligations to the Tribunal.
  - (b) The Tribunal was satisfied that Mr Brown's firm had in place the necessary systems to ensure that all service charge and reserve monies could be held in trust for the Respondents in a designated client bank account and that the service charge monies would be regulated under section 42 of the Act.
  - (c) Mr Brown had confirmed to the Tribunal that he was conversant with the latest RICS residential management code and that his firm complied with its recommendations.
  - (d) There was no evidence before the Tribunal that the appointment of Mr Brown was unfair to any of the parties including the freeholder.

- (e) None of the Respondents had objected to his proposed appointment.
  - (f) In the opinion of the Tribunal the appointment of Mr Brown will not result in a re-occurrence of the circumstances which led to the Management Order being made and that it is just and convenient in all the circumstances to vary the Management Order by the appointment of Mr Brown.
14. Mr Brown indicated to the Tribunal that he could only accept the appointment as manager if he received from the first Applicant signed and certified service charge accounts for the year ending 31st March 2009. Further, he would need copies of all relevant information and documentation relating to the management of the property so that he could ascertain the arrears position and could take steps following his appointment to collect in those arrears. Lastly he would require a closing statement of service charge accounts together with bank reconciliation statements to be provided by the first Applicant within 28 days of his appointment.
15. At the second day of the hearing the first Applicant gave an undertaking to the Tribunal that he would provide the above information. The service charge accounts for the year ending 31st March 2009 would be available by 22nd September 2010, as would copies of their management files. The final documentation and records would be made available to Mr Brown within 28 days of the transfer.

#### **ORDER.**

1. Upon the first Applicant providing an undertaking to the Tribunal in accordance with paragraph 15 above the Tribunal orders that Mr Brown shall be appointed as manager of the property with effect from the 22<sup>nd</sup> October 2010 upon the terms set out in the order of the Tribunal dated 11th June 2003 under case number CHI/43UD/NAM/2003/0004 subject to the following variations:
  - a) Basic management fee to be set initially at £185 plus VAT per unit per annum for the first year with subsequent increases to be negotiated with the lessees.
  - b) Collections of ground rent will incur a 10% collection fee.
  - c) Any major works costing in excess of £2,500 will be subject to the standard charges of HML Andertons Limited as detailed in their terms of business from time to time. These charges currently comprise a fee of 10% for managing the project, plus associated section 20 notice fees. If an external surveyor is appointed, the charges shall comprise of an administration fee of 2.5% plus section 20 notice fees. In this case external surveyor's fees shall be charged in addition.
  
2. Leave to apply.

Chairman \_\_\_\_\_  
R.T.A.Wilson LLB

Dated 9<sup>th</sup> September 2010