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**DECISION BY LEASEHOLD VALUATION TRIBUNAL OF THE  
LONDON RENT ASSESSMENT PANEL AS TO DISMISSAL OF APPLICATION**

LANDLORD AND TENANT ACT 1985 as amended – Section 27A

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**Ref: LON/00BK/LSC/2006/0314**

**Property:** 91/93 Westbourne Terrace, London, W2 6QT

**Applicant:** 91/93 Westbourne Terrace Ltd

**Respondent:** Mr Ogunsanya – Flat 3  
Mr J Purdie – Flat 1  
Mr Z Hanayen – Flat 4

**Appearances:** Dr K Papas  
Mr I Plahte

**for the Applicant**

No appearances

**for the Respondent**

**Tribunal Members:** Mrs J S L Goulden JP  
Mrs E Flint DMS FRICS IRRV

**Date of Decision:** 17 January 2007

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BACKGROUND

1. On 14 December 2006, the Tribunal wrote to the parties as follows:-

**“The status of the application has been considered by a procedural chairman. Because the parties and in particular the Applicant has failed to comply with the directions issued on 3 October 2006 the hearing scheduled for 7 December 2006 has been vacated.**

**The tribunal gives notice, pursuant to paragraph 11 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2004 [sic], that it is minded to dismiss the application as an abuse of its process on the grounds that:-**

- 1. the Applicant has failed without explanation to comply with its directions of 3 October 2006; and**
  - 2. the issues primarily in dispute have been the subject of tribunal decisions issued on 28 September 2006 and 10 October 2006.”**
2. A hearing was held on 10 January 2007 to consider dismissal of the application.
  3. Dr K Papas, a director of the Applicant company, 91/93 Westbourne Terrace Ltd, appeared together with Mr I Plahte on behalf of another director of the Applicant company, Ms M Wold.
  4. None of the Respondents, Mr J Purdie, Mr Z Hanayen or Mr Ogunsanya appeared or were represented although correspondence had been received from Mr Purdie.
  5. Following discussions between Dr Papas, Mr Plahte and the Tribunal, several adjournments were given so that the Applicant company's representatives could consider the Tribunal's decisions in respect of Flats 1 and 4, 91 Westbourne Terrace which were dated 28 September 2006 and 10 October 2006 and in particular whether they wished to withdraw the present application which was dated 23 August 2006.
  6. The Applicant company's representatives subsequently confirmed that they did not wish to withdraw the August 2006 application and were therefore asked to address the Tribunal on the question of dismissal.
  7. It was accepted that the Tribunal's Directions dated 3 October 2006 had not been complied with due to *“a lack of co-ordination and organisation” written the Applicant company*. Dr Papas said that this was *“a clerical omission” “a misunderstanding”* and an *“absence of knowledge”*. She also said that if the

application were to proceed she would take personal responsibility. Of the 12 Directors of the Applicant company, only two lived in England permanently. Dr Papas confirmed that she had attended every hearing, and Mr Plahte confirmed that he had attended "a couple of hearings".

### **THE TRIBUNAL'S DECISION**

8. In Directions dated 3 October 2006, which were issued following an oral Pre-Trial Review held on the same date and attended by Dr Papas and Mr Plahte, it was directed inter alia:-

**"By 30 October 2006, the Applicant shall send to the Respondents –**

**(a) Service charge accounts for 2004 (if necessary) and 2005 prepared in accordance with the provisions of the Leases, and an estimate for the year 2006 together with demands and details of any payments made and a statement setting out the grounds in full for the application including:**

**(i) Identification of the service charge provisions in the leases pursuant to which the service charge is demanded.**

**(ii) Any legal submissions in support of the application."**

9. Regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (the 2003 Regulations) states:-

**"(1) Subject to paragraph (2), where –**

**(a) it appears to a tribunal that an application is frivolous or vexatious or otherwise an abuse of process of the tribunal; or**

**(b) the respondent to an application makes a request to the tribunal to dismiss an application as frivolous or vexatious or otherwise an abuse of the process of the tribunal,**

**the tribunal may dismiss the application, in whole or in part.**

**(2) Before dismissing an application under paragraph (1) the tribunal shall give notice to the applicant in accordance with paragraph (3).**

**(3) Any notice under paragraph (2) shall state –**

**(a) that the tribunal is minded to dismiss the application;**

**(b) the grounds on which it is minded to dismiss the application;**

(c) the date (being not less than 21 days after the date that the notice was sent) before which the applicant may request to appear before and be heard by the tribunal on the question whether the application should be dismissed.

(4) An application may not be dismissed unless –

(a) the applicant makes no request to the tribunal before the date mentioned in paragraph (3)(c); or

(b) where the applicant makes such a request, the tribunal has heard the applicant and the respondent, or such of them as attend the hearing, on the question of the dismissal of the application.”

10. The Directions dated 3 October 2006 were not complied with in any way and this was the case up to and including the date of this hearing, 10 January 2007, i.e. over three months after the Directions had been issued. No explanation satisfactory to the Tribunal has been provided.

11. Accordingly the application dated 23 August 2006 is dismissed on the grounds that it is an abuse of process to the Tribunal under Regulation 11(1)(a) of the 2003 Regulations.

CHAIRMAN .....  .....

DATE ..... 17 January 2007 .....

JG