

VESTAPUB00001
25/07/2011

VESTA
pp 00001-00061

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION VESTA

Reference: Operation E10/1246

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 25 JULY 2011

AT 10.05AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: This public inquiry concerns an allegation that Mr Andrew Kelly, in his capacity as an officer of Sydney Harbour Foreshore Authority, acted in conflict with his duties. He is alleged to have done so when dealing with Mr Charif Kazal and other members of the Kazal family. These dealings are alleged to concern properties owned by the Sydney Harbour Foreshore Authority at 91, 99 and 100 and 135 George Street, The Rocks. These properties were, at the time in question, leased by the Sydney Harbour Foreshore Authority to Charif Kazal and members of the Kazal family. It is alleged that at that time Mr Kelly was or anticipated being involved with Charif Kazal and members of the Kazal family in private business.

This public inquiry also concerns an allegation that Charif Kazal sought improperly to influence the exercise of Mr Kelly's official functions or place himself in a position to do so by holding out to Mr Kelly the prospect that he would or might be involved with him and members of the Kazal family in private business.

I draw attention to the document headed Standard ICAC Directions. I understand that all interested parties have been provided with a copy of this document. Those directions are hereby ordered to apply to this hearing. I shall now invite Counsel Assisting to deliver his opening address. There will then be a short adjournment. When we recommence I will take the appearances of counsel and the leading of the witnesses to be called will commence. Mr Newlinds.

MR NEWLINDS: If the Commission pleases. Pursuant to section 33 of the ICAC Act I've been appointed by the Commission to assist you in relation to this inquiry and on that basis I seek your leave to appear.

THE COMMISSIONER: Yes, you have that leave.

MR NEWLINDS: The Sydney Harbour Foreshore Authority, commonly known as SHFA, was created pursuant to the SHFA Act of 1998. As at 2007 SHFA was the consent authority for the areas generally known as The Rocks, Darling Harbour and Circular Quay. It was also the owner of approximately 500 properties in those areas which were either leased or available to be leased so one can immediately see that SHFA as at 2007 had two separate and distinct roles. One was to be the consent authority for any applications to develop or make alterations to any properties in the area, and in this case we're focussing on The Rocks which of course has significant heritage value, and on the other hand was the landlord seeking to rent out properties in that area to tenants with a view to making money for SHFA and with a view to the tenants' businesses being successful so as to create an environment of, an environment attractive to other tenants and commercial operators within The Rocks. By 2007 SHFA managed an asset portfolio of approximately \$1.4 million.

Mr Andrew Kelly commenced employment with the Darling Harbour Authority some time in 1998. At that Authority he was the Director of Business Services. Now, one of the things the SHFA Act did was to bring under the one umbrella, if you like, the Darling Harbour Authority, the Rocks Authority and the Authority that had previously dealt with Circular Quay. So by virtue of the changing Authorities Mr Kelly became an employee of SHFA some time in 1998, his first job being Director of Business Services.

- 10 In 2001 Mr Kelly also had a consultancy with SHFA through a company that he controlled, that has some relevance to the evidence you will hear because in around 2001 Mr Kelly did go to the trouble of disclosing to his superiors within SHFA the fact that he had that consultancy and the fact that it may cause some tension in his interests which matter was considered by his superiors and considered to be of no consequence. But what it does show us is that as early as 2001 Mr Kelly was well and truly aware of his obligation as an employee of SHFA to identify in any circumstance where his interest might come into conflict with that of SHFAs and his obligations to being those matters to the attention of his superiors. In other words, he had a clear understanding of his obligation to disclose any conflict of interest in which he found himself.

- Now, in late 2001 Mr Kelly applied for a permanent position and there is a written contract dated 21 May, 2003. The contract had a five year term and therefore it would expire by effluxion of time in May 2008. Now, at some stage he is promoted within the organisation and becomes the Director of the part of SHFA known as the Tenant and Asset Management Services referred to in most of the documents as TAMS, T-A-M-S. Now, the structure of SHFA at the relevant time, that is, 2007 was this. He came under the portfolio of the Minister for Planning and ultimate responsibility for the acts of SHFA rested with the Minister. Below the Minister was a Board of Directors appointed by the Minister and below the Board was the CEO who, at the relevant time, was a Dr Robert Lang.

- Below the CEO there are a series of Directors of various departments within the organisation, one of them was TAMS. There was a different department that dealt with the heritage matters and the consent to developments and the like and Dr Lang will tell us that he was satisfied that he had in place what are commonly known as Chinese walls to ensure that there was equal or no dealings between the separate departments. He will tell us that he was very conscious of the tension for conflict between what each department was trying to achieve.

One thing I haven't told you was not only was SHFA the consent authority for the area it was also the prosecuting authority so if any person at The Rocks did some authorised building works or did something that breached the terms of not just their lease but of the development consent position down there SHFA was charged with determining whether there should be a

prosecution and indeed prosecuted. So that's SHFA and that's Mr Kelly's position as at 2007.

Can I then come to the Kazal family. As at 2007 through a series of companies all of which have in common the fact that they are controlled and ultimately known by members of the Kazal family. The Kazal family was the tenants of a series of properties at The Rocks. The Kazal family consists of eight brothers and two sisters. For our purposes we'll hear evidence from and evidence about Tony, Karl and Charif Kazal.

10

Charif Kazal as at 2007 and for the few years leading up to 2007 was the person within the Kazal organisation who primarily dealt with SHFA regarding lease matters and the evidence will show that as between the Kazals and SHFA there were many of what might be described as the usual dialogue, disputes, negotiations that one sees between landlord and tenant in relation to commercial buildings and because of Mr Charif Kazal's position within the Kazal organisation and Mr Kelly's position at SHFA, the position was that as at 2007 Mr Kelly and Mr Charif Kazal had had many, many dealings of a business nature dealing with these leasehold businesses. Mr Charif Kazal had also, I think was still but he certainly had been the President of the Chamber of Commerce in the area and in that capacity he'd also had dealings with Mr Kelly and other people at SHFA and as these things develop Mr Kelly and Mr Kazal had a relationship. I don't think - it would not be fair to describe it as a personal relationship as at early 2007 but they certainly met for cups of coffee and tea around the place and no doubt had a rapport that they had developed throughout their dealings.

20

Now, the relevant decisions that were made by SHFA in relation to leaseholds held by the Kazals in 2006 and 2007 are as follows. Firstly, on 26 June, 2006 in relation to the property 100 George Street, and if I can I'm going to try and refer to these properties by reference to the business that's carried on within them because they're all in George Street and it can get a bit confusing. So 100 George Street is generally known as La Mela Pizzeria, La Mela, M-E-L-L-A, Pizzeria and on 26 June, 2006, on the application of the Kazals the lease which was, which had a period to run was replaced by a new lease with a longer term. So that's a decision that Mr Kelly was involved in, made recommendations about, his recommendations went the CEO and by the CEO's recommendations onto the board and it's undoubted then in relation to each of these decisions, albeit that in relation to none of them was Mr Kelly the actual decision-maker, it will be accepted by all concerned I expect that his recommendation was given significant weight and was taken into account by the relevant decision-makers, whether that be the CEO or the board. There's evidence of the delegations that were in place but regardless of delegations each of these decisions ultimately did go to the board and were signed off by the board.

40

The next relevant decision is in relation to 99 George Street which is referred to as The Rocks Café and a decision was made on 21 January, 2007 and it involved an agreement by SHFA to pay to the Kazals an amount of \$335,000. Now what that emerged out of was some work to develop the property which had been carried out by the Kazals that originally was unauthorised. They went ahead and did this work without permission from SHFA we suspect, well, without permission of SHFA and it's been suggested in some of the documents you will see when SHFA was considering how to deal with all this, there were certainly some people within SHFA who considered that was part of a business strategy that the Kazals carried on that instead of waiting to get permission from SHFA to do things they would do them and then deal with the situation from what might be seen to be a stronger negotiating position having regard to the fact that what had happened had already happened and if SHFA didn't allow it to happen then there would have to be demolition orders and the like. In any event, there was a dispute between the landlord and the tenant as to what amount of money which the tenant had undoubtedly spent should properly be allocated to developing what's described as a lease of the base building and what amount of that money should properly be allocated to tenant's fixtures.

The lease containing provisions to the effect that any work the tenant did that had the effect of benefiting or improving the base building would be paid for by SHFA, any work that only went to tenant's fixtures would be paid for by the tenant. There was to-ing and fro-ing with SHFA with various people making different recommendations as the amount to be paid but ultimately a decision was made to pay \$335,000.

It's clear from the documents that some people within SHFA thought that was too much money. Mr Kelly thought it was appropriate as did Dr Lang and as did the Board. It's an example though, at the very least the dealings between SHFA and the Kazals in relation to that decision give us a very clear insight into the close dealings between Charif Kazal and Mr Kelly and also the influence and impact Mr Kelly's view on a particular decision had within the organisation. Dr Lang will tell you, and indeed no one, Dr Lang will tell you that he considered that Mr Kelly was good at his job, did know his area, was good at dealing with tenants and when it came to decisions such as this which ultimately had to be a matter for judgement because no one is able – will be told to identify with any particular precision how much work has been – is probably linked to any particular part of a building.

So Dr Lang will say consider him good to be at his job, certainly trusted him and gave great weight to what Mr Kelly thought should happen. I should say this though, Dr Lang will also say that at the time and with the benefit of hindsight going back through the documents that he is satisfied that that particular decision was the type of decision that ultimately would've been made in any event and he will say that now in light of what he knows Mr

Kelly's relationship with the Kazals apparently was at that time and will be later.

10 The next relevant decision was made on 2 January, 2007 and concerns 135 George Street known as Amo Roma, the Amo Roma Restaurant. That was a decision to pay \$20,000, or SHFA to pay \$20,000 for an electrical upgrade. There had been some to-ing and fro-ing between the Kazals and SHFA as to whether the electricity supplied to the building was adequate for a working restaurant or not and the result of those negotiations which is effectively
10 how these things seem to work within SHFA, they start off with a claim by the tenant, it's looked at by someone within the organisation, a counter offer or a counter proposal is put, sometimes SHFA holds out from paying amounts like this in circumstances where some of the rent isn't up to date and he just said, Well, we're not going to look at that until you get all your rent arrears in place. And a, what looks very much like a close negotiation goes on and you end up with a compromise, in this case for \$20,000. Once again, Dr Lang will say that even looking at that decision with the benefit of hindsight what he thought at the time is still what he thinks now, that is, it's probably a decision that would've been come to in any event.

20

Now, the next relevant decision is one that was made on 14 July, 2007 and concerned a property at 91 George Street which used to be Costi's Seafood and later on as a result of this decision became the Guylian Chocolate Shop or the Guylian Chocolate Café. And what had happened was the Costi people or someone using the Costi seafood brand, presumably by a franchise, had operated a seafood business within that building. The Kazals had taken an assignment of that lease and therefore had become the leaseholder. The seafood business shut down, there was a period of time when the premises were vacant and the Kazals wanted, firstly, they wanted
30 this from SHFA a rent abatement and they also wanted consent to a change of use so that instead of being a seafood shop it could be used as a chocolate selling shop.

Now, this decision is important in terms of the chronology because on 14 May a decision was made within SHFA at the recommendation of Mr Kelly to decline that application, in other words to say no to the rent abatement and to say no to the change of use. That decision is reversed on 14 July, 2007 and Mr Kelly agrees with the change of position. Why that is significant is what, is because of what happened in late May/early June
40 2007. But before I come to that, can I just tell you a couple of other things. Mr Kelly as I said had a written employment contract. It incorporated within it the, what was then and perhaps is still now the Code of Conduct for senior executives working within the New South Wales Government. We'll take you to the provisions of that code before this inquiry is out. But what it does without any equivocation is make it clear that any conflicts of interest that a senior executive finds himself in or identifies within his or her staff are to be disclosed and declared and considered by that person's superiors. So that's the Code of Conduct that actually forms part of Mr

Kelly's contract. It also says, as you would expect, that an employee is not entitled to take a secondary job without permission and it also identifies very clearly that conflicts of interest are as much about perception as fact and it makes it clear that any circumstance which might not in fact involve a conflict but which might create a perception of a conflict are just as important as actual conflicts and need to be disclosed. Secondly, SHFA had within its own organisation its own code for its own employees which also would apply to Mr Kelly and it has similar provisions in it. Now, when Dr Lang commenced at SHFA at its CEO in I think July 2003, he instigated an induction program for new employees at SHFA wherein amongst other thing they, other things they were educated in the Code of Conduct. And he will tell us it was emphasised to them of the importance of the code with particular reference to conflicts. At the same time he also put a system in place whereby current employees of SHFA went to courses or applied to go to courses where they received the same education about the code, conflicts and the like. Dr Lang will say that as far as he was aware Mr Kelly went to those, went to that session. There are some documents floating around which appear to be the attendance record of those sessions which tend to suggest Mr Kelly wasn't there, so that's a matter we'll have to ask about and if he didn't go we might need to get to the bottom of why he didn't go, but it might not matter because I'm confident that Mr Kelly will accept that he well understood what a conflict was and he well understood that it was a serious requirement of his employment and of his role that any such conflict be disclosed. Now, the next character in this story is Rodric David and his group of companies known as the Parkview Group of Companies. Now, Rodric David is the son of John David. In 2007 he was a businessman involved in property development and I think property management who was interested in doing business in the United Arab Emirates. As I said, he was the owner and controller of a group of companies known as the Parkview Group and in particular a company known as Parkview Property Pty Limited. Three relevant people within his employ or within the employ of that company at the time were Clint Willoughby, whose expertise was real estate, Tony Touma, T-U-M-A, who was the general manager of the Parkview Group, and Emile, A-M-I-L-E, Tabet, T-A-B-E-T, who worked for Mr Touma.

Now, it seems that some time early 2007 Mr David and Mr Charif Kazal had discussions about doing some business in the United Arab Emirates on some basis and why I say some basis is that there is a lack of conformity within what various people have told those assisting you as to how this idea came to be and what was intended to be the role of Mr Kazal.

Now, at about the same time, that is early 2007 and this had been going on since late 2006, Mr Kelly had either worked out for himself but might have been told informally, that his contract which you will recall was to expire in May 2008 was not going to be renewed. Now, we don't think there was anything sinister about that decision, albeit it seems to be accepted by all involved that that decision had been taken but there is no suggestion in

anything we have seen to the effect that that decision was based on some perception that Mr Kelly was not anything other than doing his job.

10 But in any event, he apprehended he wasn't going to have his contract extended and he was actively looking for new job opportunities and it seems from the document he was particularly interested in working in the United Arab Emirates. He had a friend over there who he was emailing backwards and forwards and the friend was telling him how good the working conditions were, how he got paid a lot of money, how the tax rate was lower and that it was, that there may be opportunities for him over there and he was sending that friend and other people his CV asking if they were aware of any job opportunities.

20 Now by May 2007 at the latest and probably earlier, there was a plan in place for a group of people to travel to Dubai and Abu Dhabi with the objective of scoping out a business opportunity for the Parkview group. Now, the people involved were Rodric David, Clint Willoughby, Tony Touma and Emile Tabet and as you'll recall they're all Parkview people, Mr David being the owner, the others being his employees, together with Charif Kazal and Andrew Kelly and those two people have had in common at the time that they were not Parkview people.

30 Now, not only were, was the group of six able to be categorised by reference to who did or who didn't work for Parkview, there were a couple of other distinguishing factors which allows us to speak in terms of there being two separate groups within the main group. The first was that the David people, that is Mr David, Mr Willoughby, Mr Touma and Mr Tabet all travelled in one plane, all went first class. Mr Kazal, that is Charif, and Andrew Kelly all travelled, travelled together on another aeroplane on the same day, only in business class.

40 The Parkview people were all, all had their airfares and accommodation and expenses paid for by Parkview. Sometimes they say it was paid for by Mr David and sometimes they say it was paid for by Parkview. In fact the accounting, counting records of Parkview show that it was all booked as expenses to Parkview Property Pty Limited. Now, the question of who paid for and the circumstances under which these payments were organised for Charif Kazal and Andrew Kelly is a matter that will have to be the subject of some focus of the inquiry but some of what I'm about to tell you seems to be objectively clear. Firstly, all the Parkview people were paid for by Parkview so they didn't put their hand in their own pocket for their airfares or their accommodation. Mr Kelly paid for his own ticket and for his own accommodation and on 18 June, 2007 was reimbursed in cash for that amount by someone. And thirdly, Mr Charif Kazal paid for his own ticket and accommodation and was subsequently on the provision by him of an invoice to Mr David's company Parkview, just to put that in a more formal position. One of the Kazal companies is called AWT and AWT provided after the trip Parkview with an invoice seeking reimbursement for

Mr Kazal's expenses and Parkview paid those expenses. So we're now at a stage where we think we can prove without any doubt that everyone except Mr Kelly was definitely paid for or reimbursed by Mr David.

Now, who paid Mr Kelly in relation to reimbursement for his expenses? That is not clear. Mr David will say he didn't pay Mr Kelly and he certainly didn't pay in cash. He will say it wasn't his practice to pay in cash. Mr Kazal will say that he didn't pay Mr Kelly and Mr Kelly will say that Mr David provided him with an envelope with about \$11,000-odd in bank notes in it shortly after the trip which he took down to his bank and banked and that was Mr David reimbursing him for the trip. Objectively we know this: Mr David through Parkview keeps very meticulous records of the expenses relating to this trip, an account was set up within the Parkview accounts dealing with the expenses for the trip and all of the other expenses relating to the trip are recorded in those accounts with no reference to any cash payment to Mr Kelly.

10

20

Now, in relation to who was doing what on the trip and what people's role was, there's also an inconformity in what people have been telling your investigator. Mr David will say he didn't really know much about Mr Kelly until Mr Kelly came along on the trip with Mr Kazal and as far as he was concerned he, Mr Kelly, was there with Mr Kazal as some sort of assistant for Mr Kazal. Mr David will say that Mr Kazal was there as a consultant to Parkview and the deal was he'd get reimbursed for his expenses and later on down the track he might get a job if the business got up and running or indeed he might even get some sort of ownership in the, in that particular business.

30

THE COMMISSIONER: Sorry, Mr Newlinds, who said that?

MR NEWLINDS: Mr David and Mr Kazal both say that that's the arrangement with Mr Kazal. So Mr Kelly will say that he was there to help Mr David as some form of consultant for Mr David and that's consistent with Mr David reimbursing him for his fees and therefore Mr Kelly and Mr Kazal both say well, yes, we were both on the same trip, yes, we both had something to do with what Parkview was trying to do by way of business in the United Arab Emirates but we, that is Kazal and Kelly, really had nothing to do with each other because we're both there really as separate consultants to Mr David.

40

Now, before and during the trip and perhaps even shortly after the trip various documents were prepared by the Parkview Group of people. Some of those documents identified both Mr Kelly and Mr Kazal as being part of the Parkview team and indeed some of those documents identified both Mr Kelly and Mr Kazal as being directors of Parkview Property. Now, it is, it was never the fact that Mr Kelly or Mr Kazal at that time were directors of the Parkview company but it is equally true that documents were prepared which did hold, which did state that they did hold a position.

Another thing that happened which will be the subject of some questioning is shortly prior to the trip Mr Kelly was allocated an AWT email address, remembering AWT is a Kazal company and Mr Kazal had an email address which was charifkazal@AWT or something to that effect and Mr Kelly was allocated a similar email address which had @AWT on it.

10 There is also some suggestion within the documents to the effect that all concerned had business cards prepared for the trip and that Mr Kelly may have been holding an AWT business card during the period that they were in Dubai. Now, Mr Kelly was probably involved in the preparation of some of these documents, we'll have to hear some evidence about that, but it is clear that he knew about the documents and seems to have been 100 per cent content with those documents being distributed to whoever was interested within the United Arab Emirates. In other words, it will be clear beyond doubt that Mr Kelly acquiesced in the Parkview Group holding him out as part of their group and holding him out as someone who actually held a senior corporate position within the company.

20 There will also be some evidence of some other documents that were created in Australia shortly prior to the trip, these are some dealings with Chesterton International, the large real estate firm, probably created by Mr Kelly, and if not created by him, once again, almost certainly created to his knowledge which again hold Mr Kelly out and Mr Charif Kazal out as being part of the team of people who are contemplating this new business venture. The other thing we know about the trip is that Mr Kelly and Mr Kazal, as I said, flew there on the same plane, stayed at the same hotel, went to dinner, dinners together, had drinks in the afternoon and went to various meetings and while they were over there created a document which might loosely be
30 called a business plan or a budget which you will see, but tends to suggest a common knowledge between Charif Kazal and Andrew Kelly that the goal of the business included, at least, both of them being employed by the business.

Now, what Mr Kelly didn't do in relation to this trip was, either before it or after it, disclose the fact that he had gone to anyone at SHFA and the person he should've disclosed it to was Dr Lang, he being his only superior other than the Board. Mr Kelly, we think, we anticipate, will seek to explain away that, what some people might describe as a failure in this way. We
40 anticipate that he will say, Well, look, I wasn't having any business dealings with Mr Charif Kazal because all that was happening was that I had some arrangement with Rodric David where I was some sort of consultant or assistant and Mr Kazal had a similar arrangement but it was also with Mr David and therefore, so the explanation goes, we had no business relationship with each other and therefore there was no conflict and therefore there was nothing for me to disclose. That's one way he has in the past sought to justify the non-disclosure.

The other way is for him to explain in detail why it was that none of the decisions that he was involved in either before the trip or after the trip on some of the Kazals were anything other than proper decisions. In other words, he says, Well, look, it wasn't anything I had to disclose because it didn't create a conflict because I can demonstrate why it was that these decisions that were made would've been made regardless of what relationship I had with Mr Kazal.

10 Now, for reasons of developing final submissions that it's perhaps worth just touching on them now. Neither of those explanations we think stand scrutiny. When I say "we" I mean the submission I will make is that they don't stand scrutiny but it will be supported by this evidence. Dr Lang who will put a number of scenarios to you about what Mr Kelly was actually doing on the trip starting with the most benign, that is, he's there as a consultant to Mr David, Charif Kazal as a consultant to Mr David, Mr Kelly was paid, reimbursed by Mr David and it didn't have much to do with Charif Kazal when he was over there.

20 He will say without any hesitation that he considers that matter that should've been disclosed and if it had been disclosed he would've told Mr Kelly he was not allowed to go on that trip and if it hadn't been disclosed and he found out about it afterwards he would've dismissed Mr Kelly. So he considers it not just a matter that hasn't been disclosed, he considers it a matter so serious, that is the lack of disclosure, that it would have justified summary dismissal. The reason Mr Kelly's explanation (not transcribable) is this. Even on that benign view, that is, they're both engaged by Mr David the position has to be, we will submit, that what that means is that both Mr Kelly and Mr Kazal were working towards a common goal, that common goal being that Parkview get up and running in the United Arab Emirates a business. Now, perhaps that business is just for the benefit of Mr David but 30 it's also totally clear that both Mr Kazal and Mr Kelly hoped that if the business got up and running there may be opportunities for both of them in that business, undoubtedly Mr Kelly hoped that he would gain employment. Undoubtedly, Mr Kazal hoped the same thing and indeed Mr Kazal also hoped that he would have some ownership in the business.

40 But however one gets going into those details and whatever the answer is the fact is they were working together with a common interest to get this business up and running. Now, that interest, we will suggest, was in conflict with the interests they each held at their respective organisations, that is, Mr Kelly at SHFA doing the best he can for SHFA in the dealings between SHFA and its tenants and Mr Kazal at the Kazal Group of Companies doing the best he can for the Kazals when dealing with Mr Kelly. And Mr Kelly must've perceived that, do you think he'll say he didn't, and he ought to have in those circumstances disclosed it.

The second explanation, or the second part of the explanation put forward by Mr Kelly, that is, Well, I didn't have to disclose it because it didn't make

any difference to anything I did, completely misunderstands the fundamental importance of disclosing conflicts even if what one is disclosing is nothing more than a perception of conflict or a perception of bias. Now, that fundamental importance is thought out in words of one syllable in the Code of Conduct of both SHFA and the Code that applied to its senior executives and is something that Mr Kelly, we will suggest, understood at the time, but if he didn't then this inquiry at the very least is a very important vehicle for the Commission to look at the question of conflicts by reference to perception, that is, perception of conflict and perception of bias caused by that conflict and why it is that as a matter of policy the Codes of Conduct that had been in place for many years emphasis on perception is an important matter because we all know that after Mr Kelly left the organisation, and I'll come to this part of the story in a few moments, but he leaves in April 2008, there is a business created in the United Arab Emirates, Mr Kelly does have a job with it, Mr Charif Kazal does have an ownership interest in it, Mr David also has an ownership interest in it, it's created incredibly complicated, involving various tax havens and the like and there's been an enormous falling out between Mr David on the one hand and the Kazals on the other and there is litigation in a jurisdiction that we don't often hear much about, the Cayman Islands where the David Group and the Kazal Group are now no longer, on the one hand, they're locked in litigation so the thing was a financial disaster.

And of course at some point in time, the Sydney Morning Herald and other press outlets have identified the fact that, the following basic facts, that is Mr Kelly's position at SHFA, Mr Kazal's position at the Kazal Organisation, the trip to Dubai, the fact that a business result from that trip, and have pointed out that that all has a very bad look to it, as it does, which is why perception is so important. Now, we will look in the course of this inquiry into these various decisions. It's not clear at the moment whether there will be any suggestion from anyone that what Mr Kelly says about them is not right. In other words, it may well be that you are left in a position where you are just not able to say whether any of these decisions were infected by the conflict or whether they might have been different if there had been no conflict or if Mr Kelly had disclosed the conflict and had stepped aside and had no part in the decisions. If that be the case at the conclusion of the inquiry, our submission will be that doesn't lessen the gravity of the conduct of Mr Kelly in failing to disclose what he failed to disclose, because it's the very failure to disclose that on that hypothesis would have created the perception which any reasonable person just been told those facts would immediately conclude, that is, this process could not have been fair because Mr Kelly and the Kazals had this relationship, albeit an embryonic one. Now, just to complete the story, there's a second trip to Dubai which happens in early 2008. Basically the same people go. On this trip everyone's expenses are reimbursed by Parkview and it's clear that by the time of this trip the plan for the business has been advanced to some degree and Mr Kelly by that stage is considered by Mr David to be part of the group which is why he is reimbursed. Mr Kelly is offered a job by Mr

David, and I'll now just refer to it as Mr David, because as the story unfolded, Parkview as the vehicle to do the business in the United Arab Emirates dropped out of the picture, another entity was contemplated at a later stage and finally there was a company used called International Property Services, known as IPS LLC, that's a Cayman Island-incorporated company I think. I'm sorry, that's a UAE-incorporated company. Mr Kazal, as I said, had a slice of the action through an ownership and Mr Kelly had a job, but it is the same business that was being contemplated and to use my phrase, scoped out by Parkview and the group of people who went on the two trips to Dubai, the first in the middle of 2007 and the second in January 2008. On 10 March 2008, Mr Kelly is offered a job by Mr David to work for that business. He tenders his resignation on, on 10 March and he, his employment finishes with SHFA on 4 April. Have you got copies of it? I'll hand out a little chronology of the critical events as we see them that we've prepared. It's pretty impressive, it's coloured. Perhaps you can all share these amongst yourselves.

THE COMMISSIONER: Mr Newlinds, before you come to the chronology, I take it that your submission will be, should the evidence reveal only a perception of bias, in the sense that as you have explained, the evidence may show that the decisions which were taken on the recommendation of Mr Kelly would still have been taken but that fact still all gives rise to corrupt conduct under section 8(1)- - -

MR NEWLINDS: Indeed.

THE COMMISSIONER: - - -of the ICAC Act because that definition, the definition of corrupt conduct is not only converse that, not only conduct that adversely affects the honest or impartial exercise of official functions by a public official, but conduct that could adversely affect?

MR NEWLINDS: Correct.

THE COMMISSIONER: And we are dealing, once we're dealing with a conflict of interest and the taking of decisions pursuant to a conflict of interest, it is really immaterial to work out what in fact occurred. Once the tainted conflict is there, that is enough?

MR NEWLINDS: That's correct. And we also say it will amount to corrupt conduct because if Dr Lang's evidence is accepted it amounted to conduct that was so serious that it justified summary dismissal.

THE COMMISSIONER: Yes.

MR NEWLINDS: Now, there will be and there ought to be a good look by this inquiry into these decision because there have been very serious allegations made in the press to the effect that the decisions were corrupt or were infected by the relationship. And to be fair to those who have had that

allegation levelled against them, that is, Mr Kelly, undoubtedly he ought to be given an opportunity to say what he wants to say about the decisions. But I think it's reasonable to say at this stage that like all these sort of decisions when bias is involved or allegations or perceptions of bias are involved, it is very difficult unless it's a grossly outrageous or out of the ordinary decision to indentify with the benefit of hindsight what might have happened differently. Now, and equally it's very difficult to prove, if that's what Mr Kelly will seek to persuade you to do, that if things had been different exactly the same result would have been arrived at.

10

THE COMMISSIONER: Yeah.

MR NEWLINDS: And so it may be that at the end of the day you will be left in a position where the best you can do is to say, well, look, they might have been infected but it's difficult to tell, however from the point of view of corruption and corruption prevention, this sort of conduct is, ought not be tolerated and ought be treated extremely seriously and defences or answers or justifications based on oppositions that, well, yes, I can see why you might think that I lost my objectivity, but it doesn't matter because I didn't and I can demonstrate to you, ought not be even allowed or considered because they completely misunderstand the conduct which has provoked the brief, that is the creation of the perception is enough. And in my submission, this case is a stark example of how what may be, if Mr Kelly and others are to be accepted, reasonably innocent conduct by them, that is putting the most benign spin on it, can still create a terrible perception of misconduct by people who are dealing with public assets and public money. Now, all of what I've opened to you has really been of the most benign approach to the facts. You do, and everyone here should appreciate that there is a much more sinister version of events which of course involve Mr Kazal in fact inviting Mr Kelly along to the trip for the purpose of helping Mr Kelly obtain a job with Mr David, Mr Kazal paying Mr Kelly for his expenses and that like, now, and that type of findings. Now, on those findings of course it become incredibly serious because it becomes without doubt, it would follow from those sort of findings that Mr Kelly has deliberately not disclosed, that would be inevitable on those findings, which would make his conduct all the more serious. However, as I said, we think that I've just taken the most generous view of what clearly did happen in favour of Mr Kelly, it's reasonably inevitable that he is left in a position where he failed to disclose a serious conflict which created a serious perception.

40

THE COMMISSIONER: Yes. The point that I think that you, if I may say so that you've made and to put it in slightly different language, the persons who are potentially affected by this inquiry are at risk of having findings of corrupt conduct made under the definition in section 8(1) of the ICAC Act either on the basis that there's been a perception of corrupt conduct which would involve conduct that could adversely affect decision-making by public officials or in fact they, or they were, the risk is for them that there is

a potential for corrupt conduct, conduct findings being made on the basis that their conduct, that in fact adversely affects the decisions made.

MR NEWLINDS: If Mr Kazal actually paid Mr Kelly for his expenses and if he invited him on the trip and if he held out the prospect of a good job in the United Arab Emirates with Mr David or Mr David's company, then one is getting very close if not there to being able to make submissions to the effect that Mr Kazal deliberately went out of his way hold out incentives to Mr Kelly so as to cause his objectivity to be compromised which in itself is
10 conduct which can come (not transcribable). And I just finish by telling you how this chronology worked and I seem to have run out of copies, just, just to tell you where the, where the decisions fit in relation to the trip.

So Mr Kelly commences in 2003, the first relevant thing he does in relation to conflicts is he does make a declaration in June 2006 which you'll see in the evidence in due course and as far as we know, that declaration was never updated or another declaration ever made but I don't think there's any doubt about that.

20 Then on 2 January, 2007 there are two decisions, one concerning, one considering 99 George Street, and we'll write onto this the name of the business because I can never remember, the other concerning the Amo Roma Restaurant, being the electrical upgrade. We then move forward to May 2007 and you can see that there was the decision, a negative decision in relation to the Guylian Chocolate Café and a change of use application and the rent abatement application. That negative decision was made on 14 May. We then have the first trip to Dubai on 26 May, they return on 2 June. We then have, above the line, some deposits into Mr Kelly's bank account, that's the reimbursement by cash and then you have on 14 July the
30 opposite decision being made in relation to the Guylian Chocolate Café.

You then have the second trip to Dubai in January 2008. There is then some work done in March 2008, in February 2008 being an application for consent for the Guylian Chocolate Café, again Mr Kelly is still involved and then he leaves on 4 April, 2008. There's many more events that happened but what this little chart shows us is where the decisions that are under the inquiry I think in terms of the chronology with the trip and one see if ever one was talking about perception and whatever the explanation for the change of heart relating to the Guylian Chocolate shop, the fact that the trip
40 to Dubai intervenes is to say the least unfortunate. That's all I wish to say by way of opening (not transcribable) we, we've prepared, what we have, we have, there are a lot of facts, most of which I've opened on, that I perceive are going to be non-controversial in this inquiry, for example the fact that of the leases, the fact of these decisions, the various bits of paper that were produced within SHFA to record the decisions and how they were made and to SHFA's credit it's reasonable for me to say that their paper trail, that is the documents that are created at the time decisions are being considered is reasonably good and so it is possible just to look at the

documents and work out who within the organisation was recommending was, who actually was the final recommender before it went to the Board and what the Board was told. And so all of that can be shown through the documents. As I said, the fact of the trip is, will be common ground, who paid who other than Mr Kelly is all common ground. What Parkview documents said to the rest of the world can just be proved by those documents and what actual position Mr Kelly had within the Parkview company in 2007 is a matter of public record.

10 So for that reason we firstly prepared what, when they're printed out, is three bundles, three folders containing documents which we think are the important documents that we will need to pay heed to and we put them in chronological order. And I for one, at some stage will be tendering, I will be tendering all the documents in those three folders.

We've also put together another group of folders which contain witness statements on various people who give evidence which we, for our part, think is reasonably non-controversial to the extent that I don't want to ask any of those witnesses anything other than what is in their statements. We
20 have circulated reasonably late on Friday to those people who are represented both those folders and in relation to the witness statements we've invited them to tell me if they want me to call any of those people and if so unless we can think of a very good reason not to but produce the people and we will call them and they can be asked questions by our learned friends.

We've also identified a lengthy list of other people who, when you look at the documents, have been involved in some of these events. We don't think it necessary to call them but they're all under subpoena or summons and
30 we've provided that list to our learned friends and invited them that if they wish to ask them any questions if they just let us know the topic, we'll make those people available to them. And we've also (not transcribable) thinks that there is any other person who we haven't identified who ought to be called who can give some relevant evidence in any of these matters to please let me know and we will do our best to arrange that.

THE COMMISSIONER: Yes, thank you, Mr Newlinds.

MR NEWLINDS: If your Honour pleases.
40

THE COMMISSIONER: Yes. The Commission will now adjourn for ten minutes.

SHORT ADJOURNMENT

[11.08am]

THE COMMISSIONER: Mr Newlinds, unless there's anything else I'll take appearances.

MR NEWLINDS: May it please.

THE COMMISSIONER: Yes. So perhaps if counsel, I'll start with you, Mr Korn.

10 MR KORN: Thank you, Commissioner. Korn is spelt K-O-R-N. I seek the Commission's consent - leave to appear in the interests of Mr Charif Kazal and Mr Karl Kazal.

THE COMMISSIONER: Yes, there's no conflict there, Mr Korn?

MR KORN: No, I don't, your Honour, at another time we considered that but with the little I know we haven't and it's been (not transcribable) there doesn't appear to be one.

20 THE COMMISSIONER: Well, I accept your assurance, Mr Korn.

MR KORN: Yes, well, there's doesn't appear - - -

THE COMMISSIONER: Should anything occur you let me know.

MR KORN: We will let you know. Your Honour, sorry, Commissioner, does your Honour, did you require my instructing solicitor's name in accordance with - - -

30 THE COMMISSIONER: No.

MR KORN: Okay.

THE COMMISSIONER: Ms Williams.

MS WILLIAMS: Yes, Commissioner, I seek leave to appear for Sydney Harbour Foreshore Authority.

THE COMMISSIONER: Yes, thank you. Mr Andronos.

40 MR ANDRONOS: With your leave, Commissioner, I appear for Mr Kelly, also Mr Beech-Jones of Senior Counsel will appear (not transcribable).

THE COMMISSIONER: Yes.

MR ANDRONOS: With, with your leave.

THE COMMISSIONER: Yes. Who's next please? Starting from the back. Ms Hogan-Doran, I think you're next.

MS HOGAN-DORAN: Your Honour, Commissioner, I seek leave to appear on behalf of Mr David.

THE COMMISSIONER: Yes, very well. Are there any other appearances? No. Mr Newlinds.

MR NEWLINDS: I seek to call Mr Kelly.

10 THE COMMISSIONER: Yes. Won't you be seated, Mr Kelly. Mr Andronos, do you wish me to make a section 38 order please?

MR ANDRONOS: Yes, Mr Commissioner, I do seek a declaration under section 38 of the Act.

20 THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Kelly and all documents produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document produced.

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR KELLY AND ALL DOCUMENTS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED**

THE COMMISSIONER: Mr Kelly, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR KELLY: Oath, thank you.

40 THE COMMISSIONER: Would you administer the oath to Mr Kelly, please.

MR NEWLINDS: Is this a true statement, Mr Kelly: In mid 2007 Rodric David and Charif Kazal asked you to meet with them, is that true?---Yes.

You did meet with them and at that meeting they discussed with you an opportunity that they were working on the United Arab Emirates?---That's correct.

10

You were asked to confidentially join them to present to senior government officials in the United Arab Emirates about a property and facilities management business?---That's correct.

And you took a week of annual leave from your job at SHFA and went to the United Arab Emirates to assist them in making those presentations? ---Yes.

20

Now, why didn't you disclose to your employer, SHFA, the fact that Mr Charif Kazal and Mr Rodric David had approached you with that proposal?---Because Rodric David explained at the meeting that he was looking to set up a business in the UAE, he explained that Mr Kazal was consulting to him, providing introductions to the Middle East and I didn't see that as a conflict of interest as it was a proposal from Mr David who was looking to set up the business and he didn't have any dealings with SHFA so I didn't see it as a concern.

30

But did you know Mr David before these discussions?---I knew his family through his father but I didn't know Rodric David personally, no.

And so it's the fact isn't it that when Mr David and Mr Kazal contacted you to arrange this meeting, you person you knew was Mr Kazal and the person you didn't know was Mr David?---Well, yes.

40

And so does it follow from that that you understood that one of the things Mr Kazal was doing as a consultant for Mr David was using his contacts in Sydney to identify suitable people to come along and help?---No, that's not how I understood it. At the time Mr David explained that he was looking to do, you know, presentations in the Middle East, he explained that Parkview was a development company and he needed someone with a property background who would be able to present and show that, you know, they'd managed and been involved in, you know, high assets of, you know, value and reputation in Sydney so he saw me as ideal for that. I partly assumed at the time that it was probably through his father that he was made aware of me.

It was equally obvious that he would also have been made aware of you through Mr Kazal, correct?---Yes.

Mr Kazal, as far as you knew, thought highly of you at the time?---I would have expected so, yes.

And Mr Kazal knew that you were looking for a job at the time, didn't he? ---He may well have done, yes.

Well, he did, didn't he?---Yes, well, he knew I had looked in the Middle East before, yes.

10

And you provided your CV to Mr Kazal to show to anyone that he might think had a suitable job for you, correct?---In the Middle East, yes.

Yes. And you'd had correspondence with I think another friend of yours in the Middle East whose name was Greg Whiteside - - -?---That's correct.

- - - about potential jobs in the Middle East?---Yes, that's correct.

So the position is this, you're working for SHFA, correct?---Yes.

20

You are looking for a new job?---Yes.

Because you think your contract is to run out whenever the five years are up, correct?---That and I was looking for a new job anyway, yeah.

But your understanding or expectation was that your contract would not be renewed?---Yes.

30

You thought the UAE might have good opportunities for someone with your background?---Yes.

And you were contacted by, amongst other people, Mr Kazal and had a meeting about a potential opportunity for a new job?---Well, it was through Mr David but Mr Kazal was at the meeting, yeah.

But who actually contacted you?---Well, Mr David.

40

So when I said to you earlier was it true that Mr Kazal and Mr David contacted you - - -?---It was because I, I was looking at the context of, you know, I was called to a meeting that they were both at.

All right?---So that was all.

THE COMMISSIONER: I'm sorry, I don't understand that. The fact that they were both at a meeting doesn't mean to say that they both contacted you?---I didn't say they did. He just said that, you know, they contacted you so in the context of yes, they called me for a meeting, that's correct.

MR NEWLINDS: Well, let me just read to you the first question which I asked you which was, Is this a true statement: In mid 2007 Rodric David and Charif Kazal asked me to meet with them where they discussed an opportunity they were working on in the UAE. You agreed that that was a true statement, did you not?---Yes, I did.

And it is the fact that you understood at the time that you had been invited to the meeting by both Mr David and Mr Charif Kazal, that's right isn't it?
---No, I just explained that I thought.

10

THE COMMISSIONER: Well, I don't understand it?---Well, I was contacted by Mr David and invited to come to his office for a meeting. At that meeting Charif Kazal was there and they both went through and discussed this Middle East opportunity.

That's inconsistent with your answer to Mr Newlinds' first question?
---Well, I'm sorry, I didn't see that the answer was that word specific.

20 But did Mr, did both contact you to arrange a meeting?---No, Rodric David contacted me and then Mr Kazal was at the meeting.

So Mr Newlinds just put the proposition first if you don't mind.

MR NEWLINDS: Does it follow from that that it's not true that in mid-2007 Rodric David and Charif Kazal asked you to meet with them?
---As you've put it, yes.

30 Well, what do you mean as I've put it?---Well, I think it's , you know, playing with words but, you know, Rodric, Rodric - - -

THE COMMISSIONER: (not transcribable) playing with words is I mean either both contacted you or both didn't?---Why would two people contact me to go to the one meeting? One person did.

MR NEWLINDS: Can I try it this way?---Yes.

40 Would you have ever said these words, In mid-2007 Rodric David and Charif Kazal asked me to meet with them where they discussed an opportunity?---Yes.

You would have said those words?---Yes.

And do not those words convey the meaning that you were asked by both of them to go to the meeting?---No, it conveys to me that I was asked to go to a meeting that both of them were at.

Well, let's move on to this: do you think you ever said these words, I was asked a confidentially join them to present to senior government officials in a property and facilities management business in the UAE?---Yes.

So they both asked you to go along with them, is that right?---No. The context of joining them means they were both going to be there.

10 But they asked you?---Well, Rodric David asked me, if we're being specific, the they was join them means I joined both of them in a trip to the UAE.

All right. So you saw Mr Charif Kazal and Mr Rodric David as, as in a group together?---Well, in the context that it initially started as a meeting with them both, yes.

But you were being asked to join them?---Yes, join them in a trip to the UAE, yeah.

20 Now, at this first meeting, what was your understanding of Mr Kazal's relationship with Mr David?---That he was a consultant.

Who told you that?---Rodric David.

He said, Mr Kazal is a consultant of mine?---He said, "He is providing consultant services for me for the Middle East to create introductions and introduce us to people that his family knows in the UAE." And he was looking to set up a business over there that involved property and facilities management and- - -

30 THE COMMISSIONER: Mr David was, but was Parkview's business- - -? ---Parkview was a- - -

- - -facilities management, Mr Kelly?---No, it was development.

40 It was construction?---Yes. He was going over there to do that as well, so the meetings in that first trip over there involved construction and development meetings and it also involved property and facilities management meetings and I attended both as did the development people that went.

What did Mr David know about facilities management?---I guess he'd know it by function. It's a, it's a by-product of doing construction, but- - -

Otherwise he knew nothing?---Not very much, no.

You were the person who knew?---I was the person, that's why he was looking to engage me.

MR NEWLINDS: And was the basis upon which you would be engaged discussed at that meeting?---The basis in terms of remuneration and things you mean or- - -

They asked you to join them. What does that mean?---Well, they said, you know, we go over there and we're going to pitch for work, if we're successful in securing that work, you now, you'll be given a job opportunity.

10 Right?---And from that, you know, Rodric David said, "It'll be, you know, worth well above what you're earning here or what you're doing here if you stay in Australia."

Right. So the carrot for you to go all the way to the UAE with these people is that if the business that they were investigating got up and running you'd likely get a job?---Yes.

And that would be a job doing what you considered yourself to be good at? ---Yes.

20

That is property management. Yes?---Yes.

In the UAE where you wanted to work?---Yes.

At a salary which you were told would be more than you were being paid at the moment?---Yes.

In circumstances where you probably were going to be out of a job sometime in the next year?---Yes.

30

All right. So that's all good for you?---Yes.

And does it follow from that, and the fact that you agreed to go on the trip, that you thought it was worth your while going on the trip?---Yes.

Because you thought it would enhance your prospects of getting a job with Mr David or whatever company ended up doing the business?---Obviously, yes.

40 Now, it was obvious to you from that very first meeting that Mr Kazal also had an expectation that if the business got up and running that he would have a role in it. Correct?---I wouldn't say it was obvious from the first meeting, he was, I was told he was providing the introductions and things but, you know, it could have been attractive for him, you know, through ongoing work or it may not have. It wasn't something that I was particularly concerned about.

So are you saying it wasn't obvious to you?---Well, it wasn't obvious to me what his ongoing role would be and nor was I concerned about it.

Did you ask him?---No.

Did you ask Mr David?---No.

Did you ask anyone?---No.

10 Did you think about it?---No.

Did you think, I wonder what this bloke's up to?---Not really, I thought it was fairly obvious. I knew that his company had dealings in the UAE.

All right, well, all right. So it's fairly obvious that he has the ability to provide introductions in the UAE. Is that it?---Yes.

20 And it was also fairly obvious that he would want to be remunerated in some way if by virtue of those introductions Mr David came across a valuable business opportunity?---I would expect so, yes.

And he would be paid either by a share of the business, correct?---Well, that's possible, yes.

A job, that's possible?---Possible.

30 Or just being paid an amount of money, some sort of success fee?---Yeah, that's possible. And again, you know, I don't know what his consulting arrangements were.

Well, it was highly unlikely he was going to go over there to do the introductions without any expectation of some share in the product of those introductions. That's fair, isn't it?---No. Consultants more often than not just operate for a fee and I knew he's had, his family had a business that operated in the UAE on a, you know, consulting basis both between the UAE and Australia and had done so for many years.

40 Now, it is true, isn't it, that in the years leading up to 2007, pick the two years before then, you and Mr Charif Kazal had many many business interactions?---Yes, regular meetings, yes.

You in your position as the SHFA person in charge of the tenancies- - -?
---Yes.

- - -and he in his position as the Kazal representative who dealt with tenancy issues?---Yes.

And you knew each other reasonably well as a result of those dealings?

---Yes.

And he knew, and you knew that he knew that you were the person at SHFA who he in the main had to deal with in relation to the leases?---Ah, well, yes and no. I mean, he could have applied, you know, to the CEO as was often the case and there was also a head of property that controlled the leasing.

But I said in the main you were the person he dealt with?---For leasing I'd say probably not.

10

Well, he certainly dealt with you?---Yeah. I'm not saying he didn't deal with me regularly, I'm just answering your questions.

THE COMMISSIONER: You are saying he dealt with you regularly?---I'm saying that he dealt with me regularly but in answer to the question for leasing matters would he deal with me the most, I'm saying no, it would have been the head of property.

20

MR NEWLINDS: Who was?---Paul Neilsen for roughly that period from recollection.

The Kazals and Mr Charif Kazal in particular had a bit of a habit of going over people's head if they weren't happy with the speed things were happening or indeed the decisions that were being made?---Well, certainly, yes, they did, as I said, go to the CEO a lot.

And they'd sometimes go to the board and sometimes they'd go to the minister?---Oh, I don't recall too many events like that, but- - -

30

So there's nothing unusual about that sort of behaviour by tenants, is there?---No, it's consistent.

And generally within SHFA the matter would be referred back to you if it was you that (not transcribable)?---Yeah. I mean the CEO would generally, it was my division, so find out about that, sort it out and come back to me with a recommendation.

40

Right. And you've got no doubt in your mind that Charif Kazal at the time of the meeting with him and Mr David and yourself knew that you were a person within SHFA who had to be dealt with at least some of the time when lease matters were being dealt with?---Yes.

And he knew that your opinion on decisions that would affect the Kazal leases was given weight within SHFA?---Yes.

In other words, even if you weren't the decision-maker your recommendation was certainly taken into account?---Yes.

Not always followed, but certainly given close consideration?---Yes, I agree.

And wasn't it obvious to you that Mr Kazal had a perfectly legitimate expectation that if you and he went to the UAE involved with Mr David and pursuing the same business venture, he might enhance his prospects when dealing with you about Rocks properties at SHFA?---I wouldn't be in a position to comment on what Mr Kazal would think and I don't necessarily agree that he would automatically assume that.

10

Well, I take it you would say that he should not automatically assume that because regardless of what dealings you might have with him, you would always bring an impartial mind to any decisions?---Yes.

But that's not really the point of my question and I ask you to listen to it. Don't you think that it was likely that he would think that it would be to the benefit of the Kazals if he developed a closer relationship with you by virtue of going to the United Arab Emirates and working together on this business venture?---Well, I don't know that it would necessarily give us a close
20 relationship by virtue of going to the UAE any more than we had a regular requirement to meet with each other. The trip to UAE in the first case was four or five days and the second time was something similar. Ah, you know, I could see him, you know, a couple of days a week for meetings on a fairly normal basis anyway, so I don't see that it's necessarily going to make it any better. And as I've explained previously, my time in the UAE I spent little time with him.

20

All right. But you sat next to each other on the plane going over there, didn't you?---Yes, we did.

30

You stayed at the same hotel while you were there, didn't you?---Yes, we did.

You went to at least one dinner together while you were over there?---Yes, we did.

You went to drinks before dinner regularly while you were over there?
---I've been there several times so, you know, we would have, yes.

40

Well, you hung around together when you weren't at meetings, didn't you?
---No. A lot of the time he and Rodric were off doing other stuff completely different to what the rest of us were doing.

And what you were doing was completely and utterly different from anything that you had done with Mr Kazal beforehand, wasn't it? It was a completely different relationship?---Well, insofar as, you know, he was there as a, you know, person consulting and I was in a similar capacity. You know, I guess you could say it was different to normal.

Yeah. Well, the normal relationship was you were there as capacity as landlord and he was there in a capacity as tenant?---Yes.

And that's how you related to each other?---Yes. But over there we weren't dealing with anything to do with SHFA so, you know, I didn't see that as, you know, more significant, I'd say it's less significant.

10 Just answer my question. The relationship was completely different to the one that was the ordinary relationship, wasn't it?---Yes.

No longer were you the landlord and no longer were, was he the tenant?
---Correct.

Indeed, you were both working towards the common goal of Mr David getting a business up and running, correct?---Yes.

20 And within whatever structure or hierarchy there was on the trip over there you were really on the same level weren't you? You were both there helping out Mr David?---I wouldn't say we were on the same level, no.

Okay. Well, who's higher and who's lower?---He would've been deemed higher. As I said he and Rodric were off doing one thing and, you know, I was, you know, doing a lot of that, the work preparing, you know, budgets and proposals and things like that so quite different work.

Now, you did prepare a budget while you were over there didn't you?
---Yes, I did.

30 It might've been prepared on Mr Willoughby's laptop computer, do you remember that?---That's possible. I remember we did one, yes.

And you had significant input into that budget didn't you?---Yes, I did.

And you saw the end product?---Yes.

40 And whilst the whole thing was at a very early stage you were satisfied it was a reasonable budget?---Well, again, it was providing indicative guidelines on costs and things so, yes.

One of the indicative guidelines of costs and things that was in that budget was that there was a line items for Mr Charif Kazal to be paid a salary of 350,000, I think it was Australian dollars?---It would've been in Australian dollars, yes.

You remember that don't you?---Yes, I've seen it in the evidence.

As one of the costs of the business?---Yes.

And there was a line item in that same budget for you to receive a salary of US\$350,000 from the same business?---Yes.

And when you either created that document or saw the end result you understood that the budget represented the best efforts of those involved at the time in estimating what expenses there would be, correct?---Yes.

10 And you understood that Mr Charif Kazal was satisfied with the end product of that budget didn't you?---I don't recall it being discussed with Charif, it was stuff that I worked on with Mr Willoughby and gave to Rodric but I don't know whether Charif was involved in it.

It was your understanding at the time you prepared that budget that Mr Charif Kazal, like you, had an expectation that if the thing got up and running he would be employed by the business, correct?---Not employed necessarily, remunerated in some form.

20 THE COMMISSIONER: Remunerated to the extent of \$350,000 a year?
---Yeah, we were told - - -

That's not a salary?---Well, - - -

30 What is it then?---Well, you need to understand the context of how these things happen and how the documents are put together. Whether he's getting paid as a consultant or otherwise Mr Rodric David if he's trying to put together costs to report to a third party as to what's going to be involved in the project it's far simpler to just have it all listed as salary rather than creating strange, you know, bi-lines of consultancy fees and things like that that just confuse people.

Mr Kelly, whatever you call it he was going to get \$350,000 a year?
---Again, these were just indicative numbers.

Is that right or not?---Well, it was an indicative number. I didn't get paid 350,000.

40 That was the intention at the time?---It was an indicative number to put in for - - -

Where did you get it from?---I think it was just, you know, made up at the time to - - -

Made up by whom?---Well, myself and Mr Willoughby.

Are you serious?---Yes. Well, how else do you put it - - -

Put in 350,000, is that the salary you expected to get?---Again, it was ballpark, we hadn't discussed salaries at that time.

Why would you put in \$350,000?---Because we had to put in a number and
- - -

Why did you choose \$350,000?---Because market values of contracts and payments and things over there at the time that was around about the figure.

10 That's what you thought you would be paid?---In that vicinity, yes.

And that's what you thought Charif Kazal would be paid?---Well, again, we put it in because we knew he had to get paid something but we didn't know
- - -

But that was your best assessment of what he would be paid?---For want of a better description, yes.

MR NEWLINDS: Did you not tell the Commissioner about ten minutes
20 ago that at the time of the first trip you didn't have any understanding or expectation that Mr Charif Kazal would have any ongoing role in the business?---I said I didn't know what his ongoing role was, I thought I said.

All right. That's - - -?---And what he would be paid.

Right. And you also said that as far as you knew he might just be a consultant for the introductions and have nothing else to do with it?---That's right, he'd get an ongoing consulting fee.

30 And get an ongoing consulting fee?---For however long he's there, yes.

Right. Okay. So is this the position, that at least at the time you prepare the budget which is during the trip to the UAE your understanding was that if the business got up and running you would have a job with the business and Mr Kazal would have a job with the same business?---I wouldn't go so far as to say a job, as I said - - -

All right?--- - - - we were putting in - - -

40 Let's (not transcribable) with jobs. You might've both been consultants to the same business?---Yes, but he'd have some ongoing role for however long he was there so we put that in, it was up to Rodric to then decide whether that was a budget that he was going to accept and take forward. We just prepared a budget.

It's actually referred to in some of the emails as Andrew's budget isn't it?
---Well, that's because I put it together.

All right. And you were prepared to own it at least in the sense that you had prepared it - - -?---I gathered it, yes.

And you were prepared for it to go Mr David as a budget that you thought was reasonable?---Based on, you know, whatever he would've discussed with Clint and I in putting it together.

10 And so there's no doubt at all, is there, that at least during the first trip your expectation was that if this business started both you and Mr Kazal would be remunerated quite handsomely from it?---I'm not disagreeing with that, no.

And it is a fact, therefore, that you were acting in a common interest in what you were doing over there, the common interest being let's see if we can get this business up and running?---Yes.

And that suited the both of you for obvious reasons, you both get some money out of it?---Yes.

20 Why didn't you disclose that - - -?---Because - - -

- - - to your employer?---I didn't see that him getting paid by Rodric David is something that causes a conflict for me.

It's not him getting paid by Rodric David it's the fact that you were over there working together towards a common end, that was something that you'd never done before with Mr Kazal?---No, I hadn't.

30 You'd never had a common goal with him before had you?---No, I hadn't.

Your relationship had always been, if you like, adversarial, you working for the best thing for SHFA, him working for the best thing for his companies? ---Yes.

This was completely new wasn't it?---In that sense, yes.

40 Now, before you went on the trip, let me withdraw that. At the time of the first meeting that we've talked about who did you understand was going to pay for your expenses in relation to the trip?---Rodric David.

Who told you that?---Well, he was the one setting up the business and running it off.

So does that mean no one told you that, that at some point you assumed - - - ?---I don't believe it was discussed at the first meeting, I believe it was discussed at a subsequent meeting.

All right. Now, is the subsequent meeting before the trip?---Yes.

Now, where is this meeting and about when does it happen?---It would've been at Parkview again but I don't remember the exact date, I just remember it was before we were meeting to discuss logistics and things when I was told that.

And who said what to who?---Well, from recollection Rodric David words to the effect, you know, There will be a ticket waiting for you at Emirates, I think it was, you know, you sort it out and I'll reimburse you.

10

And what about the cost of the hotel that you stayed at?---Same basis.

He said there will be a room booked for you?---I don't recall if he said that but it was the same basis.

20

Now, at around this same time did you have some discussions with Mr Kazal or Mr Kazal suggested that he might be able to organise a ticket for you?---Yes, it did come up that he won some tickets or something like that where he said, Look, you know, before you buy your ticket just wait, see if I can get these tickets changed from, you know, my name who won the ticket into your name and then, you know, I'll get the money off you for that ticket, or maybe you want to get it off Rodric, but, you know, we use that ticket instead of you paying for another one.

Was that a first class or business class or an economy ticket?---I don't recall.

I think you recall it was a first class ticket don't you?---No, I don't recall.

30

Now, did you ever have any discussions with Mr Kazal where he indicated that he, at least at the time of those discussions, was contemplating paying for your expenses?---No.

Okay. So you turned up at the airport?---Yes.

And was there a ticket waiting for you?---Well, I'd already got the ticket from Emirates in their city office so I had to go in and pay for it with my credit card and - - -

40

It wasn't paid for was it?---No.

So - - -

THE COMMISSIONER: Did you say you had to go in and pay for it with your credit card?---Yes.

MR NEWLINDS: And were you surprised that you had to pay for it with your own credit card?---No, because I knew I was going to be reimbursed so it was something that I was prepared to trust him on.

All right. And then when you got to the airport you worked out, I take it, that you were sitting next to Mr Kazal?---Yes, I believe that was arranged at the airport.

10 All right. Now, who arranged it?---It would've been Mr Kazal through the reception.

When he checked in?---Yes.

And you thought it was appropriate that you sit next to him, didn't you?---It didn't, it didn't bother me either way.

And when you got to, I think it's Abu Dhabi, is that where the hotel was?
---The plane flew into Dubai and then we all got cars to Abu Dhabi.

20 And you checked into, was it the Palace Hotel?---Emirates Palace Hotel, yes.

Right. Five-star, six-star?---Many stars.

Many stars?---Amazing.

And was there a room booked for you or did you have to make your own booking?---Ah, it had been reserved from recollection.

30 Right. But not paid for?---Yes.

And so once again you paid with your credit card?---Yes.

Right. Now, did you discuss with Mr Charif Kazal as to whether his ticket had been paid for or whether he paid for it and was hoping to get it reimbursed?---No.

40 Did you discuss with Mr Charif Kazal as to why it was that only you and he were on the particular aeroplane you were on?---Oh, I recall surprise at the time but was told that they were on another flight. I didn't know why and they landed at virtually the same time because we shared cars to Abu Dhabi.

Right. And did you know that the others went first class?---I didn't till I saw it in the evidence.

Right. Okay. So now we're in the United Arab Emirates. Your job you've told us involved preparing some budgets?---Yeah.

It involved I take it going to meetings with people who might have been involved in the business from the other side?---Yes, that's right. We, we met with ah, sort of some of their, you know, junior staff and things I think in the first, you know, morning or thereabouts that we were there ah, and went over and looked at some of their properties and things like that and we met the board in the afternoon or evening ah, and, you know, myself and Rodric David were the main ones that spoke to that because it was the property side of things, so a proposal for that, and then on the other days- -

10 THE COMMISSIONER: Facilities management?---Property and facilities management, yes.

Not construction?---No. So that was for that meeting. There were separate meetings with construction companies, Aldar and others.

And you weren't present for those?---I went to those as well but I didn't say anything, I was just making up numbers to make it look impressive.

20 MR NEWLINDS: And either during or just before the trip, some documents had been created entitled The Parkview Profile. Do you remember that?---Yes.

And there was a series of iterations of those documents. Do you remember that?---I've seen various iterations in evidence, yes.

30 And whilst you were in the UAE you were aware that those documents were being distributed to various people who were being talked to?---I actually don't recall it ever being given out. I know it was prepared but I don't actually recall them giving it out, and we only met with the one potential client as far as the property management goes and I don't specifically recall it being given out at that meeting.

Right. But you knew it had been prepared?---I certainly knew it was prepared. I was asked to comment on the section that had my name in it.

And, and you knew it had been prepared for the purpose of the trip?---Yes.

40 And you knew it had been prepared deliberately containing statements to the effect that you were a director of Parkview?---I'm not sure whether it was director or, you know, head of facilities management. Yes, something like that.

And certainly that you were part of the, "Parkview team", to use the words of the document?---Yes.

Now, your evidence today is that you weren't really part of the Parkview team at that stage, you were a consultant to Mr David?---I certainly didn't work for them as the document suggested.

And you understood- - -

THE COMMISSIONER: You were not part of the team?---That's right, I wasn't an employee.

10 But you knew that the document said that you were part of it?---Yes, I do, and again it was all when it was prepared on the basis that it was only going to be used in the UAE for work over there and if we secured the work, then those companies would have seen me as part of the team when we first arrived.

So it was okay to tell lies then?---Again, it's, you know.

Is that yes?---I'm not saying it's okay to tell lies, I'm saying I didn't see it was harmful to- - -

20 No, my question was, it was okay to tell lies then?---I'm not following the emphasis on then.

Is it okay to tell lies in the UAE?---Well, again, it's the context of you're presenting this is who's going to be on our team, and if we get the contract and start the work it would have been seamless that I would have been part of their team from day 1 when it started so- - -

But you were not part of their team?---At the time of doing the presentation, no.

30 And you knew that the presentation would say that you were part of the team?---Yes.

That was a lie, wasn't it?---Factually, yes.

And your answer to me earlier was that that didn't matter because it was in the UAE. Did I misunderstand you?---No. I'm saying that, you know, I didn't see that it was of significant weight, the fact that it said that I was an employee.

40 No, but it being said in the UAE and not in Australia was irrelevant, was it? ---Well, for the purpose of what it was being used for, it was to secure a contract over there and all the people named in the document were at the time it was prepared envisaged to be going there to, you know, perform services. So that company would have seen a presentation that said this is who's on our team, and if they engaged us, that's who would have shown up to do the work.

So my, your answer is yes to my question, that it was irrelevant that the document being used in the UAE contained untruths?---Well, I'm saying I

wasn't concerned by that, whereas if it was used in Sydney I would have been.

Why?---Because in Sydney I had a job with existing companies and it would have more than likely involved a company that I had dealings with, so I wouldn't have supported that at all. That's why I specifically said to them, as long as it's only used in the UAE I'm okay.

You said that to who?---To Rodric David.

10

MR NEWLINDS: Oh, I see. So you say that you put a stipulation on the use of that document- -?---Yes.

- - -that it was only to be used in the UAE?---Absolutely.

All right. And you're not saying that it's some part of your moral code that it's acceptable to lie to people in the Arabic part of the world- -?---I'm certainly not saying- - -

20

- - -and unacceptable elsewhere?---I'm not saying it like that, I'm saying the context of, you know, where you draw a line between, you know, lie and exaggeration is a, a blurred instrument in that point.

THE COMMISSIONER: I take it you're not applying that test here?---I certainly do not intend to, no.

MR NEWLINDS: Because we can look at the document in due course if you really want to- -?---I'm sure you could.

30

- - -or we can just cut through it and you can accept that it contained absolute falsehoods concerning your involvement. Did it not?---I haven't said it didn't.

Yeah, I know. And you accept that it did, don't you?---I do accept that.

And whilst you of course were not the person who wrote the document and you perhaps didn't intend to distribute the document yourself, you gave permission for that document to be distributed containing those falsehoods, didn't you?---The ones that relate to the page involving me, yes.

40

And in that sense you went along with the lie and did nothing to stop it?---Correct.

Now, the other falsehood that was contained in the document was that Charif Kazal was part of the team. Correct?---Yes.

And indeed he was described as a director of Parkview when in fact he was not?---Correct.

And he was described as an employee of Parkview when in fact he was not?
---I don't think it said he was an employee, I think it just said he was a director?

Part of the team. All right. But certainly- - -?---Director.

And certainly it conveyed the impression that he was part of the Parkview team?---Absolutely, yes.

10

All right. And is this the case then, that at some point either slightly before or during the trip to the UAE, you knew that there was a document in existence which might be distributed to people which would tell those people that both you and Mr Kazal were involved in the same business?
---Yes.

Now, you knew that that was false?---Yes.

20

But you were happy to go along with that?---In the UAE, yes.

And you keep saying only in the UAE?---Well, I think there is a distinguishable line of difference between in the UAE and if it was happening in Sydney.

30

Now, what about inquiries that were made of Chesterton International before the trip where I think the proposal was put to Chesterton's that could you, or could the Parkview Group use the name Chesterton's for the purpose of doing this business in the UAE, I suppose because Chesterton's had a world-wide brand?---Yes.

Now, do you remember that that was part of the plan?---Yes, I do.

And do you remember that some letters were written to Chesterton's asking for their permission with the hope to move forward to signing some agreement whereby their name could be used?---I've seen the letters to Chesterton's but I don't specifically recall them at the time. I'm not sure if I was aware of them.

40

Because you know the letters you've seen also contain the proposition that both you and Mr Kazal are part of the team?---Yes.

Now, you know those letters were in fact distributed to people in Sydney, don't you?---Well, I also know in the evidence there was- - -

Please---?- - -an email that says I was a current director at SHFA in explaining that as well.

Now, would you answer the question? You know those letters were distributed to people in Sydney, don't you?---To the Chesterton's people, yes.

Now, the Chesterton people were involved in real estate?---(NO AUDIBLE REPLY)

Yes. The Chesterton people were involved in leasing real estate?---Yes.

10 In the Sydney City and surrounds?---Yes.

And undoubtedly they were people that you either had had contact with on a business basis or might have contact with in your job in the future?---In the future, yes. At the time I didn't have a job with them.

Now, you're not prepared to say you didn't know about those documents at the time are you?---Well, my recollection is that I wasn't involved in preparing them but, you know, I can't say for certain.

20 You don't think you were involved in preparing them, is that your evidence?---Yes.

Now, the next question is, did you know that they were brought into existence by someone else at the time?---At the time, no, because all I knew at the time was that they were looking to get Chestertons on board to provide the licence and my recollection is Mr Willoughby was asked to organise that and that sort of stuff was happening in the peripheral without my, you know, need to be involved.

30 Right. Do you say that's your recollection?---Yes.

So are you prepared to say that you did not have any involvement in the preparation of those documents?---I'm saying that's my recollection.

Well, what does that mean? That's the best you can remember?---Well, to the best that I can recall.

40 Does that mean that if I show you something that suggests the opposite you'll change your mind?---Well, I would obviously have to.

Does it follow from that that you're not particularly certain about this recollection?---Well, when I'm saying I don't recall it means I don't recall.

Of course, you're not able to tell us that well, if it had happened I would remember because it contained a falsehood because in your life that was no big deal because you had already agreed to go along with a similar falsehood in the other document, correct?---Well, again, it was in the context of the UAE so I do see them as different.

Okay. Now, how did you get paid or how did you get reimbursed for your costs?---For the May trip do you mean?

Yes?---By Rodric David.

Right. Now, did you consider that you were retained by him in some sort of consultancy role do you?---No, I wasn't paid on a consultancy basis, just my costs for airfares and the accommodation were reimbursed.

10

But was that pursuant to some agreement?---Well, I saw it as basically a job interview.

By which you would be reimbursed for your costs?---Yes.

Did you ever have any discussions with Mr David that that's what you were doing, being interviewed for a job?---Effectively, yes, that first meeting which talked of going over there to help and if they were successful in securing work then, you know, I would be in line for a good job.

20

But you'd also be reimbursed for your expenses?---Yes.

Now, did you consider that you had an agreement with Mr David that you would be reimbursed for your expenses or did you consider that just to be a bonus after the event?---No, I saw that I would be reimbursed those expenses as normal if you're required to travel for a job interview.

30

You did much more than being interviewed for a job weren't you?---Well, effectively I was, you know, being trialled to see if I was able to do what they wanted to do.

So it's a trial job?---Wouldn't say it's a trial job but they were testing, you know, my suitability by virtue of whether I was able to convince people that I could do the job that was wanted.

40

It was obvious to you at the time that you had some sort of arrangement with Mr David which involved you going to the United Arab Emirates to provide him with assistance and you were going to be paid at least to the extent that your expenses would be reimbursed, correct?---I was going to be reimbursed my expenses, I don't consider that being paid.

But you were going to receive from Mr David some money - - -?---Yes.

- - - which you would then allocate to reimbursing those expenses?---Yes.

But obviously it does involve Mr David paying you some money?---Yes, but I'm differentiating between getting costs reimbursed for an interview versus getting paid as a consultant.

But let's go back to the first part of my question. It was obvious to you that you were actually going there to assist him in a meaningful way in what he was trying to do?---Yes.

It wasn't some half baked lengthy job interview was it?---Well, it was from my perspective because I either was successful in them getting that contract that they were going to bid for and getting a job or I wasn't which is, you know, effectively the same as I'm either going to get the job or I'm not.

10

THE COMMISSIONER: Your job depended upon - - -?---In getting a contract that required them setting up a business there.

So what you are doing there is doing work which would enable you to get a job?---Yes.

Including doing the budget of course?---Yes. Demonstrating my capabilities to do so.

20

And helping them get the work, the contract?---By virtue of it, yes. So it's all wrapped in to one event, meeting with Seba and, you know, getting the contract which then means I get a better job.

The basis aim was to get, enable Mr David to get the contract in the UAE? ---Yes.

30

MR NEWLINDS: And, indeed, you had to be there because they were pretending already that you were part of the team, correct?---Well, that was put into the, you know, materials again as part of, you know, a background brief to explain who we are and where we come from.

But let's forget about the material, when you went to the meetings you were introduced as part of the team weren't you?---Yes.

And they said, Here's Mr Kelly, he's got a lot of experience in managing properties and he's part of our team?---Yes.

None of which was true on what you now say?---Correct.

40

Right. And you understood that the reason they were telling these people that you were part of the team was because that gave their business some credibility?---Yes.

They were wheeling you out as someone who had the right credentials to do the sort of business they wanted to do?---Yes.

And that was providing to Mr David and the group a benefit?---Yes, if they succeeded, yes.

Is the reason you are baulking from accepting the proposition that you were there in some sort of consultancy role is that you know that if that be the correct categorisation you were in breach of your employment contract because you had a second job without permission?---I'm certainly distinguishing it for that reason, yes.

10 And is that something you thought about at the time, did you think to yourself, No, I'd better be careful here because I know I'm not allowed to have a second job without asking my employer's permission?---Well, that came into it, yes.

Because you did know that that was a term of your contract didn't you?
---Yes.

Yes?---Yes.

20 And so do you say that you actually thought about it and thought could this be characterised as having some sort of job with someone else?---No, I thought about it more in the context of what am I being proposed, okay, I'm effectively going over there for a job interview, I considered that was okay.

THE COMMISSIONER: Going over there for a job?---Yes.

But you had your job interview when you first saw Mr David at Parkview didn't you?---No, he explained that it was, anything progressing was contingent on a business contract being secured in the UAE that would enable him to be setting up a business in the UAE at which I'd be employed.

30 Your payment, the payment that you would get for the work was contingent upon the work being successful?---No, my reimbursement of expenses was contingent on me going there.

I'm not talking about reimbursement for expenses I'm talking about your \$350,000?---Yes, it doesn't get the contract, there was nothing I'd fly back and - - -

40 But if you got the contract you'd get something like \$350,000?---As an annual salary thereafter, yes.

As a success fee?---No, not as a success fee.

You didn't want to call it a salary?---No, that was in the context of Mr Kazal and we were talking before, I was explaining that, you know, it was just called a salary for the sake of convenience in the budget, but my presumption then was he was going to get consulting fee.

You were getting a salary were you, true genuine salary?---If, if the budget was accepted and a contract was agreed with the party that we were meeting with and they engaged Mr David in a joint venture that would be thereabouts the salary I would get in my first year.

So it was very important for you that Mr David were to be successful in his efforts in the UAE?---Yes.

10 MR NEWLINDS: Why didn't you tell your employer that you were going to go to the UAE for a week with Mr Kazal and others to do work which may or may not be paid for for Mr Rodric David or one of his companies? ---Because again, in my opinion this has been slanted to say that I was going with Mr Kazal. I was going with Rodric David, Mr Kazal was going to be there and yes, I knew that but in looking at the situation I saw that I was going for a job interview with Rodric David, he availed a company that had no dealings with SHFA whatsoever and by virtue of that I saw no conflict and the fact that it was in a country halfway around the world I thought, you know, there's no problem with that.

20 Can we just test it this way. You knew Dr Lang at the time of course? ---Yes.

And you knew he was a bit of a stickler for the rules didn't you?---Yes.

He was really heavy on conflicts and perceived conflicts wasn't he?---I wouldn't he was any heavier than any other boss but, yes.

30 He was very conscious to make it clear to you and others within the organisation that whilst it might be all right to have cups of coffee with people you were dealing with dinners and drinks had to be very carefully considered before accepted?---Yes.

And you understood did you not that if you were invited by Mr Kazal in the, whilst you both held your respective positions to go to dinner with him at his expense, say at the Amo Roma Restaurant, that that was something you would definitely need to disclose to Mr Lang?---Yes.

40 And you knew that Mr Lang, whilst he may allow it on some occasions, would treat that very seriously and would come at it from a, perhaps a bias of the answer should probably be no, correct?---No, that's probably reasonable, yeah.

And the same would apply if Mr Kazal simply asked you down to say the Orient Hotel for a drink on a Friday night, that was something you fully understood was - - -?---But it wasn't Mr Kazal that was asking me.

Please, please. You knew that if Mr Kazal asked you down for a drink at the Orient after work on a Friday night, no matter how innocent his

intentions and even though you might have become mates through the course of your dealings that Mr Lang would require that to be disclosed?
---No, I don't understand that wouldn't have been disclosed.

Did you ever do things like that?---I met with tenants for, you know, coffees, drinks and things at different times.

No, well, coffees is one thing?---I never met with Mr Kazal at the Orient Hotel for a drink, no.

10

Well, let's test it this way, hypothetically some time in the middle of 2007 you go into Mr Lang in his office and you say, now, Robert, I, I don't think I have to disclose any of this but because perhaps others might take a different view and I just want to run through you what I propose to do on my holiday. Okay. And he, he says okay, well, tell me all about it and you say well, I've got the prospect of doing some, of getting a job with Mr David or one of his companies in the United Arab Emirates?---Yeah.

20

I've been to a couple of meetings with Mr David and Charif Kazal where we've talked about that potential business. So far so good? This is what you say was actually going on?---Yeah, but I only recall the one meeting with Mr Kazal at that time but anyway.

Mr Kazal is also going to the United Arab Emirates with Mr David during the period of my holidays. Okay. That's what you say was happening?
---All right.

30

Mr Kazal as far as I know is being retained by Mr David as some sort of consultant but I don't know the details, all right?---Yes.

That's what you say the position was, yes?---Yes.

I am also going along on this trip to the United Arab Emirates but I'm not being paid anything but I will be reimbursed my expenses by Mr David, true?---Yeah.

When I'm there I'm going to help out Mr David in getting this business up and running if it can be got up and running, yeah?---Yes.

40

And Mr Kazal is also going to be there helping out Mr David to get this business up and running if it can be got up and running, yeah?---Yes.

And if the business is got up and running both Mr Kazal and are expect to be employed in that same business?---Well, I don't know about employed but - - -

Okay?--- - - - he may be an ongoing consultant.

Right. Retained in some way that produces money in exchange for work?
---Right.

Yeah?---Yes.

And you don't for a moment suggest that if you had had that hypothetical discussion with Dr Lang that his response would be look, I don't know why you're bothering me, of course you don't even have to disclose that, it's not a problem, do you?---Well, again, that's - - -

10

Please?--- - - - hypothetical.

I know it's hypothetical but that is the story as you would have it, isn't it?
---Yes, it is.

And so if you did disclose what you say you understood you were doing and what Mr Kazal was doing what I've put to you would be what you would disclose, correct?---Thereabouts, yes.

20

And you know as certain as you can be that Mr Lang would have gone ballistic, don't you?---I wouldn't say ballistic but he may well have declined it, yes.

Of course he would have declined it, wouldn't he? He would have said are you mad, wouldn't it?---I, I don't know.

And he would have said and by the way, having done all that, do you propose to come back to SHFA and continue to work on Kazal-related files, do you and you would say, Yes, I do because I don't think there's a problem?---Well, again, if I don't get the job - - -

30

No, no?--- - - - there's no ongoing link.

Well, so, yes, so your answer would be yes, if I do all that and there's no ongoing link I'll just come back to SHFA and it'll be business as usual with me dealing with the properties with Charif Kazal?---Yes.

Right. And he would say, as you well know, you are not doing that, Mr Kelly, and if you do do that you'll be out of here before you can blink, wouldn't he?---He may well have.

40

He would have, wouldn't he, and you know that?---Well, again you're applying a different context in my view to how it all works but he may well have, yes.

And the reason you knew, sorry, I'll withdraw that, the fact that you knew that if you disclosed those matters to Mr Lang that he would have declined

permission for you to do it is the very reason you didn't disclose those matters to Dr Lang, isn't it?---No.

10 You deliberately kept this all secret from Dr Lang because you knew that not only did you have to disclose these matters you knew that if you did it was beyond doubt that he would have told you not to do it?---No. My view at that time was I was going to work for Rodric David, it's a job interview and I'm spending a couple of days over there, even if Mr Kazal's going to be there, wouldn't impact on my job and it was with a party that doesn't have dealings with SHFA.

Okay. Now, you've told me that I'm putting it in the wrong context so can you do the hypothetical. I know you at the time and still today don't think you had to disclose anything to Dr Lang but just say for the abundance of caution you chose to disclose it to him can you just the Commissioner as best you can the context that you have put it to Dr Lang in?---Well, again I don't see the relevance given that I didn't choose to disclose it.

20 Okay. Can you just go along with me. Say you're just in the tearoom and you're having a chat and you run out of things to say so by, and he goes, hey, listen, what are you doing in your holidays, because he knows you're going on holidays because you've told him that, yeah?---Yes.

So he might think you're going somewhere interesting so he says well, what are you doing on your holidays?---Yeah.

Now, what are you going to say, none of your business, are you?
---Potentially, yes.

30 You're going to say it's none of your business where I'm going on my holidays?---Well, I may not have been so rude but, you know, I just, you know, wouldn't have specifically said I'm going to the UAE.

Why not?---Because Mr David instructed me to keep it confidential.

40 I see. Now, while, firstly, did Mr David say why you needed to keep it confidential?---Because he felt that it was an opportunity that other companies may well be looking at and he didn't want to give people a heads up that, you know, he was looking at taking Parkview to the UAE because he wanted to get the jump on others and get in and secure as many contracts as he could before such time as other Australian companies started to do likewise.

Dr Robert Lang was the CEO of SHFA at the time. There was not a chance that he was looking at similar opportunities, correct?---I don't know.

There was not a chance that Dr Robert Lang was someone who might make improper use of confidential information was there?---How did I make improper use of confidential information?

Well, you're saying one of the reasons you didn't, you would not tell Dr Lang where you going on your holidays was because Mr David had told you not to tell anyone?---Right.

10 I'm just pointing out to you that if that direction was given to you to stop people who might be competing with you getting an advantage, that explanation just wouldn't apply to Dr Lang, would it?---Because he said if it gets out, you know, there will be no opportunity for you so you tell anybody and the story can get out so I told nobody.

20 All right. And is that the reason you didn't tell Dr Lang about all this, because Mr David told you not to?---It may have had a bearing on the decision but the, the fundamental was because I didn't see it as a conflict, going to do a quasi interview for somebody that had no dealings with SHFA in a foreign country.

But in relation to things like disclosures of potential conflicts, it's always got to err on the side of conservatism, isn't it? No one can ever get you in trouble for disclosing something that didn't need to be disclosed, correct? ---In a practical sense yes but - - -

But in a real sense - - -?--- - - - there's a lot that goes on a day to day basis and, you know, one could spend their life doing disclosures of what may give rise to a conflict.

30 You're not suggesting that the proposed trip to the UAE was something in, in the run of the mill are you?---No, but I'm just saying - - -

It was extraordinarily unusual wasn't it - - -?---Well, yes.

- - - in your life?---Yes.

It was the first time anyone had asked you to go on an all-expenses paid trip to the United Arab Emirates?---Yes, it was.

40 And it was something you were looking forward to?---Yes.

It was a real business opportunity for you?---Yes.

It was a real employment opportunity for you?---Yes.

And it was going to be fun no doubt – or at least interesting?---Yes.

And it was nothing like the one of the normal things that come up in the day to day drudgery of what undoubtedly is, it's like to deal with (not transcribable) tenants down at The Rocks, was it?---It wasn't.

So you can't, may I suggest to you, just put this in a box of – well if I had to disclose all the things I might have to disclose I'd spend my life disclosing.-
--Well, I - - -

10 This was a one off wasn't it?---Yes, but I'm just saying Charif Kazal was a consultant to Mr David.

Well, you've said.---There's many other people that would have been consultants to Mr David as well and, you know, it's no different if I went for job interview somewhere else. I don't check everyone's creditors and disclose that, you know, there may be a conflict because I'm going for a job interview there.

20 Well, let's test it this way, what if you went and applied for a jobs with the Kazals, you'd disclose that wouldn't you?---Yes.

And why?---Because that's different, the Kazals are operating within SHFA's area so obviously there would be a conflict between my duties as a SHFA director and dealing with the Kazals in that same area.

But Charif Kazal was operating in your very area.---Yes.

He was the person who you deal with a lot - - -?---Yes.

30 - - -in your job.---Yes.

And Charif Kazal was operating in your area in the trip in to Dubai?---Yes.

Yes.---But it was about a job opportunity in the UAE which has nothing to do with my role in dealing with in SHFA.

40 But you both have a common goal in getting the thing up and running. Can you see that now?---I can see (not transcribable) this common goal issue but it's not something that I would have given any thought to I couldn't of cared less what Mr Kazal was doing in the context of consulting to Rodric David. I was looking at it from my perspective.

Well, you might not have cared less, that's, I know you've baulked at doing the hypothetical, but can you just humour me. What would you have told Dr Lang if anything if you were chosen - - -?---I wouldn't have told him.

No, if you had told something, what would you have told him?---Well, if I was telling him for whatever reason, I'd tell him I was going for a job interview in the UAE.

Full stop.---Yep.

Well, that would not be the whole story would it?---Well, again, where I go for jobs and things in my own time is my own business in my view.

10 THE COMMISSIONER: I just don't understand your concept of a job interview, you weren't going to the UAE for a job interview you were going to do work in the UAE according to your evidence which would help you get a job should the contract that you all hope for materialised. Is that not true?---That's true, so effectively it's a job interview because if the presentation that we do over there doesn't secure a contract, I don't have a job, end of story.

MR NEWLINDS: So if you told Mr Lang anything about this you say you'd just go as far as saying I'm going to the UAE for a job interview. ---Yes.

20 And you wouldn't mention Mr Kazal's involvement?---No, I'm saying I wouldn't have disclosed it, so you know.

But you agree with me don't you that if, if you do disclose it and include in that disclosure Mr Kazal's involvement then it's inevitable that the result of that disclosure would be a direction from your employer that you not go. ---In the form that you've put it, yes I agree that's quite probable.

30 And I'm just trying to be fair to you, I know you want to say that somehow I'm putting in the wrong context or putting too much of a spin on it, I'm inviting you to tell the Commissioner what you, what you would tell Dr Lang about this proposed trip if for example, he asked you a direct question?---If I was asked a direct question at the time I would have just said I'm just taking holidays.

But that would be not true because the one thing you are not doing - - -?---It was holidays still.

The one thing you are not doing was just taking holidays was it?---It was my annual leave so I'd call it holidays.

40 THE COMMISSIONER: Do you usually prepare budgets for other people on your holidays?---No, but you know, in a job interview context you can be asked to put documents together, it's not uncommon.

MR NEWLINDS: Have you ever gone – sorry.

THE COMMISSIONER: Why do you keep using the phrase job interview?---Because it's the most apt description of what I saw this, that, you know, if I go over there, I'm going to meet with some people who

would have formed part – who did form when it was the second – form part of the board of the company I'd be working form. So I'm going in there, I'm presenting to them as to what our credentials are and capabilities to do property and facilities management for them and if I'm able to convince them that we are able to do it, they then enter into a contract with Mr David and one of their first orders of business would be to appoint me into that company. So, for want of a better description it's a job interview because - - -

- 10 Is a job interview is a job for the Parkview Group, not for you?---Well, there's two aspects to it, it's the Parkview Group is trying to win a contract there.

And that's what you were doing there?---I was assisting them with that and with a view to – if they secure that contract one of the main commodities that they're pedalling is my ability to manage the property and facilities management for a new joint venture business that the parities would then enter into.

- 20 And what was Charif Kazal there for?---Well, he was a consultant, he provided the introductions for Mr David to the people that we met with.

And you went along for the meeting?---Yes.

So what was the benefit to Parkview, what were they representing him as doing?---Well, he was just deemed to be part of it, I don't think they specifically delineated whether he was a consultant or otherwise but he provided introductions, some of them only spoke Arabic so he was able to speak Arabic – things like that.

- 30 So it was important for you that he did his job well too?---Well, in so far as it helped in the securing of an outcome.

Exactly.---Yes.

So when you didn't care less about what Charif was doing that wasn't true? ---Well, in the context of what income and opportunities and things there are for him. I didn't know when I was first going over there what detailed role he would play even.

- 40 You cared a great deal about what he was doing there because you hoped that what he was doing there would achieve the contract that you were all hoping for?---Well, with due respects, I considered that you know, my role was going to be more instrumental about whether we'd secure a contract rather than him as someone who provides, you know, introductions and speaks Arabic and things like that. We're selling properties facilities management - - -

There is an important aspect as him?---He was important to Rodric David because he introduced the company.

(not transcribable) ---Well, he didn't play a role in the work that I was doing for the team as such.

Without Charif you couldn't get the contract could you?---Without Charif there was no introduction to the company.

10 Without Charif you couldn't get a contract?---Well, there was no introduction.

Therefore you couldn't get a contract?---Well, there were perhaps other businesses that Rodric David could've sought other introductions to.

Are you being candid Mr Kelly?---I'm being totally open.

20 Without Charif, if Charif had not been there to make introductions you had no hope of getting a contract did you, of the kind you wanted that would get you a \$350,000 job?---That's not true. Rodric David could've had contacts lined up other than through Charif Kazal that we could have also met when were over there.

Did you know about that?---Did I know about what?

That he had other contacts?---I don't specifically but I know that the David family is very well connected and - - -

30 This is speculation on your behalf?---Well, in in - - -

Is it speculation?---In response to what you're saying you'd call it that, yes.

So the only, the only reliable source of introductions that could lead to a contract was Charif Kazal?---I didn't know before we got there who we were going to be meeting with.

Is that a, would you mind answering the question?---You're asking a question that - - -

40 The only reliable source of meeting people through whom you could get a contract in the UAE of the kind that you wanted to earn \$350,000 a year was Charif Kazal. Is that right or not?---For the purpose of that visit, that's right.

MR NEWLINDS: Now did you understand Charif Kazal was to receive an on-going payment of \$350,000 per annum when you - - -?---He would get an arbitrary amount that we put it.

When you prepared the budget?---It was just an arbitrary amount that we put in.

So he was to do more than just introductions he had – you understood that he had some on-going involvement in this business if it got up and running. Correct?---I knew that he was providing a consulting service so we stuck figures into a budget.

10 To do what? It must have been more than just introductions because once the business is up and running the introductions are being used?---No, there's plenty of other companies in the UAE that you could be introduced to through them to win more contracts.

All right.---And that was what happened over the course of time when we're over there.

20 Now, can I go back to my hypothetical disclosure to Dr Lang, I know you don't like it but can we add this to it and tell me if you agree that this just gets into the realm of silliness. What if you disclosed this to him, now look Dr Lang, I'm going to the UAE but you don't need to worry about it because it's just a job interview and Charif Kazal will be there but he's really got nothing to do with what I'm doing but even though it's not true I'm going along with those state of affairs where people are preparing documents which actually say that Charif Kazal and I are both part of the Parkview team at the moment and there's a chance that those documents will be distributed to people, but don't worry Dr Lang, only people in the UAE. Well, what do you think Dr Lang would say to that?---I mean, I think he may well not of, you know, seen it as a wise thing to do.

30 Well, to that he would have gone ballistic, wouldn't he?---(NO AUDIBLE REPLY)

Wouldn't he?---Oh, I'm not saying ballistic but he wouldn't have agreed with it.

No. He would have thought it was ridiculous, wouldn't he?---Again, it was a decision that I made at- - -

40 He would have thought it was ridiculous, wouldn't he?---Probably.

And undoubtedly he would have told you not to do it. Yeah?---Yeah.

Because undoubtedly he would have told you that apart from anything else you shouldn't be allowing people to tell lies on your behalf, wouldn't he? ---Yes.

And I think if we go to the Code of Conduct, the very first thing that you're told when working for SHFA is that it's all about honesty and integrity. Correct?---Those words were used by SHFA, yep.

SHFA people should not tell lies. Not surprising, is it? That was one of the rules. Correct?---Correct.

10 And there was no distinction drawn between telling lies just within the confines of your job at SHFA and telling lies elsewhere in your life, was there? They wanted trustworthy people?---That's correct.

And you were on this hypothetical disclosure, which I know you say never had to be made, disclosing to Mr, Dr Lang that you were going along with deliberate falsehoods in documents that were going to be distributed to serious businesspeople albeit elsewhere in the world?---Yes.

And that those documents held out to those people that you and Mr Kazal were in fact now actually involved in the same business?---Yes.

20 Now, you should have disclosed that to Dr Lang, shouldn't you?---Again, it's a subjective- - -

But can't we test it this way – the fact that you accept that it's inevitable that he would have said you can't do that demonstrates that you should have disclosed it, doesn't it?---Well, it doesn't demonstrate that you should have, well, perhaps it does suggest that you should have disclosed it, but I'm saying- - -

30 Well, as a matter of logic- - -?---?- - -the judgement that I made at the time didn't so the hypothetical's we can talk all day but that's not what happened.

Now, I want to, right. Now, I want to challenge you when you say the judgement you made at the time was there was no need to disclose and I want you to, I want you to consider this. You knew full well that you were required to disclosed to Dr Lang what you were proposing to do, didn't you?---No.

40 And you made a deliberate decision not to tell him because you knew that it was inevitable that if you did tell him he would tell you you couldn't go? ---No, that's not correct.

And you knew that it was inevitable that if you told him and he then told you not to go and you did go, he would dismiss you?---Again, I don't agree with the direction, but yes he would have if I told him.

And that's the reason why you would have told him a deliberate lie if he'd asked you straight out what you were doing on your week off to the effect

of, I'm just going on holiday. That would have been a deliberate lie, wouldn't it?---Well, it's not a deliberate lie, it's factually correct, I'm on holidays.

Why not- -?---I'm not required to disclose what I do on my holidays, that's my own business.

You are required to disclose conflicts of interest. Correct?---And I didn't perceive it to be one.

10

And you are required to, to disclose secondary employment?---I didn't have secondary employment.

And you are disclosed, you are required to disclose anything that might create a perception that there's a conflict. Correct?---You are required, yes.

And you are required to disclose anything that might create a perception that you're working for someone else at the same time as SHFA?---Well, yeah, again I saw it as a job interview.

20

Please. The creation of the document that stated that you were working for Parkview at the very least created the perception that you were?---It does create that perception but I was- - -

Right. Now, that's something you have to- - -?--going to the UAE and that's the only place it was being used, so I didn't see that it was going to create any conflict with my work for the Sydney Harbour Foreshore Authority which has got no relevance in the UAE whatsoever.

30

Do you say you actually went through this thought process at the time? Did you actually think to yourself, is this something I should disclose, think it through and then come to a conclusion that you should not or did you just do what you were told when Mr David said don't tell anyone?---No, I didn't just do as I was told, I genuinely consider that going for a job interview in the UAE- - -

But that's now?---No, at the time, at the time I genuinely considered I was going for a job interview in the UAE for Rodric David was tied up with Parkview at the time.

40

But you were going to help them out. That's where we started today. They wanted you to go with them?---It's still a job interview in my eyes. What I do in the interview I don't see is relevant. My question is, why am I going over there? I'm going over there to try and secure a job through a process that involves meeting the people that I would be working for.

I wonder if we can bring up document number 908, please, Commissioner. I'm just going to show you a document that I've been reading from this

morning. Can we make it bigger? And if we can go down to the fifth paragraph that starts, "In mid-2007."

MR KORN: (not transcribable)

MR NEWLINDS: Well, you can make your application.

10 MR KORN: Commissioner, this is a matter that I've raised with Counsel Assisting earlier. This a document that he told me that he was going to, or that I told him that I, I invited him to in fact withdraw that from the tender bundle that was going to the, to the Commission on the basis that that's a document that was prepared in privileged circumstances and that privilege is not waived. So, Your Honour- - -

THE COMMISSIONER: That's irrelevant to this inquiry.

20 MR KORN: Well, no, no, no, no. The inquiry, I understand that, but what I'm asking Commissioner to do is to in fact not make that part of, exclude that from access to any persons other than obviously Counsel Assisting and to those associated with the Commission, but not have that publicly made available as part of any public bundle and restrict access to it, and indeed to the extent that it's now being shown on the screen which I wasn't aware was going to happen but in fact persons other than those necessarily require to be present be excluded during this process.

THE COMMISSIONER: What is it?

30 MR KORN: It is a document that was prepared, as I understand it, by Mr Kelly setting out his explanation and it was prepared in, the reason for privilege is it was prepared in contemplation of defamation proceedings being brought by members of the Kazal family through solicitors Robinson and Co and it was prepared for that purpose. For that reason it attracts privilege and that privilege is, is relied upon.

THE COMMISSIONER: Are you saying it's relied upon for application for a Suppression Order?

40 MR KORN: Yes. So, so I understand that within the context of the Commission it's got a bona fide use and that's what I'd raised with, with Counsel, but in fact, as I say, I wasn't aware it was going to be put on screen, but I'd invited him to exclude it. And so what I'm now doing, I understand what is required to do, but what I'm asking you to do, Commissioner, is in fact suppress it to the extent that it not be part of any public tender and if it's now being on the screen to in fact exclude persons other than those necessarily required to be present from being here during this part of the examination.

MR NEWLINDS: I think I'm at cross-purposes with my learned friend. There were some other documents in the bundle which were prepared by Mr Kelly and given to his lawyers in the way that has been described and which would ordinarily attract legal professional privilege, but my instructions are this is not one of those documents and that this document was prepared by Mr Kelly after the Sydney Morning Herald article and given to his employer at the time which was another government department, I think the land and property, whatever they're called these days, and we got it from his personnel file. And so my submission is it's, the foundation of the submission is just wrong, it's not a privileged document.

THE COMMISSIONER: What do you say about that, Mr Korn?

MR KORN: I have a different understanding, but I- - -

THE COMMISSIONER: I beg your pardon?

MR KORN: I have a different understanding, but let me make it perfectly clear, I'm not employed directly or indirectly, I'm not employed nor have I ever been employed by Robinsons and I haven't been briefed by them, but I am proceeding on the understanding that that in fact is a document that came about in the way in which I have told you.

THE COMMISSIONER: Well, Mr Korn, I've been informed by Counsel Assisting that the document comes from Mr Kelly's personnel file at the SHFA. On that basis your application is refused. Mr Newlinds, I think that - - -

MR NEWLINDS: Just checking that.

THE COMMISSIONER: - - -we need to be sure of that.

MR NEWLINDS: Those instructing me are those nodding, Mr Commissioner, so I, I have no knowledge myself.

THE COMMISSIONER: No, I understand that.

MR NEWLINDS: And I think if my learned friend looks at document 918 that is a document that falls exactly into the category or documents that he's describing and I must say is the ones that I thought we were talking about beforehand. But I would say this as well, even if this is all right this would be Mr Kelly's privilege I think.

THE COMMISSIONER: That is true as well.

MR KORN: The document that I have put my learned friend on notice about this morning were pages 918 to 921.

MR NEWLINDS: Well, that's right, and that's not these documents. This is - - -

THE COMMISSIONER: That number is that?

MR NEWLINDS: 908 and it finished at 909 so it's the document before. I'm not suggesting that my learned friend can't move from documents.

THE COMMISSIONER: I understand.

10

MR KORN: If it comes from that location then obviously my application can't be pursued. We just have to be very careful that in fact it is, that it comes from that location.

THE COMMISSIONER: I understand, Mr Korn, but Mr Newlinds has raised another point.

MR KORN: Mr Newlinds has raised the - - -

20

THE COMMISSIONER: Has raised another point. You have no standing. It is not your privilege, your client's privilege to raise.

MR KORN: But it is, Commissioner.

THE COMMISSIONER: Why?

MR KORN: If it was prepared for and at the behest of Robinson Lawyers who in fact are solicitors for members of the Kazal family with respect of defamation proceedings.

30

THE COMMISSIONER: I understand that. But I've received an assurance from Mr Newlinds who has in turn received an assurance from officers of the Commission, I have received nothing from you to the contrary.

MR KORN: Well, Commissioner, I'm dealing with one at a time.

THE COMMISSIONER: I'm only dealing with these documents.

40

MR KORN: Commissioner, you took me to a new point, I was only responding to that. In respect of the other matter if we're now going back to that - - -

THE COMMISSIONER: I'm going back to that.

MR KORN: If we're going back to - - -

THE COMMISSIONER: I think that in this profession one moves from point to point.

MR KORN: As long as I can follow it, Mr Commissioner, I'll do my best.

THE COMMISSIONER: Now, I am pointing out to you that I have received an assurance from Commissioner officers that this document is obtained from Mr Kelly's employment file and I've heard nothing from you that refutes that.

10 MR KORN: I wouldn't be in a position by the very nature of that sought to be able to say to the contrary.

THE COMMISSIONER: Well, you are saying, well, then, how you then understand that on the basis of the assurance I've received your application is refused.

MR KORN: Yes. Can I just ask this caveat, Commissioner. I'm seeing Mr Robinson at lunchtime, is that a matter that we can revisit at 2 o'clock?

20 THE COMMISSIONER: Well, I don't think so unless it goes to this point. Whoever took the statement is one thing but it does seem that Mr Kelly handed this statement to his employers.

MR KORN: That wouldn't obviate the question of privilege.

THE COMMISSIONER: I doubt that. The document has gone to the public domain.

30 MR KORN: Well, with respect, Commissioner, I wouldn't agree with your doubting.

THE COMMISSIONER: I'm not making a decision, I want to make that clear, I'm pointing out that I have reservations about your submission.

MR KORN: And may I respectfully say that I would take a dissimilar view. If somebody without authority in fact puts a document on public domain with authority from the person whose right to privilege is affected that doesn't bestow upon the granter the right to obviate that privilege. Privilege always remains, that would be my position.

40 THE COMMISSIONER: All right, Mr Korn, you can raise the point again.

MR KORN: Thank you.

MR NEWLINDS: Now, I wonder if we could have the document up please. Now, if you just look at the paragraph, see the one with the two lines scribbled next to it. If you look at the paragraph above that, Mr Kelly, it starts "In mid 2007", do you see that?---Yes.

Now, the first couple of sentences of that I've put to you this morning a couple of times and you've given your explanation?---Yes.

But I just want to direct you to the whole of the paragraph. So if you can just read that paragraph in full to yourself and let me know when you're finished?---Finished.

10 All right. Can you see at the end of the third line there's a sentence that starts, "I", it read, "I took a week of annual leave and attended to assist them"?---Yes.

"And costs were met by Rodric David."?---Yes.

You then go on to say, "As I knew my contract with SHFA was at best uncertain I took the opportunity to investigate the UAE and agreed to attend an act as an employee of Parkview Constructions controlled by Rodric David."?---Yes.

20 Now, you wrote those words didn't you?---Yes.

If we look at the next page 909 you've signed your name to this statement? ---Yes.

Do you remember the circumstances under which this statement was prepared?---Can you go to the top of it just so I can (not transcribable).

30 So if you go back to 907 it's got a heading Comment on this in each Article?---Okay. Then yes, I believe that was done on or about 1 September, 2010.

For the purpose of explaining to your then employer what your side of the story was?---Yes.

Because of course they were very concerned about what had been published, yes?---Yes.

Now, do you see that last sentence when you said, "I agree to act as an employee of Parkview."?---Yes.

40 What were you intending to convey about that sentence, that you agreed to be an employee of Parkview or you agreed to pretend to be an employee of Parkview?---Yes, probably more the latter. The appearance of being one of the Parkview team.

So you had agreed to pretend to be an employee of Parkview?---By virtue of those documents being put together that we spoke of earlier, yes.

Well, you don't draw that distinction in this letter do you?---We're discussing it in more detail but no, I don't.

And you don't go to the trouble of pointing out to your then employer that in fact as far as you were concerned all this was was a glorified job interview do you?---I mean, I haven't said it - - -

You haven't said it at all have you?--- - - - at the start there, no.

10 Isn't it the case that you've made up this story about it being a big long week of job interview as we got closer and closer to this inquiry?---No, that's - - -

And isn't it the case that what you tell your employer in this document which was after all your first attempt to put your side of the story, isn't it much more likely that this is more close to the truth?---No, I'm being more specific now that I'm being called to account. I thought at that time that I was providing an explanation that was refuting allegations made by the Herald that I considered to be highly incorrect and defamatory and I was
20 merely trying to suggest this is what actually happened and, you know, I'd like you to do a quick investigation, speak to ICAC if need be and clear this up so that I can resume my normal life because, you know, I've been wronged with my view in writing this.

Well, - - -?---And I was focusing on trying to provide a defence for myself.

One of the things the article said is that you had some form of business relationship with Charif Kazal at the time you were working for SHFA?
---Which I didn't.

30 You say you didn't?---Yes.

But this letter at least suggests, does it not, that you had agreed to pretend to have a business relationship with Parkview?---Which is not a company that Charif Kazal is a director or living off.

But at the same time you knew that Charif Kazal had also agreed to pretend that he had a business relationship with Parkview?---The key word here is pretend.

40 All right. Now, why didn't you point out to your employer that even though none of this was true what was true was that both you and Charif Kazal were pretending to have a business relationship together?---Because again, my emphasis in all this has never been to explain Charif Kazal's involvement in it, I was going to work for Rodric David, Rodric David is the person who actually employed me and Rodric David is the one who I then went to the UAE to work for, the fact that Charif Kazal became a part owner of that company happened well after I had left SHFA. So, you know,

it's all great in hindsight to rub it all up and make it, you know, look like I'm, you know, you know, I'm the worst thing since sliced bread so to speak but, you know, it's just so out of context it's ridiculous and - - -

THE COMMISSIONER: But what I don't understand, Mr Kelly, is that the first sentence of that paragraph in mid-2007 because there you say "Rodric David and Charif Kazal asked me to meet with them where they discussed an opportunity they were working on in the UAE." Is all that correct?
---Yes, but again we go back to, this is the exact same discussion you and I
10 had this morning, Commissioner, where it's in the context. I had a meeting that both of them were at, they didn't both ask me to attend the meeting.

Well, it says that, "In mid-2007 Rodric David and Charif Kazal asked me to meet with them where they discussed an opportunity they were working on in the UAE"?---Well, that's right and when I met I was explained that Charif Kazal was providing, you know, contacts and introductions to Rodric David so they were obviously doing stuff before I was brought into the picture and, you know, I met with them is just a way of describing that I met with the two individuals. I didn't write it like a police statement, I just
20 wrote it in general language terms.

Yes, Mr Newlinds.

MR NEWLINDS: But it was critical, that this document was a very important communication between you and your then employer, correct?
---I agreed but my emphasis of it is to highlight the timing of when things happened to show that the Herald was incorrect.

All right. And you do that in the first part of the statement?---Yes.
30

So in relation to how the trip came about, who invited you and whether you were an employee or not, the paragraph that I've directed your attention to and the next one are the two that deal with those topics, aren't they?---Yes.

There's no other part of this letter that we need to look at to get those paragraphs in context, is there?---Probably not.

They're dealing with that stand-alone topic?---Yeah.

40 Correct? The whole chronology argument is elsewhere in the letter, yes?
---Right.

And what I'm suggesting to you is don't you think it's more likely that this, your first attempt to explain your conduct to your then employer is much more likely to be accurate when we compare it to what you're saying now, especially in relation to your insistence that what you were doing was a job interview?---No, I disagree. This was, you know, on a day when I'd been, you know, broadcast on the front page of the major newspaper and was

under major attack so I was putting stuff down. I didn't properly consider it as constructively and analytically as I would have, when I then met subsequently with lawyers who explained well, no, you should talk in this context and all that sort of stuff.

10 That's my point. Your evidence today to the effect that, well, this was just a job interview, I wasn't really involved with Mr Kazal and what he was up to because I was really working for Rodric David, that's all a construct. It may have happened honestly in your mind but it's occurred during the period when you thought about and received advice as to how to deal with these allegations and contrast what these two paragraphs in this letter are which is your very first honest attempt to put your side of the story in circumstances where you had every interest in, in putting your best foot forward. Do you see what I'm putting to you?---I don't because what you're saying is I wasn't an employee so if I wasn't going over there in a job interview sense, am I dumbest consultant in the world that went over there for no reason? Didn't get paid, didn't have any, you know, ongoing arrangement, had no contract. It didn't make sense.

20 You got a free, you a free trip to the UAE, right, on what you point out was your holiday so that doesn't make you pretty dumb, that makes you pretty smart doesn't it?---Well, not if you're only going over there to get a free trip. I would suggest that, you know, from the job interview of a job paying, you know, 300 grand or something, is a far more pertinent reason to be looking at it at a time when I was looking for alternative employment.

30 All right. I'll move on to a new topic after this but I just want to give you one last chance. Can you explain why the explanation to the effect that this was just a job interview did not find its way into this letter?---Because it was, you know, not the level of detail that I went to at that particular juncture.

THE COMMISSIONER: Mr Kelly, I understood your evidence to be that you saw your solicitors, you saw solicitors for the first time after this document had been written?---Yes.

MR NEWLINDS: And after they had assisted you to characterise your conduct in a certain way?---No, no, none of my solicitors have ever - - -

40 No, I'm not - - -?--- - - - (not transcribable) changed my story.

I'm not suggesting anyone's suggested you change your story, your story is still fundamentally the same, it's the characterisation of what you were doing that I'm suggesting has changed. Do you accept that?---No, I don't, entirely not.

Do you say at the time you wrote that document that has just gone off the screen, I think it's at 918, 908, that your state of mind was that in fact you'd only gone there on a job interview?---That's right, to secure a job.

And your explanation for why that statement didn't find its way into that document is because you didn't go down to that level of detail, is that it?
---Yes.

10 And you disagree with me when I put to you that in fact the truth is you hadn't thought up that explanation at the time you prepared that document?
---I disagree with you.

Right, thank you.

THE COMMISSIONER: Do you wish to adjourn now, Mr Newlinds?

MR NEWLINDS: I do, I'm onto a new topic so - - -

20 THE COMMISSIONER: We'll adjourn until 2.00pm.

LUNCHEON ADJOURNMENT

[12.56pm]