



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AW/LVM/2022/0005**

Property : **178 Holland Road, London W14 8AH**

Applicant : **Cinnamon Heathcote-Drury**

Respondent : **(1) Richard Davidoff
(2) 178 Holland Road Management Ltd**

Type of application : **Variation of Appointment of Manager**

Tribunal : **Judge Nicol
Mrs A Flynn MA MRICS
Mr C S Piarroux JP CQSW**

Date and Venue of Hearing : **30th-31st August 2022;
10 Alfred Place, London WC1E 7LR**

Date of decision : **13th October 2022**

DECISION

(1) The management order made on 26th February 2021 is varied by the replacement of Mr Richard Davidoff with Mr Paul Cleaver as the appointed manager of the property at 178 Holland Road, London W14 8AH.

(2) The Tribunal makes no order as to costs.

Background

1. The Applicant is the lessee of the basement flat at the subject property, a five-storey end-terrace house converted into 8 flats. The Second Respondent is the lessee-owned freeholder of the building.
2. The Applicant seeks to replace the existing Tribunal-appointed manager, Mr Richard Davidoff of ABC Estates Ltd, the First Respondent, with a new appointee, Mr Paul Cleaver of URANG.

3. The application was listed for a one-day hearing on 5th August 2022 but, for reasons set out in the Further Directions, the Tribunal decided to re-list it for 3 days. The re-listed hearing took place on 30th and 31st August 2022. The attendees were (the last 3 by remote video conferencing):
 - (a) The Applicant, one of the lessees at the property;
 - (b) Mr Adnan Chaherli, a director of 178 Holland Road Management Ltd, the Second Respondent;
 - (c) Mr Yannis Psomadakis, a neighbour at 182 Holland Road and a witness for the Applicant;
 - (d) Mr Davidoff, the First Respondent; and
 - (e) Mr Cleaver.
4. The parties had originally been directed on 1st April 2022 to produce a single bundle of documents each. Instead, the Tribunal had before it:
 - A bundle from the Applicant in 14 separate parts, numbered 01, 02, 03, 04, 05a, 05b, 6a, 6aa, 6b, 6c, 6d (which was the index), 7 p1, 7 p2, and 7, totalling over 1,000 pages;
 - Two bundles from the Second Respondent, one of 62 pages and another of 40 pages;
 - A 2-page document which purported to be a witness statement dated 2nd August 2022 from both the Second Respondent and Mr Chaherli;
 - A 4-part Supplementary Bundle from the First Respondent; and
 - A statement with accompanying documents from Mr Cleaver.
5. At paragraph 10 of the Further Directions the Tribunal directed the parties to provide a comprehensive list of their bundles of documents. Unfortunately, this did little to help the Tribunal to navigate the various parts. Both the hearing and the preparation of this decision were significantly hindered by the difficulties in just finding where the material relevant to any particular issue was located.
6. The First Respondent was originally proposed by the Applicant and, in a decision dated 26th February 2021, the Tribunal appointed him as the manager until 26th February 2024. However, the Applicant became unhappy with the First Respondent very quickly. At paragraph 2 of her witness statement dated 29th May 2022 at part 6a of her documents, the Applicant summarised her allegations against the First Respondent:
 - (a) Breaches of RICS code and lease;
 - (b) repeat and active Unfair Prejudice and non-compliance with Section 20 notice;
 - (c) Discrimination against disability;
 - (d) Breach of Health & Safety and Duty of Care;
 - (e) unreasonable and inexplicable service charges (including reduction) without consultation of all Leaseholders, threats and yet failure to issue these demands or show adequate accounting;

- (f) active collusion with the “hiding” of funds ongoing and protection of the Directors’ abuse of the building, by nominating the disgraced directors’ own choice of accountant – without my consultation or consent;
 - (g) refusal to demonstrate that a bank account has been setup in favour of 178HR, free from the issues of ABC insolvency, interest-earning and inaccessible to the very directors for whom parallel accounts and hiding of £ tens of thousands of funds has been exposed – this appears to be a breach of Section 42 of Landlord & Tenant Act 1985, and breach of fiduciary duties of Manager and of course the FTT appointment;
 - (h) concerns over loss of affiliations and no active indemnity insurance appearing to be in place – checked by myself as soon as Mr Davidoff lost ARMA and IRPM memberships;
 - (i) Apparent cronyism and fixing of tender via in-house contrivance using ABC payroll surveyor to offer the specification, as well as costings for Richard Davidoff’s favoured ‘Landlord Repairs and Maintenance Services’ [LRMS];
 - (j) Breach of S27 & S28 Housing Act 1988 and Protection from Harassment Act 1997.
 - (k) No complaints procedure, which had to be requested time and again – contrary to the FTT demand that one was in place, and whilst formally addressed complaints via solicitors have continued to be ignored.
7. That wasn’t the limit of her allegations against the First Respondent which also included:
- (a) Using alternate names – Raziel instead of Richard and Archer instead of Davidoff;
 - (b) Allowing the front façade to remain in a dangerous condition;
 - (c) He and the staff of his company not being contactable, despite charging separately for an out of hours service;
 - (d) His company being recorded as dormant at Companies House.
8. In turn, the First Respondent had complaints against the Applicant, including the use of aggressive, inflammatory or abusive language, failing to provide access for works, and failing to pay service charges so as to leave the First Respondent unable to carry out his duties, let alone do what the Applicant wanted.
9. There is certainly something in the First Respondent’s complaints about the Applicant’s language. It is apparent from the documents before the Tribunal that it is frequently extreme, bandying about terms like “fraud”, “extortion”, “defamation”, and “slander” without the material to support such serious allegations. The Applicant must understand that language matters. It can undermine the credibility of the person using it so that making even just one unsupportable claim casts doubt on any other claims. Even more importantly, it can undermine the trust that is needed between those responsible for the

management of this building. Whether they like it or not, the Applicant and her fellow lessees have an ongoing relationship. The Applicant seriously undermines her own objectives for the proper management of the building if she can't maintain that relationship with a minimum level of trust and co-operation.

10. There are some allegations that may be simple to dispose of. For example, the Tribunal finds no unlawful purpose in the First Respondent's changes of name. Raziell is his given Jewish name. Like many whose names are unfamiliar to some people in this country, he finds it more expedient to use an alternative, Richard. The First Respondent also said he changed his surname by deed poll temporarily to hide his involvement in the purchase of a property.
11. However, the Tribunal must bear in mind the purpose of the application before it which is to consider whether the First Respondent should be replaced by Mr Cleaver. It is not to carry out a full accounting of any party's defaults, nor to reach any kind of judgment on the First Respondent's general suitability as a manager of any other property. The Applicant herself identified one issue in particular which, if established could be determinative. At the invitation of the Tribunal, the parties focused most of their submissions for the two days of the hearing on this issue.
12. The First Respondent used to be a member of IRPM (Institute of Residential Property Management) and Propertymark. His company, ABC Estates Ltd, used to be a member of ARMA (Association of Residential Managing Agents). They are no longer members of these organisations because they were expelled. Contrary to the Applicant's allegations, the First Respondent complies with the statutory requirement to be part of a redress scheme and maintains professional indemnity insurance, but his expulsion from the other organisations is a matter of concern.
13. The organisations in question are trade bodies, not regulators. However, in appointing managers under its statutory powers, the Tribunal looks to membership as an indicator of compliance with professional standards with which any putative manager should comply. The First Respondent and Mr Cleaver outlined some of the benefits of membership. For example, membership of the IRPM depends on taking a test of professional knowledge. ARMA provides updates on developments, including legal changes, affecting residential property management. Training and continuing professional development is also available.
14. Further, members are subject to certain standards and, if they do not meet those standards, the relevant organisation may subject them to a disciplinary procedure. Sanctions include expulsion from the organisation.

15. Membership of any of these organisations is not mandatory, either to operate in the residential property management market or for appointment as a manager by the Tribunal. However, given the role they play, the Tribunal would expect putative appointees to be members of one or more of professional bodies at a level of seniority commensurate with the responsibilities of a Tribunal appointed manager. If they are not, the least the Tribunal would expect is an explanation of why and what arrangements they have in place instead of such membership.
16. Further, if a putative or actual appointee is expelled from membership of a professional body, they cannot expect to be appointed or to continue an appointment without, at the very least, a clear explanation, both as to what happened and what impact it would have on the conduct of their duties.
17. The First Respondent stated that his problems started when some disgruntled former employees put false negative reviews about him and his company online. His rating dropped from 4.8 out of 5 to 3.8. He has sued them for defamation and achieved 6-figure settlements and apologies from some of them, the rest still being ongoing. He provided no evidence of either the reviews or the court cases.
18. The First Respondent then identified the root cause of his expulsion from IRPM, ARMA and Propertymark as being the Tribunal's decision dated 12th August 2021 in relation to 112 Blackheath Road (ref: LON/00AL/LSC/2020/0111 and LON/00AL/LAM/2018/0012). On 3rd January 2019 the Tribunal appointed the First Respondent to manage the property at 112 Blackheath Road. The First Respondent's relationship with the lessees broke down. On 4th March 2020 one of the lessees applied for a determination of the reasonableness and payability of service charges sought by the First Respondent. The case was delayed by COVID and only came on for hearing on 5th and 7th July 2021 after the management order had expired on 31st January 2021. The Tribunal made findings as to various defaults by the First Respondent:
 - (a) The management order had failed, with none of the works previously identified having been executed and no money having been spent on improving the physical fabric of the property. The First Respondent was primarily responsible for this failure.
 - (b) The Tribunal did not find the First Respondent to be a satisfactory witness. He had limited knowledge of the details of the case whereas, while a manager may delegate, they retain ultimate responsibility to ensure the outcomes sought through the management order are delivered. In his closing submissions the First Respondent made an allegation for which there was no foundation, namely that the lessees had never wanted to spend any money on the property from the outset. This was indicative of his dismissive attitude towards the lessees.
 - (c) The First Respondent failed to have sufficient regard to the terms of the management order. In particular, the outcome to be secured was the

execution of a relatively modest package of internal and external repairs and decorations which had already been identified by a surveyor. The First Respondent had two years which was sufficient time.

- (d) The First Respondent's actions led to inflated and wholly unreasonable sums being demanded from the service charge payers.
- (e) The First Respondent signed an agreement with his own company, ABC, for management services. The Tribunal said they could see no justification for this and that it seemed to have been a device to enable the First Respondent to levy charges and deal with service charge funds outside the scope of the management order. They further stated that it is not open to a manager to subvert the express terms of a management order in that manner.
- (f) The First Respondent issued service charge demands which were far from satisfactory. They had no covering letter, budget, or explanation for the sums demanded.
- (g) While the management order presented a challenge, with the landlord defaulting in their contribution to the service charges, the First Respondent was empowered to demand initial payments from the lessees and the landlord but did not avail himself of this.
- (h) The First Respondent did not tell the lessees or the landlord that the original surveyor had withdrawn from the project. The First Respondent then proposed a package of works which was quite different from that contemplated in the management order, with the budget increasing from the £26,000 he had originally proposed to the Tribunal to £106,574. He then didn't engage with the lessees and the landlord or bring the matter back to the Tribunal.
- (i) The First Respondent failed to consider whether the lessees could afford the increased budget, as he should have done.
- (j) By June 2019 the management order was doomed and the First Respondent should have brought it back to the Tribunal. There was no practical purpose in incurring ongoing costs when the desired outcome was no longer achievable. The only people to benefit were the First Respondent and his nominated contractors.
- (k) The First Respondent's report to the Tribunal in December 2019 gave no adequate indication of the extent of the problems that had arisen.
- (l) A lessee asked whether any staff members of ABC had any connection with contractors which had tendered for work. The person who answered said there was not when, in fact, his wife was the sole director and secretary of one of the contractors. The First Respondent's response was that there is nothing wrong with such a connection and the person who answered was self-employed rather than an employee of ABC, despite their title being, "Head of Block Management, Aldermartin Baines and Cuthbert". The Tribunal pointed out that a manager should be transparent and this dissembling was unacceptable.

- (m) The management order specifically provided for a separate reserve fund. However, the First Respondent used lessees' payments into the reserve fund to cover a shortfall in the service charge fund caused by the landlord's failure to pay their contribution. The Tribunal stated, "We are satisfied that Mr Davidoff has acted in breach of his fiduciary duties as trustee with regard to the sums in issue ..."
 - (n) The First Respondent's service fell far short of what the lessees might reasonably expect and his annual fees were reduced from £1,875 + VAT to £900.
 - (o) The First Respondent charged fees for an out of hours helpline and the handover between managers but the expenditure was unreasonable.
 - (p) The First Respondent charged too much for the preparation of accounts which should have been simple.
 - (q) The First Respondent also charged for supervision fees but they were not payable.
19. The First Respondent alleged that the chair of the Tribunal, Judge Latham, had read the defamatory online reviews and had taken against him. His evidence was that the Tribunal members treated him in a way he perceived as rude and aggressive. He did not allege that the reviews or their content were referred to at any time.
20. The First Respondent drew out 5 transgressions found by the Tribunal:
- (a) The First Respondent asserted that, contrary to the Tribunal's finding, he was entitled to enter into the contract with his company, ABC, according to the terms of the management order. He particularly objected to the use of the verb "subvert" which he said made him sound like an arch-criminal.
 - (b) The First Respondent argued that it was not reasonable to say he couldn't pay the insurance premium out of the reserve fund when there was a shortfall in the service charge fund.
 - (c) The First Respondent said he was unaware of the Head of Block Management misleading the lessees and, in any event, it was unnecessary. He had told him to be transparent. He asserted that the Tribunal's reaction was disproportionate.
 - (d) The First Respondent had to act when the original surveyor withdrew. The work he had recommended was "sticking plaster" work. The First Respondent appointed a successor and the cheapest quote for his works was £34,000. He said the Tribunal made it sound like he had run off with £100,000.
 - (e) The First Respondent said it had been suggested he was not transparent about other contractors which had used an address he actually owned. It was just that the contractors happened to be his tenants.
21. The First Respondent said that he decided it was not worth appealing the Tribunal's decision because it would cost more to pursue such an

appeal than the direct cost of the decision which he put at around £5,000. However, long after the appeal time limit had expired, a lessee at another property decided to exploit the Tribunal's findings to support a claim for the right to manage that property in place of the First Respondent. That lessee was in PR and a former high-level political consultant. He spread selections from the decision across social media. As his message was re-tweeted and re-posted, the First Respondent's transgressions were made to seem worse and worse. It was this which led the IRPM, ARMA and Propertymark to expel him and his company.

22. There is a number of serious problems with the First Respondent's arguments:
 - (a) First Tier Tribunal decisions are not binding on later constitutions of the same Tribunal. However, the First Respondent wanted this Tribunal to go beyond that and expressly disagree with the previous decision. This is not possible. This Tribunal did not hear the same evidence or arguments and so could not possibly disagree with any of the previous Tribunal's findings. The appropriate remedy is an appeal, not a review in an entirely separate case.
 - (b) Furthermore, the First Respondent's characterisation of the previous Tribunal's decision is, at best, highly selective and skewed to his perspective and, at worst, just wrong. The Tribunal's decision went beyond the First Respondent's analysis and its reasoning is sound on its face.
 - (c) The First Respondent provided virtually no evidence in support of his arguments. The Tribunal does not actually know why IRPM, ARMA and Propertymark expelled him because he has not provided copies of their decisions. The Tribunal has no idea what role any social media campaign has in his predicament, not only because it has not seen the decisions, but also because he has presented no evidence whatsoever of the social media campaign. The Applicant provided some relevant news cuttings but they do not provide anything close to the level of detail needed.
23. For these reasons, the Tribunal is not satisfied that the First Respondent has presented anything like a satisfactory explanation for his expulsion or non-membership of the relevant professional bodies. He has pointed out that he has not entirely lost the benefits of membership in that he has not lost the knowledge which allowed him to pass the IRPM's tests and he can receive updates from other sources but this somewhat misses the point. Such points may constitute grounds as to why membership is not mandatory but the situation still needs to be adequately explained. The Tribunal agrees with the Applicant that this issue alone is sufficient for the Tribunal to decide that he should no longer be its appointee to manage the subject property.
24. The Second Respondent's position was that they objected to the First Respondent being replaced because he had already familiarised himself

with the property and any change would incur further delay in resolving issues at the property. However, while those are understandable concerns, they are not sufficient to overcome the Tribunal's difficulty with allowing the First Respondent to continue to be the Tribunal's appointee in the circumstances described above.

25. Mr Cleaver, the proposed replacement for the First Respondent, attended the hearing and the Tribunal were able to question him. He also provided a statement to which were attached the complaints procedure for his company, Urang Property Management Ltd, his management plan, evidence of his professional indemnity insurance, and details of his 16 previous Tribunal appointments or re-appointments. Urang is a member of ARMA and RICS. They are also registered with the FCA in order to be able to arrange insurance. Mr Cleaver appears to be familiar with the RICS Service Charge Residential Management Code and now has around 21 years' experience in finance, business administration and property management with Urang. He confirmed having visited the property and reviewed the leases.
26. Mr Cleaver answered questions in an honest and straightforward manner. He appeared to understand the difficult nature of the property he was looking to manage. None of the parties objected to his becoming the manager on the First Respondent's discharge.
27. In the circumstances, the Tribunal is satisfied that it would be appropriate to replace the First Respondent with Mr Cleaver as the manager under the existing management order.
28. The Applicant asked the Tribunal to make various directions to both the First Respondent and Mr Cleaver in relation to the handover and as to how to resolve various repair and other issues at the property. The Tribunal declines to do so. The Tribunal trusts the professionalism of both the First Respondent and Mr Cleaver to ensure as smooth a transition as possible – in particular, the First Respondent committed himself to ensuring this. The other proposed directions would tie Mr Cleaver's hands – as the Tribunal's appointee, the Tribunal trusts him to assess what is required and use his professional judgment as to how to proceed. If further direction is required, any party may apply to the Tribunal for it.
29. The Applicant had also applied for an order under section 20C of the Landlord and Tenant Act 1985 that the Second Respondent should not add their costs of these proceedings to the service charge. In fact, the Second Respondent has been represented by its directors and has not incurred any costs. Therefore, such an order is unnecessary.
30. It is understood that since the hearing but before this decision was issued, the First Respondent sought his costs from the other parties. The Tribunal does not understand the basis for his claim. He did not ask the Tribunal for any direction or order in relation to his costs during the hearing. If any party has an ongoing issue in relation to costs

of the proceedings, it will have to be the subject of a separate application which will benefit from knowing this decision and the reasons for it as set out above.

Name: Judge Nicol

Date: 13th October 2022

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.