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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION VESTA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 26 JULY 2011

AT 10.10AM

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

THE COMMISSIONER: Mr Newlinds.

MR NEWLINDS: Mr Kelly, can you explain what your understanding was as to why you were allocated an AWT email address?

10 ---My understanding of it is in the context of they were, you know, proposing to get the Chesterton licence as we've discussed before and as part of that discussion they were, you know, itching to see the properties that, you know, AWT was involved in, you know, bringing Chesterton to the UAE and as part of that I was given an email address saying that, you know, I was part of the team, if they wanted to contact me that, you know, they could do so on that email address and then it was routed to my home address.

That's part of the AWT team?---Yes.

20 Opposed to the Parkview team that we were discussing yesterday?---Yes.

And did you understand that at the time, was that your understanding at the time you were allocated an AWT email address?---Again, yes, which is part of this UAE process.

30 All right. Well, the UAE process therefore involved a Parkview team on the one hand being presented to people in the UAE?---It started as Parkview then when they wanted to get this Chesterton licence it was decided that AWT, because they had offices in Dubai, would look as the ones to approach Chestertons.

But AWT's approach to Chesterton happens before the trip to Dubai, can I just remind you of that?---I'm not arguing that, because they were trying to get the licence to take over there.

40 All right. And so did you understand at the time that you were being held out to people to Australia as part of the AWT team?---I don't specifically recall at the time being held out as part of the AWT team and I'm not sure that the email was set up at that time either but I'm, you know, that an email was set up.

Can I just ask you the question again. Did you understand at the time, that is, shortly before the trip to Dubai that you were being held out to people in Australia as part of an AWT team?---That's not my recollection, no.

Did you understand at the time, that is, slightly before the trip to Dubai that it was possible that people might be holding you out in Australia as part of an AWT team?---I don't recall that. My main recollection is that AWT were trying to get the licence for Chesterton.

And that was all part of the plan?---Yes.

And the real estate licence came under the part of the proposed business that you were interested in, that is the dealing in real estate in the UAE?---Yes.

Did anyone run the name Chesterton's past you and ask whether you thought that was an appropriate name to become associated with?---No.

10 Did anyone run any names of real estate firms past you and ask that sort of question?---Not that I recall. My recollection is that Rodric David was having those discussions with Mr Willoughby and Mr Willoughby was the one coordinating the licence.

And Mr Willoughby was a person who had real estate experience?---Yes.

20 Did you have discussions with Mr Willoughby about real estate matters? ---Not in terms of when they were procuring the licence, no. I had discussions with him when we were in the UAE about, you know, putting that budget and things like that together.

But you did know that you'd been allocated an AWT email?---I don't recall when I knew that I was allocated the email.

Are you able to say whether it was before the trip to Dubai?---Oh, I'm not able to say.

30 Yesterday you gave some answers to some questions concerning the change of use and rent abatement decision concerning 91 George Street, the property that became the Guylian Chocolate Café?---Yes.

Rolling through from May '07 to July 2007?---Yes.

40 And is this right, were you saying that some time prior to those dealings your duties had changed so that you weren't really involved in those matters?---In terms of the change of use, yes, I was saying that that would have been dealt with, the report you asked did I prepare and things, I said no, it would have been prepared by the general manager or the property manager that worked for the general manager because those matters were decided by the general managers because the property managers reported to them at the time.

Now, isn't this what happened, Debra Dawson commenced working for SHFA some time about February, 2007?---I, I wouldn't recall what time she started I'm sorry.

But some time early in 2007?---Perhaps, yeah.

She had the position, General Manager, The Rocks and Circular Quay?
---Yes.

And that was later renamed Director, The Rocks and Circular Quay Precinct?---I've never heard of that title, no. That must have been after I'd left the organisation.

10 All right. Now, is this right, in April 2007 Ms Dawson became responsible for day to day tenant management issues relating to properties in The Rocks and Circular Quay?---As I said yesterday, it was approximately 12 months before I left so that's about right.

And her job was to look after day to day tenant management issues, collecting rent, overdue payments and those sort of things?---Yes.

And that therefore I take it freed you up because those sort of day to day matters had been your responsibility prior to her arriving, correct?---Well, people that reported to me's responsibility, yes.

20 And what happened was it became her responsibility and people reported to her?---Yes.

You remained directly responsible for topics such as lease renewals, new leases and those sort of decisions, correct?---Yes.

But even though there was this change in roles the delegations, that is the authority that people had within SHFA relevantly didn't change?---I wouldn't recall.

30 And so ultimately any decision that had to be made in relation to what might be described as day to day tenant management issues had to go to you for approval?---Again, I don't agree with that.

40 Because Ms Dawson did not have the relevant authority to make final decisions?---Just because the delegations manual may not have been changed it doesn't mean that instructions given by the CEO wouldn't have been followed and that would have been a function that was directed in to Ms Dawson's area. There was considerable work done at the time that it all changed in identifying who was doing what roles and responsibilities as I recall so it should be documented somewhere, if they didn't update the delegations manual it's a separate issue.

So do you say the delegations in fact were changed, it just wasn't documented?---Well, I'm saying those responsibilities were documented, the delegations manual is a separate document and it may not have been changed, I don't recall.

Could you just have a look at volume 2 please, if the Commission staff can provide you volume 2?---Ah hmm.

And I want to bring up the document at 234 again. 234, bottom right-hand corner?---Yes.

MR BEECH-JONES: That's in 1.

10 MR NEWLINDS: Oh, is it? I'm sorry, it's volume, it's in my volume 2. Have you got document 234?---Sorry, page 234?

Page 234?---The signature page, yes.

Correct. And if you go back to 231- - -?---Yes.

- - -just to put you in context, that is the matter for discussion document- - -?---Yes.

20 - - -that was prepared in about the middle of May 2007?---Right.

And we looked at it yesterday. Your signature was- - -

THE COMMISSIONER: Sorry, Mr Newlinds. Can that be on the screen, please.

30 MR NEWLINDS: 234. Have we got a glitch? All right. Well, I'll try and describe the document. This is the document, one of the documents we looked at yesterday. It's a matter for discussion document that I think went to the board in- - -?---No.

No, it did not go to the board in the middle of May 2007?---Yes.

And what the signature page tells us is that the four people who were contemplated as signing it as authorising it were Mr Cunynghame, Mr Peters, Ms Dawson and yourself?---Yes.

Do you see that?---Yes.

40 Now, you said yesterday, well, that's just because I was part of the executive team?---No, I didn't say it was 'cause I was part of the executive team, I said it was to keep me informed because it was a property matter so, you know, matters like that we would involve each other just so that we knew what was happening so that one didn't do something in conflict with it.

Well, let's think about this, Mr Kelly. You could be kept informed just by being CC'd into the relevant documents. Correct?---Yes.

That's not what's happening here. Your name is being placed on the document as a person who is expected to sign it for it to be authorised. Correct?---Yes.

And in the ordinary run the people who were nominated on these sort of documents as authorising them would sign them before they went to the board?---Yes.

10 And when the recommendation ultimately did go to the board in July 2007, you did sign the discussion paper, didn't you?---Yes, I haven't disputed that.

And is your explanation to why that is so because you had to be kept in the loop?---Yes.

20 Can you- - ?---The paper wasn't prepared by me, it was prepared by the general manager or her employees and we were merely kept in the loop. It involved a change of use to the lease which would have required some lease documentation amendments and that's something that Mr Peters who worked for me would have probably carried out, so that's why, you know, we're involved to be made aware of what's going on.

THE COMMISSIONER: So to the extent that this provides for you to sign as being a person who authorises what goes before, you say that's wrong? ---I'm not saying it's wrong.

So is that right?---Yes, I authorised it, but I'm saying I'm not the originator of the paper nor the person who would have, you know, done the research and put it together.

30 I take it, I take it it would have been open to you not to authorise it?---If I had a reason to, yes.

MR NEWLINDS: In the same way that Mr Peters had pretty violently disagreed with what was proposed in May, you could have taken the same position- - ?---Yes.

- - -for the same reasons or different reasons?---Well, if, if there was concerns, yes, I could have raised them.

40 And so regardless of how much you had, input you had to the actual drafting of the recommendation to the board, the harsh reality is, you remained a person who was delegated to be one of the people required to authorise the recommendation before it went to the board. Yes?---Again, if we're playing with words, I don't believe delegated, but it's, it was the decision of Ms Dawson to put my name on it, she could have also done the report without putting my name on it. The fact that she did, I had no objections, no issues with it and I signed it.

And you read it?---Yes.

And you agreed with it?---In the July version, yes.

Yes. And if you hadn't agreed with it you could have and would have done something about it?---Yes.

You would've brought it to - - -?---As I did in the May instance.

10 And just for the transcript the signed version of the July document is from page 402 to 404 but we looked at that yesterday, I don't think we need to look at that again?---Yes.

And so can I come back to something we were dealing with late yesterday. In light of the fact as at 14 July, 2007 that you had just returned or you had returned on 2 June, 2007 from a week long trip to Dubai with a number of people including Charif Kazal, why did you not bring to the attention of Ms Dawson, Dr Lang or the Board that fact when you were asked to authorise the July recommendation?---Because I didn't see that there was a conflict
20 that needed to be disclosed.

For the reasons you gave yesterday?---yes.

Now, I just want to ask you a couple of more questions about the banking of the cash that we discussed yesterday?---Yes.

You remember the topic no doubt?---Yes.

30 Do you really remember going to the bank and banking the cash at all or do you think you might be reconstructing from the fact that you've seen that there was a deposit that's into your account and you're just assuming that you must've gone to the bank?---No, I have a recollection of clearing the account.

THE COMMISSIONER: Sorry, clearing the account?---Clearing the credit card.

40 I still don't understand what that means, Mr Kelly. Does that mean that you have an understanding of going to the bank and depositing sufficient money which led to your debit account being discharged?---Yes, that's exactly correct.

MR NEWLINDS: Are you sure you don't remember becoming aware that the account had been cleared?---No, that's not what I recall.

You say that you remember going to the bank?---Yes.

You are making that up aren't you, Mr Kelly?---No, I'm not.

You sure you weren't told by Charif Kazal that his wife had organised to go to the bank and put the money into your account?---No, I was never told any such thing.

Are you sure you didn't receive the money from Charif Kazal?---I'm certain.

10 Are you making up the whole story about the envelope full of cash?---No, I'm not.

Isn't what really happened is Charif Kazal told you, asked you for your credit card details?---No.

Or indeed had your credit card details because you showed him the statement and he said, I'll attend to it, and later on you saw from another statement that the account had been cleared?---No, that's not correct.

20 You sure?---I'm positive.

Do you leave any room for your memory having failed you in this regard? It is possible for memories, for people to create memories by virtue of a process of trying to reconstruct what might've happened?---I certainly recall going to the bank and clearing my credit card.

You don't leave any room for doubt that you might be wrong about that? ---No. Not in my recollection.

30 THE COMMISSIONER: And I know you were asked this yesterday but I just want to make absolutely certain that I understand your answer. You don't remember going to the bank twice, you only remember going to the bank once?---Well, I won't say that I remember going twice but, yes, I remember clearing the credit card but I don't recall going twice.

40 I'm not sure what you're really intending to convey by that, Mr Kelly, in the sense that I'm not sure whether you're saying it's possible that you went twice but you have no, you only have a recollection of going once or you're saying I have no recollection of going twice, I do recollect going once therefore I only went once as far as I know. Which of the two is it?---It's possible that I went twice but I definitely recall at least being there the once where I was clearing the balance of the credit card.

And when you accept the possibility of going twice is that because of the evidence of the bank statement?---Yes.

MR NEWLINDS: Because you, you have to accept that unless there is a mistake in the bank statement that if you were the person who made the deposit of the money that you must have gone twice?---Yes.

And I think you accepted yesterday that you would expect to remember something like that because that would have been unusual, would it not?
---No, no, I, I - my recollection of yesterday was saying that, you know, I don't recall why I would have done it twice that was all.

And you thought of one reason which might be you didn't want to wander around the city with lots of cash in your pocket?---Possibly, yes.

10 But that is mere speculation?---Yes.

All right. How are we going with the machine? Can we bring up document number 290 please. You see that on 4 June, 2007 Mr David wrote an email to Mr Karam in the UAE effectively thanking him and following him up after the meetings?---Yes.

And you were copied in to that email?---Yes.

20 As far as you were concerned you were copied into that email because you were part of the group who had had dealings with Mr Karam?---That's right.

And it was appropriate for Mr David to keep you in that look?---Yes.

Now, how does that fit with your job, job application characterisation of what you were doing in Dubai? Was the job application continuing even after you'd returned was it?---Well, as I have stated previously, the first order of business was to secure the contract. Once that's secured I was then to be offered a job by Mr David.

30 I see. So the job application was not just the trip to Dubai, it's everything that follows up to and including securing the business opportunity?---Well, unless they had confirmation that they'd got a contract there was no job to offer.

But can't you see that what was happening was that you were performing a job, that is assisting in getting the job?---I didn't perceive it as performing a job as such, I saw it as assisting with the process of securing the employment that I was pursuing.

40 Now if you can just go back to 287, it's clear isn't it from that, that document if you just have a quick read of it, that you were certainly aware that you had been allocated the AWT address as at 2 June, 2007?---Yes.

And what you were saying there was that an email that had been forwarded to that address had not been on sent to your home address?---Yes.

And if you just look at 288 I think what you're talking about is a chain of emails that includes the one at 290 that we just looked at?---It would have been in relation to this sort of stuff I expect, yes.

Can we then bring up 292, please and I'm not going to show you all of them but you accept, don't you, that during the period after the first trip to Dubai leading up to the second trip to Dubai, there were many meetings of a group of people who had gone to Dubai organised by Mr David. Now, some of them happened, some of them got rescheduled but he went about organising a series of meetings?---Yes, I wouldn't have said many but there were some, yes.

THE COMMISSIONER: I notice that this refers to the Parkview UAE Shareholders Agreement. What, what was that, Mr Kelly?---I, I don't know specifically what it would have entailed. It's obviously a heading that he's, you know, picked for some reason.

Who, who were the proposed shareholders?---In terms of that, again, I'm not sure what the context of it would be.

Well, what was happening at the time?---Well, they were meeting with these people in the UAE in try and get a joint venture agreement up with them.

And who's they?---Well, Rodric David and the Parkview team going over there with this - - -

Parkview team, when you talk about the Parkview team are you excluding Mr Charif Kazal?---Well, no, because he was assisting them with it.

Are you saying that was one team, the Parkview team?---Well, in describing everyone on that email address, you know, more or less, yes.

When you went to UAE- - -?---Yes.

- - -did you all have a common object?---Well, insofar as- - -

MR BEECH-JONES: I object. (not transcribable) speculate about what everyone else thought that he was- - -

THE COMMISSIONER: I beg your pardon, Mr Beech-Jones. I know that if you were appearing in a trial that would be a legitimate objection. This is not a trial- - -

MR BEECH-JONES: But- - -

THE COMMISSIONER: - - -and the rules of evidence do not apply.

MR BEECH-JONES: But to that extent it's unfair.

THE COMMISSIONER: Why is it unfair?

MR BEECH-JONES: To speculate about what everyone else's common object was.

THE COMMISSIONER: Well, if Mr Kelly doesn't know, he'll tell us.

MR BEECH-JONES: If the Commissioner pleases.

10

THE COMMISSIONER: Now- -?---Well, in terms of as I described yesterday, there was two aspects to it, there was the property management/facilities management side and the development management side, so- - -

When you say development, does that involve- -?---Construction.

- - -construction?---Yes.

20

Now, is my understanding correct that Mr David and his group were involved in construction in Australia?---Yes.

They had no expertise in, in property facilities management?---Well, Mr Willoughby was working for Parkview and he was the one with experience in real estate matters.

And he went to- -?---Yes.

30

- - -Dubai?---And he's the one that organised the licence for Chesterton's et cetera.

Or attempted to?---Yes.

And so you're saying, or are you, do you have any knowledge as to whether Parkview conducted any facilities management business in Australia?---It's not something that's part of my recollection but Mr Willoughby would be able to clarify that.

40

But Charif Kazal was interested in facilities management?---Well, Charif - - -

Is that right?---Not specifically, he was just there to provide the introductions.

Wasn't he there to advance his own business interests as well? Didn't he tell you that?---No, he didn't.

He was just going there as an introducer?---As a paid consultant to provide the introductions, yes.

Paid consultant?---Yes.

How do you know he was a paid consultant?---Well, I assume when I'm told that someone's a consultant providing introductions that they're getting paid for the- - -

10 No one told you he was getting paid, this is something you assumed, is it?
---Yes.

I see. And while you were in the UAE, as I understand your evidence, you didn't all go out together at the same time, some of you did some things and others did other things. Is that right?---That's right. A lot of the time Mr David and Mr Kazal were off doing things together and the rest were doing other functions related to the different meetings that we were attending.

20 And were there occasions when Mr David and the Parkview people were doing things on their own without Mr Kazal?---Ah, I don't recall so, no.

So wherever Mr David and the Parkview employees or directors went, Mr Kazal went?---Yes, he went to all the meetings.

And you went as well?---And I went to all the meetings, yes.

30 And the meetings were about what, were they with different people or were they only with Seba?---Ah, there was different people. We met with Seba for the property and facilities management and then on the construction side we met with Aldar Constructions which is one of the largest construction companies in the region and we also met with another company that I think was called Saroo but I couldn't be certain. So I think there was two or three development companies that were introduced by- - -

I gather from the documents that so far have been put in that the, and read that the construction, the aim of obtaining some kind of construction business failed?---I'm not sure whether it failed or they chose not to proceed, but- - -

40 But it didn't proceed?---It didn't proceed.

What proceeded was the facilities management side?---Yes.

And the initial partner or potential partner was Seba?---Ah, at the first meeting that's who we met, but then when we went back for the second meeting the people who they actually struck the contract with, it was the same people but a different company.

Sorry to interrupt, but I'm talking about the first visit to the UAE?---That's right. For property management we only met with Seba.

And your negotiations, the negotiations after, immediately after the first visit were with Seba?---Yes, that's my recollection.

And what were these negotiations about?---It was about, you know, what service Parkview could provide to them in terms of property and facilities management.

10

And this was to be a joint venture was it?---That's right, with them.

Parkview and Seba?---Yes.

And was Mr Charif Kazal, as far as you knew was he to be involved in this joint venture?---I didn't have that level of specifics.

You saw no emails about that?---Not that I recall, no.

20 You didn't prepare a budget dealing with that?---Well, I prepared the budget document that we discussed yesterday.

Not with the budget, deal with the joint venture?---Well, it was dealing with, you know, the joint venture proposals.

And did the budget show that Mr Charif Kazal was a participant in the joint venture?---It had a line item for him, yes.

30 And who told you to put that in the budget?---I expect it would've been something that Rodric David discussed.

You expect?---Well, to the best of my recollection. I wouldn't have just dreamed it up so I must've had some idea.

I didn't think you would. So you, I take it, understood at that time that Mr Charif Kazal was going to be a part of the joint venture?---In some form, yes.

40 And this you did while you were in the UAE on the first visit, you started the budget then?---That's my recollection, yes.

And you continued working on it when you returned?---Possibly, yes.

So when you started working on the budget in the UAE did you show salary, did you take into account for the budget the salary for the Charif Kazal?---As mentioned yesterday it was put in as salary but we knew him to be a consultant but it was easier to explain that he was an employee rather than a consultant because that's how it had been portrayed in the meetings.

So while you were in the UAE you knew that Charif Kazal was going to make considerable amount of money out of this joint venture, that was the idea?---Well, yes, I knew he'd make some money out of it.

You thought \$350,000?---Again, that was just a figure that was put in for everybody for coming up with an indicative budget. And when it was later locked in he wasn't an employee.

10 What was he?---A Director.

Yes, Mr Newlinds, thank you. Mr Newlinds?

Have you finished questioning, Mr Newlinds?

MR NEWLINDS: Well, I think so. You've covered all the topics you wanted covered. I did want to show him some other documents.

20 THE COMMISSIONER: Mr Newlinds, I just need to know whether you have more questions?

MR NEWLINDS: Yes, I have some more questions, thank you. Now, can we go to document 293. Have you got that up?---Yes.

Now, this is an email from you responding to Mr David, it might be about the proposed meeting we looked at about half an hour ago or it might be another one but it's you pointing out to Mr David that you would prefer any meetings to have an outside work hours and that you were busy at the time that had been allocated?---Yes.

30

And you were putting forward that you were free most days from 6.30am to 8.00am or after 6.00pm on Wednesdays or Thursdays of that week?---Yes.

So you anticipated, did you not, that whether that happened or not that there was going to be regular meetings between the people who had travelled to Dubai?---I expected that we would need to catch up to finalise anything outstanding. My understanding was we were putting a proposal to them and we would shortly received confirmation as to whether the contract was secured at which time I would've been offered employment. So it's not something that I expected would've gone on infinitum for, you know, weeks or months even, it just may have been a matter of the next couple of weeks.

40

To put together the proposal?---To finalise anything that was needed.

Now, can we bring up 326 please. Now, this is an email from Georgia Corey who's a Parkview employee I think, does that accord with your recollection?---I've never met Georgia so I wouldn't know but the email address is that.

Anyway, it's the first draft that Emma, which I think you would agree is probably Emma Carmichael?---Yes.

And was she a person who you knew at the time?---No, never heard of.

They'd done some design changes and obviously they still had to add Andrew Kelly's changes?---Yes.

10 Now, just to tell you what they're talking about, if you look at the next document, it should be page 1 of a Parkview Property Group company profile, do you see that?---Yes.

Now if we then go through to page 338, when I was asking you about the Parkview profile documents yesterday you were thinking about this document and various other versions of it, weren't you?---I was thinking about a different version to this. There's one where it talks to me as head of Facilities and that's the one I recall commenting on.

20 Yes. Okay. All right. So my question for you is did you ever see this version?---I don't recall it back at that time. I recall getting either by email or hard copy the relevant page involving me as facilities management then asked to comment on it.

Then if we can go please to a document which starts at 382, just to show you the front page, this is another version of the same document?---Right.

30 And then if you go through to 393 there's been some changes made, one of which is Karl Kazal appears to have been promoted to non-executive chairman, do you see that?---Yes.

Now, just pausing there, were you aware as to why that happened? Did you have any dealings with Karl Kazal yourself?---No. My main recollections relate to page 386.

386?---Yes.

40 Let's go back to that. All right?---That's the page I recall commenting on at the time.

All right. Well, let's just, which said that led by Andrew Kelly, Parkview Property Facilities Management provides et cetera?---Yeah, yeah.

And if we go back to 393 do you remember being aware that you were being included in this document or this version of the document as the director of Facilities Management?---I don't recall that at the time, no.

Were you aware that in any version of this document you were being held out as a director of the company?---No.

But you do recall having direct input into what found its way into the document at 386?---Yes.

Now, if we then go please to 395 there's been a request for some preliminary information, if you look at the bottom half of the page, a July 2 email?---Yeah.

10

And then you respond making some comments as to what information has been provided and the like and what you're talking about is how many people you'll need in the office and those sort of things?---Yes.

If we then go to 400 were you aware that some time around 9 July, 2007 a website having been created, various people were given access to the website?---Yes.

And you were one of them?---Yes.

20

And if we go to 465 please, this is a, some legal advice from a lawyer in Dubai talking about potential ways to structure a joint venture. My question for you is did it come to your attention around the time it is dated, that is July 2007?---I certainly don't recall it.

Were you aware that advice was being taken from lawyers as to potential legal structures for putting together a joint venture?---Not at that point in time. I certainly recall attending a meeting with Hugh Fraser International in January '08, or sorry, it was either January '08 or the next trip in May, I can't recall which, where we met them, but that was to talk about how businesses are set up in the UAE and things when we were looking at the company we were setting up. That's my only ever dealings with Hugh Fraser.

30

Okay. Can we go back to 273, please. Now, just to confirm, when I was asking you questions yesterday about the budget- -?---Yes.

- - -that we talked about, it is the document at 274 that you were recollecting, was it not?---Yes.

40

And am I right when I read it, the third line on that document, well, let's just go through it line-by-line. The first cost that you put in is a per annum salary or expense allocated to Charif Kazal. Do you see that?---Yes.

Australian dollars of \$350,000?---Yep.

The same for Rodric David, 350. Do you see that?---Yes.

And then the third line has got Andrew and Clint- - -?---Yes.

- - -350, but with the number 2 against it and then a total of 700?---Yes.

Now, am I reading that correctly, that what is happening there is that both you, being Andrew, and Clint, being Clint Willoughby, were being allocated for the purpose of the budget \$350,000?---Yes.

10 Now, you discussed yesterday that that may not or may have been by way of salary or some other remuneration, but that was the remuneration or cost, sorry, that was the cost that was anticipated to the business?---Yes, as an indicative guideline, yeah.

And if we look at 273, I think we talked about this yesterday as well, you understood that Clint Willoughby referred to this document as Andrew's spreadsheet?---Yes.

20 Now, I understand you say that other people had input into it, but you do accept that it was a document that you created in the UAE?---Absolutely, yep.

Now, if we could move forward, please, to what happens next, there is another trip to the UAE in January 2008. Correct?---Yes.

And for the purpose of this trip you did understand you were going to be paid by Rodric David, did you not?---No, I wasn't paid for the trip.

30 Sorry, you did understand that your expenses would be picked up by Parkview or Rodric David- - -?---Yes.

- - -or whatever company he chose to use?---Yes.

And that did happen, did it?---Yes.

And on this trip, did you actually pay for your own airfares and accommodation and have them reimbursed or was it just organised for you? ---It was just organised.

40 And on that trip did you consider that both you and Charif Kazal were part of the Parkview team?---Well, in the same context as the previous one, you know, we were both going over there for work to do with Parkview. I didn't consider us, you know, one big team or anything like that.

And when you went over there did you go to the same meetings as Charif Kazal?---Again, not always. He and Rodric would have gone to ones that the rest of us didn't attend.

And did you stay at the same hotel?---Yes.

Did you fly in the same aeroplane?---Ah, I don't recall off the top of my head.

Did you go to dinners and- -?---Yes.

- - -other social events?---Yes.

10 And did you talk amongst yourselves as to how the business was looking, how things were shaping up?---Yes.

And did you and Charif have discussions to that effect?---I don't recall specifically.

As a group were discussions to that effect- -?---Yeah, there was discussions as a group about, you know, the business and what was happening.

20 And did you form the view at that point in time that things had progressed and there was a real prospect that the business might get up and running?---It was certainly looking more positive because we were going back to deal with essentially the same people.

But this time the focus was very much on the property management side of things, was it not?---Entirely.

The idea of going over there to do building work had dropped off the agenda?---Yes.

30 And so you were one of the people who were really being put forward in the forefront of things I take it - - -?---Yes.

- - - in that second trip?---Yes.

Because you were one of the people with real expertise in property matters?---Yes.

40 I take it Mr Willoughby would also have been put forward as a person with experience?---Yes, and there are also two other gentlemen who came along as property facilities management experts.

And what were their names?---James Frawley and Ashley Palm.

And were they Parkview people?---No.

Where did they fit in, where did they come from?---They were working elsewhere, I think from recollection they were both Mirvac employees and

like me they took leave to come over on the basis that if they get the contract then they'll secure employment.

The same basis as you?---Yes.

And were their expenses picked up?---That's my understanding, yes.

And did you understand that Charif Kazal would also secure employment of some sort - - -?---Again, you know, not employment, no.

10

Just let me finish. We're now just moving forward in time talking about the second trip so I've asked you these same questions about the first trip but at the time of the second trip perhaps not sticking to a legal concept of employment but did you understand that Charif Kazal would have some involvement with the business that would result in him being paid money? ---Yes.

20

And you certainly hoped and expected that you would have an involvement probably as an employee but maybe through some other arrangement?---As an employee, yes.

And you certainly hope that that would produce \$350,000 Australian for you?---Well, something decent, yes.

And you expected that Charif Kazal would be paid something around the same as you?---Again, I wasn't focused on what Charif would be paid.

30

Well, the budget that you prepared at the time of your first trip - - -?---In Dubai. Yeah, it was an indicative budget that we put together so I'm saying the January trip I wasn't focused on what Charif's salary might be or concerned about it.

Had that budget been updated between the two trips?---It, it may have been, I, you know, because there were other trips not long after January they tend to be grey in my recollection.

40

Now, can you please have a look, and this is in volume 3, at least in my volume at a document that starts at page 506. So can you just run your eye over that document, it's entitled Non-Disclosure Agreement, it's a draft? ---Ah hmm.

And then if we could bring up 512. There is a draft Memorandum of Understanding between Seba Properties and Davids Group Pty Limited? ---Yes.

You see that?---Yes.

Now, these documents appear to have been circulated – I’m sorry, I withdraw that. These documents appear to have been created in late 2007, I get that from the meta information an example of which at page 508?---Yes.

And another example which is at 518 which places the MOA in November 2007. My question for you is were you shown drafts of these documents in late 2007?---I don’t recall. It’s a document that I was very familiar with as a working document when we started so I can’t recall when I first saw it.

10 Was there such a working document produced during the first trip? It seems unlikely?---No.

But were you aware by the time of the second trip that there were draft documents floating around?---I don’t recall this necessarily being something that we looked at as part of what we were doing when we were over there on the second trip.

All right. Now did you - - -

20 THE COMMISSIONER: That’s not the question. Were you aware that documents of this kind were floating around?---I don’t recall, no.

MR NEWLINDS: Would it be reasonable to suggest that it wasn’t really your particular expertise to settle legal documents of this type?---Yes.

Would you have expected that sort of information to come to you for your input?---No, not specifically. I mean this was, you know, the document that, you know, Rodric David was putting together as far as what the arrangements were and he was the one individually negotiating with them so
30 it would make sense that he prepared it.

Can we go forward to 544 please. Now, if we can start halfway down the page at the email at the bottom half of the page which is underneath the “Regards, Andrew”. What we have is an email from Rodric David to Mr Frawley at AWT Trading, cc’d into Charif Kazal in December 2007 so shortly before the second trip where Mr David says to Mr Frawley, sorry, let me start again. It is forwarded to James Frawley and
andrew@AWtrading.biz?---Yes.

40 Is that your email address at the relevant time?---No, that was the AWT one, my home one still existed at that time.

Yeah, but was that - - -?---That was the one that was routing to my home address, yeah.

So that, this email in the ordinary course would have come to you?---Yes.

And what Mr David is telling you and Mr Frawley is he just got off the phone with Charif, Charif is in the UAE and has met with the person from Seba, that person has confirmed they're anxiousness to get moving and would like to see us in the UAE in mid-January to process the due diligence, in essence they want us to compile the business plan and get moving?

---Right.

10 And then reading down the email Mr David says a number of questions need to be asked, how are you guys placed to travel to Dubai, how much time do you think we should spend there, what preparation do we need to ensure that we come across professionally once we're in Abu Dhabi and what are the flight availability and accommodation, do you see all that?
---Yes.

Now, if you move to the top half of the page I frankly find this somewhat confusing but I think the position is part of what we are looking at is your response to that email and another part of what we are looking at are some notes Mr David has plugged into that response, but you tell me if I'm wrong?---No, I think that's about right.

20

All right. So if we just, so make sure that we're understanding this, if we just start at the top of that email - - -

THE COMMISSIONER: Does the email not commence at 543?

MR NEWLINDS: It may well, yes, thank you, Commissioner.

30 Okay. So that the - I'm just trying to find the best example of what I am talking about, if we go to paragraph 2 on page 543 the part of the email that starts with "In my view I'd like to allow for two weeks, I have done due diligence to acquire a small company in less time but there's a lot to look at in this instance including" all the way down to you saying "return to work on Monday, 4 February, 2008" that's your email response, is it not?---Yes.

And then what we have is Mr David's response to you where he's written in slightly different font "I've booked flights due to availability from 15 January so you have 10 working days, I take it I am" and so on?---Yes.

40 Then is it right at paragraph 3 that you wrote the words "as it is for a JV rather than a takeover the legal risk for a JV is in my view less problematic" et cetera, are they your words?---Yes.

Now, were there have you putting some input into the actual legal structure as to how the thing might be put together, is that - - -?---Sorry, I'm not following you now.

Well, paragraph 3. You're putting forward - - -?---Right.

- - - your opinion as to whether a JV is less problematic from a legal risk point of view, are you not?---Right, yes.

And do you describe that as all part of the job application?---Yes.

And then the next paragraph, “I also attach by way of info for James some of the previous documents compiled when considering the issue of what are key areas for us to review?”---Yes.

10 Mr David has simply noted that paragraph. And then if we go to 544, you’re saying to Mr David, “The main thing for me”, that is you, “to access is the property database, financials and any leases so other than that there are, there appears to be little preparation for us other than to have USB memory sticks and key files from home. Up to you, Rodric, but it may be appropriate to update the previous Parkview brochure with a David’s equivalent to highlight things are largely unchanged from our service delivery perspective and incorporating James into the brochure. I also understand Charif has his laptop over there already for any work to be done offsite.” Those are your words?---Yes.

20

And what you were saying to Mr David is because you understood that by this time Mr David no longer wanted to use Parkview but was proposing to use one of the David companies that it might be appropriate to prepare a brochure like the Parkview profile that we’ve looked at- - -?---Yes.

- - -but dressed up as a David’s company profile?---Yes.

30 But once again you were suggesting, sorry, I withdraw the once again. You were suggesting to Mr David that that profile when prepared should contain false information in that it would suggest that people like you actually had a role within that company at the time of the brochure?---Yes.

In the same way that the Parkview profile read?---Yes.

We can then read Mr David’s response, and one of the things, I’m paraphrasing a bit, is he is talking about whether you have someone in mind to be the property leasing manager and there are discussions about that. Do you see that?---Yes.

40 But importantly towards, just above paragraph number 4, do you see a part of a sentence that starts, “But I can’t afford to break cover and discuss Seba with anyone just yet so I can’t supply a body if you and James don’t have someone lined up.” Do you see those words?---Yes.

Now, they’re Mr David’s words, are they?---No, they’re mine.

Is that part of what you’ve written, is it?---I believe so, yes.

Okay. So where does the part where you, I'm just trying to understand where Mr David's work stops and yours starts. Do you see that there is a point two lines above where we just looked that says, "From my perspective there are people I would potentially headhunt?"---Yes.

Is that your words?---Yes.

"Later after we establish what support is needed for leasing, but I can't afford to break cover to discuss Seba with anyone just yet?"---Yes.

10

Now, what did you mean by not being able to break cover just yet?---Well, because I wanted to keep it confidential.

Why?---Because that was my prerogative.

From who?---From anyone.

20

Why couldn't you "afford" to break cover?---Because it would mean it's all disclosed and then, you know, if this didn't come off and didn't work it may have caused complications.

Isn't the truth this, you couldn't afford to make inquiries around Sydney because you couldn't afford the fact that you were involved in this potential business to get back to your employer?---No.

Are you sure?---The person that I'm dealing with, as you can clearly see, is Rodric David and there would be no reason why I couldn't tell people I was going to work for Rodric David.

30

And so why was it that you couldn't afford to break cover, other than that was your prerogative?---Well, because it was at a time when I had no guarantee of employment so I didn't want to be disclosing what I was doing because it may not have come off.

Why not?---Because if they didn't get the contract, just as happened in the first trip, there's no job for me.

40

And why would it be bad for, for example Dr Lang to know that?---Because, you know, in my view it's something that's my business and I don't need to be discussing it with people, you know, about things that may not even come off.

I understand that you say it would be none of Mr Lang's or Dr Lang's business?---Yes.

But what you wrote in the email was that you could not afford to break cover?---Yes.

Do you accept that what that conveys is a notion that if you broke cover something bad might happen to you?---Well, it can be interpreted in many ways.

Well, that is a way it could be interpreted?---Yes, it is.

And if you wanted to say I do not want to break cover because it's not anyone's business you could've said, But I don't want to break cover?
---Well, when I was typing the email I wasn't expecting to be sitting here
10 today.

I'm sure you weren't but you are sitting here today and what I would like to put to you is that when you wrote, "I cannot afford to break cover" in relation to the potential dealings with Seba what you intended to convey to Mr David is that you couldn't afford to allow this information to get out because it might get back to your employer which would result inevitably in you being dismissed?

MR BEECH-JONES: I object. If that question is going to be put it needs to
20 discuss what his information is.

THE COMMISSIONER: I beg your pardon, Mr Beech-Jones, I didn't hear you.

MR NEWLINDS: I withdraw the question.

THE COMMISSIONER: I didn't hear?

MR BEECH-JONES: I'm sorry. The objection was the question before
30 needs to specify what his information was.

MR NEWLINDS: That's a good objection, Mr Beech-Jones. I'm not sure what the Commissioner thinks. You couldn't afford to allow to get back to your employer that you had gone on a trip to Dubai with Charif Kazal and others with a common goal of getting a business up and running as a joint venture with someone in the UAE, that you'd been going to meetings and working on that proposal since that trip and that you were now contemplating going on a second trip to Dubai in January with a view to firming up that prospect?---Again - - -
40

But couldn't afford to let Dr Lang find that out could you?---I disagree with how you're interpreting it. I don't place the same emphasis on those words.

And the reason you couldn't afford to let Dr Lang those things is you understood that if he found out those facts he would inevitably dismiss you?---That's not what my view is of what you're saying.

And the reason he would inevitably dismiss you is he would put to you fairly and squarely that you should've disclosed those matters before the first trip wouldn't he?---That's your interpretation.

Do you agree that that's what he would've done?---No, I did not agree that that's what he would've done, that was part of your hypothetical discussion yesterday.

10 But if you had the hypothetical discussion which would have to happen and it got back to Dr Lang that you were up to something in the UAE - - -?---But if at the time and still do my view is that I don't have to disclose it, there is no hypothetical discussion and it never eventuates.

All right. Then at 736, if we can bring that up. It's your notice of resignation to Dr Lang on 10 March, 2008?---Yes.

And at 737. What happens on 10 March as well is that you write an email to Rodric David asking him to from now on use your non-SHFA email?
---Yes.

20

And I don't think you had been using your SHFA email up to that date had you?---It's not something that rings a bell so I'm not sure why I got it on that day to that address.

And when were you offered a job by Mr David or whatever company he was using at that time?---The Letter of Offer was dated 7 March.

30 Just find that for you. All right. We don't have that, we'll add to the folder at some stage. Now, I don't want to spend too long as to what happened next but it's true that the business did get up and running?---Yes.

It's a very complicated corporate structure which I wouldn't for a moment suggest that you should fully understand let alone try and explain?---The UAE side was straightforward.

40 And how long did you work in the business for?---I started with Mr David in March '08 because I gave notice for a month but took the last couple of weeks as holidays so I started I think in the last week of March. I worked in Australia until July 2008 and on 10 July, 2008 the Memorandum of Understanding was signed between Davids Group and the UAE partners and that was 10 July and so by the end of July, about the 25th or thereabouts I relocated to the UAE and I was there till 31 March, 2010.

THE COMMISSIONER: What was the name of the partners, the UAE partners?---The company was called Four N Property LLC.

And that wasn't Seba?---No.

MR NEWLINDS: And Four N is the letter 4 and the - - -?---No, it, it - - -

Sorry, the number 4 and the letter - - -?---F-O-U-R.

Oh, is it?---Yeah.

Four N?---Yes.

And the N is the letter N?---Yes.

10

Four N. Now without going into the gruesome details there's been a terrible falling out between Mr David on the one hand and the Kazals on the other? ---That's correct.

And that has resulted in litigation I think in the Cayman Islands?---Yes, and the UAE.

And you have been asked to give evidence in that case?---Yes, yes.

20

And you are giving evidence for the Kazals?---That's correct.

And is that because you consider the allegations being made by Mr David are unjustified?---Well, Mr David hasn't made the allegations, the Kazals have taken him to court.

And the Kazals have alleged that he has, what, over-claimed or not put in his money?---A whole suite of things.

30

All right?---And I'm sure, because you've got the affidavits, its, they would have been researched.

Well, I'm sure it is, I'm just to - all I really wanted to find out is in whose camp are you being called as a witness?---The Kazals.

Yes, thank you, Commissioner.

THE COMMISSIONER: Mr Kelly, I just want to ask you about this AW Trading email address?---Ah hmm.

40

Did you ever have a Parkview email address?---No.

And, and when did it come about that you were given an AWT trading address - email address?---I believe it was around the time that those letters that are in the evidence happened which I think is - - -

That's document 220. Could we just bring that up, please?---I think (not transcribable)

Is this the document?---No, I think it's about May 2007 or something like that.

That's the one?---Yes, I think it would have been thereabouts and as I said, my understanding is it was created at the time, you know, that they were trying to get that Chesterton's licence and would have been, you know, pitching that, you know, I was involved so I was given an AWT email address and that's why it carried on thereafter because that was communicated to Seba so it would be strange to suddenly become
10 Parkview.

So it all started off, well, are you saying that you got, you were given the AWT email address when an approach was made to Chesterton for, to use their name?---Well, I think it was around when that was happening but possibly after that because my recollection is it was created when they were pitching to Seba and they were pitching to Seba, there's a letter somewhere in the evidence about, you know, they were bringing the Chesterton's brand and things like that, I think that's when it first comes up. It mentions that I'm one of the team of AWT.
20

I think you said that you, you thought that it was some time prior to 11 May that your email address was created for you?---Oh, I think it was some time around May is - - -

And who created it?---It would have been someone at AWT.

Who?---I don't know.

And who at AWT agreed to this happening?---I imagine it would have been
30 Charif Kazal but I don't know specifically.

Well, did you not talk to anyone at AWT about this?---No, because it was just something that was set up to then route to my home and it was only to be used effectively if someone from Seba was communicating with us.

To make Seba believe that you were connected with AWT?---Yes.

Well, I don't understand why that was necessary because AWT was, as I understood your evidence, was dealing with Parkview?---They were dealing
40 with Parkview but when they went for the Chesterton's licence it was pitched that AWT because of its Dubai involvement was the relevant name that they were going to put forward to try and secure that licence and- - -

But you said, sorry, have you finished?---Yep.

You have said that it was set up with one of the purposes, and I'm paraphrasing, or the use of this email address was to communicate with Seba?---Yes.

That's what I don't understand. Why was, why was it necessary for Seba to think that it was dealing with AWT?---Because as I explained, there was a letter from AWT that went to Seba saying that they were bringing the Chesterton's brand to the UAE, so in keeping consistent with that theme, that's why I was introduced as being part of AWT because I hadn't been introduced as Parkview at that time.

10 So when were you introduced as part of AWT?---In one of the letters that's in evidence here.

Before you went- -?---Oh, I don't- - -

- - -to the UAE?---I don't recall whether that's before or after, I'd have to find the letter.

20 But weren't you introduced to Seba as part of Parkview?---Well, again, it's, it's grey in my mind as to what I would have been introduced at that meeting as and it would probably be, you know, more accurate to read the relevant letters to find out the- - -

Well, the Parkview profiles were expressly produced for use in the UAE, weren't they?---They were being prepared on that basis but I don't actually even recall if they were ever given out. We only met with the one client or potential client for that.

30 I'm confused as to the respective roles of Parkview and, and, and AWT in relation to Seba. Can you explain that to me, please?---It's confusing for everybody to follow, I'd respectfully say, and that's because, you know, Parkview was the vehicle that everyone understood it was going to be, Rodric started organising things, but then they decided that rather than go to the UAE as Parkview, you know, the intent was, well, okay, I want to get a licence so it's going to be Chesterton's. For whatever reason they decided that Chesterton's would best be secured by AWT being the one to approach Chesterton's because AWT already had a presence in the UAE, so it would look better and sell better to convince Chesterton's to give the licence if AWT who was already over there secured that licence.

40 But the, the approach to Chesterton's was unsuccessful, wasn't it?---It was, yes, but- - -

And when did you learn that?---I don't recall specifically when I learned it. I think the main breakdown with Chesterton's came when we actually got to the UAE. Excuse me. When I think it was negotiated with Chesterton's they thought the UAE didn't have a Chesterton's, when they got over there they discovered that Chesterton's existed there as a franchise from Europe.

When who got over there?---When the group got over there.

Your group?---For the, for the May trip. It was discovered that Chesterton's already existed so it was pointless trying to bring Chesterton's 'cause it was already there, so it fell over.

Is it not the case that Chesterton's simply declined the approach?---I, I'm not sure because I wasn't involved in those discussions, but I recall when we were over there discovering that Chesterton's was already there so it was, well, that option's dead in the water.

10

But before you arrived in the UAE you prepared the Parkview profiles? ---Again I think that was earlier than when they decided to start doing the letters for the Chesterton's brand strategy. So Parkview might have been prepared in, you know, April or whatever and Chesterton's- - -

So when you were dealing with Seba in the UAE in the first visit you were dealing with them on behalf of AWT, were you?---Well, I can't specifically recall off the top of my head because, like, it's confusing trying to remember whether it was Parkview or AWT.

20

But I take it from your evidence that when you, when you learned when you were in UAE that Chesterton were not an appropriate vehicle for you, you - - -?---That all died and suddenly it was Parkview again.

Yeah, you switched to Parkview?---Yes.

But the emails that were coming to you were coming to you at AWT from Seba, weren't they?---Ah, again I don't know that there's much in the way of emails that actually came to me.

30

But there were, weren't there?---I don't recall off the top of my head whether they came to me from Seba or whether they came to me from Rodric who would have, 'cause he was mainly the one communicating with Seba.

I see. Right. Thank you. Yes. We'll adjourn for five minutes.

SHORT ADJOURNMENT

[11.25am]

40

THE COMMISSIONER: Mr Korn, do you have questions?

MR KORN: Yes, I do.

THE COMMISSIONER: Just explain who you are please. Explain to the witness who you are.

MR KORN: Yes. May I call you Mr Kelly?---Yes.

Mr Kelly, my name is Korn, I'm appearing in the interests of Mr Charif Kazal and Mr Karl Kazal and I've just got some questions for you on two properties in particular - - -?---Yes.

10 - - - one which I will call the Costa's Seafood property which is now the Guylian Chocolate Shop and the other one 100 George Street which I think has been referred to in these proceedings as the La Mela property.
Commissioner, will you just give me 30 seconds, I just want to get the proofs out that I - - -

THE COMMISSIONER: Yes, certainly. Mr Korn, I should, for the information of all counsel I do not propose to apply the rule in *Browne v Dunn* strictly but I do expect that on the important issues where there are conflicts of a serious nature, which counsel think are serious they will be put.

20 MR KORN: Thank you, your Honour. Thank you, Commissioner. All right. Mr Kelly, the property at 91 George Street is that the property that you understand to be, what used to be the Costi's Seafood and then latterly became the Guylian Chocolate Shop?---Yes.

I just want to do some brief history. Is it your understanding, Mr, and I'm going to rely if you do have this knowledge, rely upon your knowledge of your time in SHFA. If it your understanding that those premises at 91 George Street were originally in the 1990s used as a police station in The Rocks?---I know it was previously used as a police station but I don't know the dates.

30 Is it within your knowledge, sir, that in 1997 a new police station was built across the road and that the police moved into that location?---Again I couldn't confirm those dates, but yes, the police is now across the road.

So is it within your knowledge that for a period of three years in the late 1990's that that property was vacant- - -?---Yes.

- - -and thereby not attracting any rent to SHFA?---Yes.

40 But after, but during the 2000 Sydney Olympics it was leased to Visa Card for a short stay of six months?---I have a vague recollection.

And that after the Olympics finished there was another short-term lease for a period of two years. Is that within your knowledge, sir?---Unless you knew the name it's not jumping out at me.

And again in the early, after the Sydney Olympics there was a further period of two years where again the property, property was vacant?---Yes, I know it had an extended vacancy issue.

Sir, is it within your knowledge that in fact the premises were put, those premises were put out to tender in 2004/2005?---I can't recall offhand whether it was tender or by way of public advertisement but anyway it's not necessarily a tender as such.

10 Sir, is it within your knowledge that Mr Karl Kazal in fact contacted SHFA with a proposition that they operate the premises as a seafood concept?
---I, I don't recall that, I'm sorry.

You knew that Mr Kazal had been a long-term tenant of the, of the, of properties in The Rocks?---Yes.

And indeed he's always been. He's never been in the nature, his business has never been in the nature of, of a demonstrated property developer, has it?---Property developer, no.

20

No. He's been in the business of being a café/restaurant proprietor?
---Yes.

And he's had a long-term demonstrated commitment to The Rocks?---Yes.

Is it within your knowledge, sir, that the, that the approach that I suggest Mr Karl Kazal made was in fact declined by the authority at that time?---It may be. I'd say it was before my involvement.

30 And that Mr Steve Costi of Costi's Seafoods won the tender?---I'm certainly aware of that.

And in fact was given a 10-year lease?---That sounds about right.

On what was thought at the time to be very commercially-favourable terms to Mr, to Mr Costi. Are you able to comment on that?---I couldn't comment on that 'cause I don't recall the rent, but you know, it would have been something that was offered, you know, at reasonable rates to secure someone with a good brand name like Costi's for that location.

40

For a property that had been in the last previous ten years vacant for quite a number of years?---Yes.

And that would be a relevant factor which the authority would take into account, wouldn't it?---Yes.

You'd want a good brand name and as you say, Costi's fulfilled that, fulfilled that. So you'd want a good brand name and of course you want to

get somebody in there who's going to stay there, particularly for a property that's had the history that it had?---Yes.

Is it within your knowledge, sir, that Costi's opened in late 2005 in about December?---I couldn't say exact dates but the timing sounds about right.

10 But that in fact in less than 12 months Mr Costi walked away from the business, he simply just closed the doors, walked away and an administrator moved in?---I don't recall whether an administrator moved in straightaway or anything like that, my recollection is that it was assigned to somebody else.

Can I take you to that, if it's within your knowledge, that approximately a month after Mr Costi I suggest moved out, walked away, that in November 2006 Mr Karl Kazal was approached by the administrator with a proposition that he in fact buy out the company which owned the lease?---I wouldn't be aware of that.

20 So that effectively Mr Kazal was being approached, putting aside the legal mechanics of it all, Mr Kazal, Mr Karl Kazal was being approached by the administrator to as it were take over the property.

THE COMMISSIONER: Well, you've said you have no knowledge of it. ---Yeah, I wouldn't know what- - -

MR KORN: I was putting it, I was putting- - -

30 THE COMMISSIONER: There's no jury here, Mr Korn.

MR KORN: I was removing the legal issues, Commissioner, that's all I was trying to do. Are you aware, sir, that in fact Mr Kazal did take over the property?---Yes, I am.

And for a short period of time, continued to run it as a seafood concept? ---Yes, I am.

40 A period of about three, three months. Is that within your knowledge? ---Yeah, I think I said yesterday, three to six months.

And, sir, is it within your knowledge that at the time that Mr Kazal took over the property, do you know any of the details in terms of the cost or the arrangements that were put in place or required of him by the administrator? ---No, I, I don't specifically.

Is it within your knowledge, sir, that at the time that Mr Kazal took over the property there was in fact still nine years left to run on the lease, the original lease that had been given to Steve Costi?---Yeah, thereabouts sound right.

And, sir, is it within your knowledge that, that after running it for about three months as a seafood concept that Mr Kazal determined to close the business down on the, on the basis that the seafood concept wasn't working?
---That's my recollection, yes.

And that thereafter he sought consent from the Authority as an existing tenant for the assignment of Costi's Fish Café to the Kazal Family Trust?---I couldn't say the specifics but to the Kazals I recall, yes.

10

And, sir, is it within your knowledge that in about February 2007, having tried to run the seafood for about three months, Mr Kazal closed the business down for a period of time?---Yes.

And after that began negotiating with the, with the Authority for a change of purposes to allow Mr Kazal to use the premises as a chocolate café?
---Yes.

20

Sir, is it within your knowledge that normally a change of purposes like that should have been a fairly straightforward routine matter, should it not?
---Yes.

But that in fact far from being fairly straightforward and routine, in terms of approval he was required to lodge a DA?---In terms of changing the fit out and that, that would have been the case, yes.

30

And it took six months for the Authority just to give its approval for that, for that part of the process. Is that within your knowledge?---Oh, I don't recall the specifics.

THE COMMISSIONER: Which authority are you talking about, Mr Korn?

MR KORN: The Sydney, I'm sorry, SHFA. I call it the Authority, I'm sorry, Commissioner. SHFA?---Yes.

40

And thereafter is it within your knowledge, sir, that the whole proposal to get the necessary consent and then to move forward and undertake the necessary work resulted in a period of 18 months during which the property did not, was not open?---I recall it was an extended period.

It was closed between February 2007 'til November 2008 when it opened as Guylian's Chocolate Café?---That sounds about right.

Is it within your knowledge, sir, that during the whole of the time that it was closed Mr Kazal was obliged by SHFA to continue to pay full rent to the Authority during the whole of that time?

MR NEWLINDS: I wonder if I could just interrupt, I know my learned friend is trying to cut through the legalities but I don't think the tenant was Mr Kazal so properly I think we're dealing with a Kazal company and I just wonder if my learned friend could make - - -

THE COMMISSIONER: Won't Mr Kazal give all this evidence, Mr Korn? Won't Mr Kazal give all this evidence?

MR KORN: Yes he, yes he, yes, he will.

10

THE COMMISSIONER: It's surely common ground isn't it?

MR KORN: Well, I'm not sure, Mr Commissioner. I'm not sure that it is common ground.

THE COMMISSIONER: Well, I mean, the documents would speak for themselves, wouldn't they?

MR KORN: Commissioner, one of the things, yes, it may well be but one of the things that the public is entitled to know, Commissioner, is there's been - - -

20

THE COMMISSIONER: Yes. It is really the Commission that who's entitled to know.

MR KORN: Yes, yes, yes, it is but - and it's a public hearing in that regard. There have been, there are blunt assertions being made that the Kazals in respect of one of these properties obtained for example this property for \$1 and that's - - -

30

THE COMMISSIONER: That has not been said by the Commission, Mr Korn, and I will not allow this hearing to be used as a vehicle to answer allegations made by others.

MR KORN: I just want to establish the history of the deal in respect of this property - - -

THE COMMISSIONER: Yes. You can - - -

MR KORN: - - - and I will certainly, I will certainly do through that Mr Kazal when he's called (not transcribable)

40

THE COMMISSIONER: Well, let's not waste time.

MR KORN: All right. In respect of this particular property my understanding and tell me if this is right or wrong, that you didn't have one single thing to do with any of the negotiations or any of the approvals that were acquired other than you signed landlord's consent to a minor DA

which allowed the fit out of offices upstairs, is that correct?---No, as we saw in evidence I signed the Board paper for change of consent.

All right. Thank you. Now, in respect of the property 100 George Street and Commissioner, if you'll permit me and if you, again, if the caveat you put on me about shortening it applies I of course will respect that immediately?

10 THE COMMISSIONER: It's only shortening it if this is evidence going to be given by your client.

MR KORN: It is.

THE COMMISSIONER: And I can't give you an undertaking that it won't be challenged because I don't know whether it will be or not. I mean, I don't know what the, the approach of Counsel Assisting is but some matters seem to not be in issue. I mean, Mr Kelly hasn't been asked about them so - -

20 MR KORN: I'll do it this way and I'll see if an objection is taken. In respect of the premises known as 100 George Street is it within your knowledge that in 1997 Mr and Mrs Billich, Christa and Charles Billich were running their art gallery from the top level of those premises? ---I wasn't involved at that time.

Is it within your knowledge that the Kazals in fact were offered a sublease for the bottom half of the premises in effect by Mr and Mrs Billich?---It's not something I'm aware of.

30 THE COMMISSIONER: I beg your pardon?---It's not something I'm aware of, that's before I was involved.

MR KORN: Is it within your knowledge that La Mela as part of the Kazal brand operated as a café/restaurant in the bottom half of the premises for seven years pursuant to a sublease from Mr and Mrs Billich?---Yes.

And that when the lease came up for renewal in 2005, is that your understanding that it was due for renewal then?---It's around then, yes.

40 And at that stage the proposal being put to SHFA as a joint proposal by Mr and Mrs Billich and Mr Kazal on behalf of La Mela was that the position now be formalised such that there would be two separate leases, the main lease, the head lease would be split into two so there would be individual leases for the Billichs for upstairs for their art gallery and for La Mela downstairs for the café/restaurant, is that your understanding?---That's my understanding.

And indeed negotiations proceeded on that basis and that understanding?

---Yes.

But then after that the Visitor Information Centre became available a couple of doors down from number 100, did it not?---That's correct.

And the Billich's indicated that that was a property which is more suited to their needs?--- Yes.

10 And thereafter they determined they would not proceed with their proposal but they would have a separate lease for the top half of number 100?---Yes.

THE COMMISSIONER: Mr Korn, the conduct of Mr Kelly and to Messrs Kazals that said to be allegedly affected by the conflict of interest has been squarely outlined by Counsel Assisting.

MR KORN: And this is one of the two properties - - -

20 THE COMMISSIONER: It's one of the properties but nothing that you have adduced through this witness bears in the way the case has been put by Counsel Assisting.

MR KORN: All right.

MR BEECH-JONES: Can I say something about that, Commissioner, because it is of some importance to my client given that he's been publicly accused of much more heinous things than Mr Newlinds has outlined.

THE COMMISSIONER: Not by the Commission.

30 MR BEECH-JONES: I didn't suggest it was but that was the result obviously of significant public interest - - -

THE COMMISSIONER: You can raise this in another forum.

MR BEECH-JONES: All right.

THE COMMISSIONER: This forum is not the place to answer allegations that the Commission is not investigating and I won't allow it.

40 MR BEECH-JONES: Could I just say this, Commissioner. Can I take it that they will not be raised by Mr Newlinds or put to my client by any other party because at least I speak to clear the air on that.

THE COMMISSIONER: I can't give you an undertaking, Mr Beech-Jones, if somebody puts a matter to which you have an objection I'll consider your objection. If the objection is disallowed which with the results that new material is a matter that this Commission will investigate, you will be

apprised and given every opportunity to deal with it. I'm not dealing with anything in advance.

MR BEECH-JONES: Commissioner, just to make it clear, at least as far as we're concerned we are proceeding on the basis that Mr Newlinds is not suggesting impropriety in relation to the granting or renewal of any lease with Kazals?

10 THE COMMISSIONER: Well, Mr Beech-Jones, the way in which Mr Newlinds outlined the case I don't think admits of any misunderstanding and is not ambiguous. I'm not sitting here to interpret what Mr Newlinds said.

MR BEECH-JONES: With respect, Commissioner, - - -

THE COMMISSIONER: You weren't even here. I take it that you've read the transcript.

20 MR BEECH-JONES: I've read it very closely and one bit of transcript that was available was the bit that fortunately for me was the bit that I was here and but equally there's no process that, and I don't seek to suggest there should be, that confines him but if you're leading allegations in terms of procedural fairness, with respect, the intention that I've just put which I think is at least a fair statement of the negative for something that I'm at least entitled to seek from Mr Newlinds confirmation.

30 THE COMMISSIONER: Mr Beech-Jones, I'm not saying that what you've said doesn't have merit, I just don't think it's the right time to raise it. No allegation, you're entitled to ask questions on allegations that have been made. If you're uncertain as to what the allegations are you can raise those with Mr Newlinds when your opportunity comes to question Mr Kelly. At the moment I am minded, which is the practice of the Commission, to invite you to question Mr Kelly when all other counsel have completed their questioning.

MR BEECH-JONES: I'm sorry- - -

40 THE COMMISSIONER: You will then, that is the practice that we invariably follow for the purposes of fairness. By that time you will know precisely what the allegations are. It is premature.

MR BEECH-JONES: If the Commissioner pleases, I've got probably about fifteen minutes (not transcribable)

THE COMMISSIONER: I hope you're right. Mr Korn?

MR KORN: All right. Thank you, Commissioner. Mr Kelly, in respect of that portion of the evidence which you gave yesterday and to some extent

this morning as I understand it, the topic of the clearing of your credit card, I want to take you back to that?---Yes.

What's become clear, has it not, is that in fact there were, there were two payments made to clear the credit card?---Yes.

And without going into exact figures, approximately, I think it was eleven, \$11,167-odd was required to clear it?---Thereabouts, yeah.

10 There was one figure of \$5,000 and the other figure was the necessary amount, six thousand one hundred and something dollars- - -?---Yes.

- - -to clear the account, made, as the records demonstrate, two days apart? ---Yes.

Is it still your position that in fact you received an envelope from Mr David in respect of funds which you took to the bank to clear that account?---Yes.

20 Can I invite you to this proposition, that in fact you did not in fact receive \$11,000 that you took to the bank in one lump sum. What do you say to that proposition?---Well, again I'm just going off my best recollection.

THE COMMISSIONER: And that is?---That I got the money to settle the account and I only recall getting one payment.

MR KORN: You see, what, may I respectfully suggest, what appeared to be clear yesterday was that your overwhelming recollection is a, is a sense in respect of I've now cleared the account?---Yes.

30 Could it be, sir, that in fact that feeling related to the later of the two payments, the payment made on the 20th, could it be that your feeling related to that second payment of \$6,000-odd that did have the effect of clearing the payment but did not relate to the payment two days earlier of \$5,000? What do you say to that possibility?---I guess it's technically possible.

THE COMMISSIONER: Technically I think you, am I correct in understanding that you mean theoretically?---Yeah, I'm saying anything's possible.

40 MR KORN: Could it equally be possible that you formed the view as a result of information supplied to you that in fact your account had been cleared rather than that you went to the account or the bank with one lump sum of \$11,000 and cleared it yourself? Do you understand the difference between the two?

MR BEECH-JONES: I object, I object because the assumption rather than clearing one sum of \$11,000 is not what he accepts is evidence to date.

THE COMMISSIONER: Yes. Rephrase the question, Mr Korn.

MR KORN: Eleven thousand, I'm not trying to mislead you, Mr Kelly, I thought your position that \$11,167 was what was required to clear the account?---That's correct.

10 And I thought your evidence yesterday was that Mr David gave you an envelope which you, and I won't go through the vagaries of whether you looked at it there and then or at home, but your understanding was that that amount of money in that envelope at that time was sufficient to and did clear the account?---Well, I'm saying I recall getting one payment and I recall going to the bank and clearing the account, but that's as good as my memory holds.

THE COMMISSIONER: I don't think that Mr Kelly remembers whether he looked at the money when he received the envelope or whether he looked at the money at home.

20 MR KORN: Commissioner, I understand what you say. In fact he said yesterday that he didn't look at it in the presence of Mr, of Mr David and when he took it, when he took it home he left it in his bag and he did, and it was still in the bag unopened and then Mr Newlinds came back to that proposition later on and at that stage Mr Kelly said that he thought that he would have looked at it at home and then we got to the proposition whether in fact he did so in front of his wife, so I'm completely aware of all that material. I'm looking past that but not unaware of it.

30 THE COMMISSIONER: I'm just taking you up on the question that you put, Mr Korn, which included in it the proposition that you looked to Mr Kelly, that he looked at it either, he looked at the envelope either at work or at home and I'm simply pointing out that he, as I recall his evidence, says that he has no recollection of looking at it either at work or at home. He may have done so but he can't remember.

MR KORN: I'm sorry, Mr Commissioner, I perhaps was inelegant in my phrase. What I thought I was putting to Mr Kelly was put aside the question of whether you looked at it at all and that's what - - -

40 THE COMMISSIONER: Proceed, proceed, I understand, proceed.

MR KORN: That's what I mean, Mr Kelly, putting aside the whole question of whether you looked at it at all - - -?---Yes.

- - - your understanding was that you had as I - yesterday your understanding was that you had one lump sum that you took to the bank and your recollection is that that cleared the account?---More or less, yes.

What I want to invite you to consider is this: that in fact if you did go to the bank on one occasion and paid money to your credit card, that that was what turns out to be the second occasion, the 20th and - - -

THE COMMISSIONER: The 20th of?

MR KORN: August, I believe. June, I'm sorry, June, and that that was for the figure of a little more than \$6,000-odd. I want you to consider the - - -? ---Well, that's possible, yes.

10

And that somehow you would have been made aware that there had already been a part payment into your account so that when you made the deposit on 20 June that had the effect of cleaning the account. Is that something which could be consistent with your recollection?---Oh, you know, I don't recall it but I'm not saying it's not possible.

THE COMMISSIONER: I beg your pardon, I'm sorry, Mr Kelly?---I don't recall being made aware of it but it's possible.

20

I don't understand how it's, do you mean you may have been told this and you've forgotten it?---Yes, I'm saying I don't recall being told that someone's deposited money in my account.

MR KORN: And I'm suggesting that it would have been Mr David who would have told you that money had been already - - -

THE COMMISSIONER: I hope that you have instructions to put this, Mr Korn?

30

MR KORN: That's why I put it in terms I suggest it would have been but I, I hear what you're, what you're saying.

THE COMMISSIONER: All right.

MR KORN: I won't take that any further.

THE COMMISSIONER: Yes, very well. Ms Hogan-Doran, I think it would be appropriate for you to go next.

40

MS HOGAN-DORAN: Yes, your Honour, Commissioner.

Yesterday, Mr Kelly - Mr Kelly, my name is Hogan-Doran, I act and appear for Mr David?---Right.

Just taking from the questions that Mr Korn just asked of you, yesterday you gave some evidence about having received a sum of money in a white A4 sized envelope which was unmarked. Do you remember giving that evidence?---Yes.

And when giving that evidence you said you didn't check what was in that evidence because you believed that the amount was already known by Rodric David?---Yes.

Yes. And you said in your evidence that you trusted him to give me the right amount of money?---Yes.

10 And you say that you didn't need to know - sorry, and that you say that Mr David knew the amount needed because you had given him a copy of the airline booking and my hotel accommodation and I believe the accommodation was given, I interpose to Mr David, on the day that I paid it?---That was my recollection is.

And that is your recollection is it?---Yes.

And you knew the amounts that were, the amount that was required to, the amount of the costs that were needed, that you needed to collect because in your evidence you said you knew what the MasterCard bills were?---Yes.

20 I'll ask you to go to page 272 of the bundle. I just want to ask you some questions about the accommodation costs. Just looking at page 272, that's your MasterCard statement?---Yes.

Yes. And the MasterCard statement, the second one as I understand it is on 1 June the Emirates Palace, Abu Dhabi?---Yes.

And that was the day on which you paid it?---I expect so, yes.

30 Because that was the day that you checked out?---Right.

Right. And you recall that after having checked out you then flew back to Australia via Dubai with Mr Charif Kazal, that's correct?---Oh, I don't recall specifically but I flew out after we checked out, yes.

Have you got any reason to doubt that you flew with Mr Kazal?---No, I'm just answering your question. I don't recall who was on the flight and things like that off the top of my head but I know I left the day that we checked out.

40 Right. And the day that you checked out was 1 June?---Well, it would've been whenever we paid so based on that I'm assuming it was 1 June.

All right. And just looking at that statement, the Emirates Palace billed you, I take it, in Dirham?---Yes.

And so that the bill that you received when you checked out was in Dirham?---Right.

And not in Australian dollars?---I would assume that's the case.

And in the ordinary course that conversion would've been done by MasterCard at some point?---Yes.

And as that statement seems to suggest that processing occurred on about 4 June?---Right.

10 Right. So you agree with me that as at 1 June you didn't know what the Australian dollar equivalent was of the cost of the accommodation at the Emirates Palace Hotel?---Yes.

Can I ask you to go back to page 265. Sorry, 264. That's the booking form from Gilpin Travel for Mr Charif Kazal for his trip to the UAE?---Right.

20 Is that the kind of booking form you were talking about in your evidence yesterday, your airline booking and hotel accommodation booking that you say you gave to Mr David?---No, I'm saying it would've been a copy of the actual payment made at Emirates Airlines.

I see.

THE COMMISSIONER: A copy of the payment?---Yes, like I would've got a receipt or something like that.

MS HOGAN-DORAN: That's the payment that you made on the day prior to departure?---Whenever I purchased it, yes.

30 I think you'll see, if you just go back to, sorry, operator, we're jumping around a little, if you go back to page 272. Page 272, just looking at Emirates Inc. the date of that transaction there is 25 May?---Right.

Right. And you accept from me 25 May is the Friday of May and that you departed for the UAE on the 26th?---Right.

So you agree with me do you that you paid for your trip on the Friday before you departed?---Yes.

40 And just going back, sorry, operator, to page 264 and over to 265 and I'll take you to 265. You see there that Mr Kazal was booked on Friday, June 1 from Dubai to Sydney non-stop departing at about 10.15?---Right.

Does that cause you to recall that that was the flight that you flew on to return to Australia?---I recall being on the flight over with Mr Kazal, I'm just saying I don't recall the flight back off the top of my head.

You don't remember it coming back?---Well, I don't remember whether I was specifically with him or whether I was on the flight or whatever.

Right. And you say that you gave Mr David the accommodation bill, it was given to him on the day that you paid it?---Yes.

Right. And that's your firm recollection is it?---Yes.

Right. And you paid it on 1 June?---Yes.

10 Right. And I suggest to you that you didn't give Mr David the accommodation bill when you paid it and indeed you never gave it to him at all?---I'm giving you my recollection.

Well, the reason you didn't give it to Mr David is Mr David left the UAE the day before didn't he?---I don't know.

Mr David left the UAE on 31 May, do you remember that?---No, I don't.

20 Do you remember that he left because he was going with Mr Willoughby to Shanghai?---Not specifically.

Now, you recall in your evidence yesterday, and I think you were taken again to it by Mr Korn, that your reacting to having paid the sum of money you allege you received from Mr David onto your credit card was that, "Thank God, I've cleared the credit card."?---Yes.

And you agreed with the Commissioner that you were very relieved to have paid that out?---Yes.

30 Right. And although Mr Korn has taken you today to some possibilities which I think you've agreed are theoretical possibilities your only recollection is having paid, made one payment?---Well, I'm saying I specifically recall clearing the credit card but - - -

And can I just ask you some - - -

MR BEECH-JONES: Can (not transcribable) be allowed to finish his second section.

40 THE COMMISSIONER: I think he's finished, were you finished, Mr- - -? ---Yep.

MS HOGAN-DORAN: I think your evidence then, and I'm not sure if I heard the end of it, and just to be sure, you just recall being relieved that you cleared the credit card?---Yes.

Right. And I just want you to focus in on the timing of that sense of relief. You say that sense of relief, am I correct, occurred at the time that you cleared the credit card, that is the credit card was reduced to nil?---Yes.

Right. And you knew it was reduced to nil because you had the statement in one hand and you had the deposit in the other. Is that right?---I don't recall what I had in my hand but I knew it was cleared.

Right. And how do you, how do you say you knew the amount was cleared?---Well, perhaps it's something that, you know, was discussed with the teller, you'd probably get a receipt showing what the balance is or something, I don't recall.

10

Well, you had your statement by then, didn't you?---I don't recall.

Taking you back to that sense of relief you say you had at the teller, you agree with me that that was, must have been when that second payment was, was banked. Do you agree with me on that?---Yes.

Right. And going back in time you said you picked up the cash in the unmarked A4 white envelope from Mr David on your way home from work?---That's correct.

20

And then you went home, you left it in your briefcase, you didn't tell your wife about it and then subsequently you took it to the bank?---Yes.

Right. And just on that point of subsequently, you're not sure and you weren't clear about the exact date, you don't have a recollection about the exact date?---That's correct.

Right. When you say you collected the cash sum?---Yes.

30

Right. But is it right to say that it was probably the next day or possibly the day after?---I, I don't recall.

But it was within a day or two?---Again I don't recall.

All right. What, do you suggest you had the money in your, in your suitcase for as week?---I'm saying anything is possible.

But agreeing with me, wouldn't you, that it was probable that it was either the day before or the day before that?---Possible.

40

All right.

THE COMMISSIONER: But what are the probabilities?---Well, again we're getting into hypothetical's. I just recall picking money up and then I recall going to the bank. The actual specifics is, you know.

Well, are you the kind of person who would be content with keeping thousands of dollars in cash at home or on your person?---Well, again, you

know, for whatever reason it wouldn't have, you know, scared the pants off me or anything.

It wouldn't have worried you at all?---Not specifically.

And my, I understood you had some anxiety about the amount you owed the bank?---No, I'm saying my recollection of paying it is simply because I cleared the credit card, it wasn't, you know, D-day or anything like that.

10 I thought you, you mentioned the relief that you experienced when you paid it?---I said my recollection was clearing the account, oh, that's good that that's sorted out.

I understood you to say that you experienced a sense of relief that you still remember. Is that wrong?---I'm not saying I experienced a sense of relief that I remember.

But you do remember it, don't you?---You have to remember, again it's words you're talking here.

20

Well, that's what we, that's, that's the tools of our trade?---But you just said did I experience a sense of relief that I remember. I'm saying I don't remember a sense of relief that I remember, I experienced a sense of relief that I paid the credit card, not that I remember paying the credit card.

I'm not sure what you're saying. You'd better say it again so that I understand?---I'm saying I experienced a sense of relief that my credit card was paid.

30 And you remember experiencing that sense of relief?---Yes.

So you had a measure of anxiety before it was paid?---I, I, you'd say so, yes.

So if that were the case, wouldn't it be probably that you paid the money to the bank as soon as you could?---Probable, yes.

That's all I was asking, Mr Kelly.

40 MS HOGAN-DORAN: Just taking you from that, Mr Kelly, given that you accept that it was probable that you had that, that you paid it as soon as you could and allowing for that you may have collected the money on the evening before making that payment that gave you that sense of relief that the credit card had been cleared or perhaps, although not probable, perhaps the night before that, do you accept from me that you must have collected that sum on either the Monday or the Tuesday?

MR BEECH-JONES: I, I object because of the lead into that included a big commentary which the witness wouldn't necessarily embrace.

THE COMMISSIONER: All right. Mr Beech-Jones. Just rephrase the questions.

MS HOGAN-DORAN: All right. You say you picked up the whole of the sum at once, is that correct?---That's my recollection.

And placing it in your mind do you say you did that probably the day before or two days before possibly?--- I've said repeatedly I don't recall.

10

All right. Is it possible that you had it, had all of the money on the day that you made the first payment?---Anything's possible.

And it's likely, is it, that you picked it up on either the day before or the two days before that first payment?---I'm saying I don't recall.

All right. I want to suggest to you, sorry, you didn't go to Mr David's office and collect that envelope of cash on 18 or 19 June, did you?---I didn't say that I did.

20

And you didn't go and collect it on 16 or 17 June, did you?---I didn't say that I did, I don't recall.

You didn't collect it on the 16th or the 17th because that was the weekend? ---I still don't recall.

All right. So it's possible, is it, on your story that you picked it up some time the week before making those payments, is that what you want the Commission to believe?---I still don't recall so you can pick any day you want and I still don't recall.

30

All right. Well, I suggest to you, Mr Kelly, that you didn't go to Mr David's office and collect an envelope of cash at any of those, on any of those days or in fact at any time?---That's your perspective, it's not mine.

I suggest to you that at no time did Mr David give you an envelope full of cash for the purposes of meeting the costs of your trip in May 2007?---The same answer as last time.

40

Just a couple of other questions I want to ask you in respect of the meetings you say you had with Mr David before you went on the trip in May 2007. In your evidence yesterday you gave evidence of two meetings, a first meeting and a subsequent meeting?---Ah hmm.

And it's your evidence that it was at the subsequent meeting that you, as you put it, discussed logistics?---That's my recollection.

And that was a meeting at which Mr Kazal was not present?---That's my recollection.

And there was no one else present at that meeting I take it?---No, there, there were other people present.

10 All right. Who else was meeting at - present at that meeting do you say?
---I'm just trying to remember it was people involved in the logistics so, you know, from recollection I'd say, you know, Paul Karantonis from Parkview, possibly Clint Willoughby so there's a few people there but, again, you know, specifics (not transcribable)

Was Emile Tabet at that meeting?---Quite possibly and - - -

When do you say this meeting occurred?---I don't recall the dates or anything like that.

20 THE COMMISSIONER: What was the meeting about?---It was just talking about arrangements going over there and what was going to happen.

MS HOGAN-DORAN: And you don't remember the exact date?---No.

Do you say it was something, a meeting held in April?---I, I don't recall the date, I just recall being at the meeting.

Do you say it was a meeting, is it more likely that it was held in May?---I don't recall.

30 You can't recall anything about the meeting in terms of its date or where it fits in the timeframe prior to your departure on 26 May?---No, I can't.

You can't assist the Commission in any way on that?---No, I can't.

Well, I suggest to you that Mr David never made a commitment to you that he would meet your expenses at all for the May 2007 trip?---I disagree.

Nothing else.

40 THE COMMISSIONER: Mr Kelly, are you saying that Mr David promised to pay you the expenses of the trip?---Yes.

And he promised to pay the airfare and the hotel accommodation?---Yes.

And they were both mentioned?---Yes.

So you were not to be out of pocket in respect of any - - -?---No, I wouldn't have gone otherwise.

Nobody else promised to pay?---No.

And nobody else made any arrangements to pay?---No.

Ms Williams?

MS WILLIAMS: No questions, thank you, Commissioner.

10 THE COMMISSIONER: Now, Mr Beech-Jones. Is there - yes.

MR BEECH-JONES: I'm sorry, am I entitled to proceed on the basis that I indicated earlier because if not - - -

THE COMMISSIONER: Well, I think, you mind just putting your questions again so we know what exactly they are?

20 MR BEECH-JONES: That there is no suggestion of any inappropriate behaviour on the part of Mr Kelly in the granting or renewal of any lease to any interest associated with the Kazals.

THE COMMISSIONER: Mr Newlinds?

MR NEWLINDS: Commissioner, I think Mr Beech-Jones can proceed on that assumption and if at any point I think he can't I'll let him know.

MR BEECH-JONES: Thank you, Commissioner.

30 Can I just ask you just one, one matter briefly about the questions you've just been asked about. Did you check out of the hotel in the Emirates in 2007 with Mr Kazal?---I don't recall.

Well, did you leave, leave the same day?---That's my recollection.

Now, you were asked some questions this morning about the budget and Mr - and I think it may have been the Commissioner's question about Mr Charif's role as a participant in the joint venture?---Yes.

40 Now just bear with me just to get this clear, the ultimate deal that was done was with a company you referred to as Four N Property LLC, is that right? ---Four N Property, yes.

Yeah. That was a company associated with Seba, is that right?

THE COMMISSIONER: No?---No, not, not associated, directors that were with Seba were also directors of this company.

Some directors of Seba were they?---Yes.

How many?---Two.

And (not transcribable)?---Oh, it, it might have been more, I don't know the specific background of Seba but the two we met with from Seba were the two we met with at Four N as well.

And were there other directors?---Of Four N, yeah, there was four.

10 There were four, the, the whole number of directors was four?---Of Four N, yes.

And do you know whether the shareholders were the same in both companies?---There may have been one or two different.

Do you know?---I don't know for a fact.

All right. Yes, thank you.

20 MR BEECH-JONES: And the, the, the ultimate joint venture agreement with that company was ultimately signed on early 2009, is that right? ---January 2009 was when the company was formally incorporated. There was an MOU dated 10 July, '08 and that's when, you know, transactions started being recorded.

Right. Now, the company you've just talked about is a company in the United Arab Emirates called International Property Services LLC IPS, is that right?---That's correct.

30 And that was, as it were, a company which was a joint venture vehicle 51 per cent owned by Four N Property LLC and 49 per cent by a company called IPS Cayman Islands Limited, is that right?---That's correct.

The 51/49 reflects some requirement of, to you knowledge - - -?---UAE law. - - - of local law. Is that right?---Yes.

40 Now - and the project that that joint venture vehicle was to ultimately undertake was facilities management for a very large place that was being built to, to house foreign workers within the UAE. Is that right?---That's right.

Now - and your knowledge, that was, that was, that was a formal joint venture, is that right?---Yes.

Now of the 49 per cent owned by the IPS Caymans company, that company did you understand was itself owned 100 per cent by a company Emergent Capital Limited?---That's correct.

And that company was in turn owned by two other Cayman Islands companies, one controlled or owned by Mr Rodric David called RAAL?---Yes.

And the other by a company called KTC associated with the Kazal brothers, is that right?---That's correct.

And that was a 50 per cent interest each?---Yes.

10 So in a sense that's another joint venture between them to hold their minority stake in the UAE project, is that right?---Yes.

Now, then can I take you back to the budget document which I think is at page 274 of volume 1. If that could be brought up.

THE COMMISSIONER: Must be volume 2. Sorry, there seem to be different - - -

MR BEECH-JONES: Versions of the volumes.

20

THE COMMISSIONER: Anyway, it's page 274.

MR BEECH-JONES: Page 274. Now, you were asked about the entry particular for Charif Kazal there?---Yes.

Just stopping there. At the time you prepared this the company, if I could call it, that was being floated to enter into some joint venture for the UAE project, whatever it would be, was Parkview, is that right?---That's correct.

30 And the entry you've got there I think you described for Charif is either of some form of salary or wages, is that right?---No, it's, it's, it's recorded as that for presentation purposes but it was effectively, you know, to, you know, make provision for his ongoing consultancy.

Right. But it's not to make provision for him to have any equity ownership of the ultimate of any form of joint venture, is that right?---No.

And did you have any understanding that at that time he either had some agreement with Mr David or about getting equity in any joint venture?---No.

40

And what you've modelled there is just expenses, is that right?---Yes.

Is there any modelling of income received?---Not at this point in time.

But any modelling of profit?---No.

Or any distribution of profit?---No, it was just looking at what it would cost to manage their portfolio.

All right. So to the extent you were modelling Mr, I'm referring to Mr Kazal as a participant in joint venture that budget's reporting him as a participant receiving consultancy fees?---Yes.

And if you - - -

10 THE COMMISSIONER: I don't think that's accurate, Mr Beech-Jones. The budget records him receiving a remuneration of \$350,000, it does not record him receiving money as a consultant.

MR BEECH-JONES: I'll say it again. You didn't model him as a participant, that is, a receipt of any equity or profits of any project or joint venture - - -?---No.

Is that right? Thank you. Now, just on the question of consultancy can I take you to page 520 which I hope should be volume 2 of the documents you have?---Three I think.

20 No, I think it's volume 2 of what you've got I think?---No, (not transcribable) volume 3.

And you see that's a document signed by Mr David headed Terms of Consultancy Agreement?---Yes.

And did you see that document that bears the date 17 October, 2007?---No, I did not.

30 But you see it bears that date now?---I can see it now, sorry, I thought you were saying back then.

Did you see that document back then?---No.

At any time during 2007 were you told by Mr David or Mr Charif Kazal or anybody else what the precise terms of their consultancy agreement were? ---No.

Or indeed what the general terms of that consultancy agreement were?---No.

40 Now, could I come back to just one matter briefly. Just to pick up something Mr Newlinds I think took up with you. Do you remember Mr Newlinds took up with you the assignment of lease, I think this is over the Costi's Seafood - - -?---Yes, I, yes.

Now, Mr Newlinds' practice, sorry, were these all retail leases?---Yes.

And then Mr Newlinds' practice in retail leases is the envy of everyone, but he may have understated it to you when he said to you, did you understand

that there was a provision that a landlord could not unreasonably withhold consent to an assignment of lease. Do you recall he put that to you?---Yes.

Did you actually, did you at that time have an understanding of what in fact the Retail Leases Agreement said as to when a landlord could or not withhold consent from assigning the lease?---More or less. I mean it primarily revolves around the person being a fit and proper person with the financial capabilities and experience to be able to be capable of operating the facility in question.

10

Right. What, that is a number of limited circumstances in which consent could be refused?---Well, it could be challenged, yeah.

Right. Now, I just want to remind you of something Mr Newlinds said in his opening yesterday. He said this at page 6. He said, "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 was what Mr Newlinds said in the opening, just note that?---Right.

20

Could I at that point take you firstly to page 219, which is in my volume 1 and your volume 1. Now, that is your diary- -?---Yes.

- - -of the executive committee meeting and there's an entry, "Advised that shouldn't go to board unless arrears paid." Do you see that?---(NO AUDIBLE REPLY)

Is that you making a decision to say no to the application?---No, that's me just making a comment at the board meeting.

30

All right. If we then go to the- -?---Sorry, at the executive meeting.

- - -the minute that's prepared- - -

THE COMMISSIONER: Sorry, I beg your pardon, Mr Beach-Jones. Who is the AK?---Me.

And is this something you, are you recording something that you said at the board meeting?---No, at the executive meeting.

40

At the executive meeting?---That's right, yes.

That is that you said at the board meeting- -?---No, the executive meeting.

Sorry, I beg your pardon, that you said at the executive meeting that the change of use issue should not go to the board until the arrears were paid? ---The arrears were addressed, yes.

Yes. Thank you.

MR BEECH-JONES: And ultimately the arrears were addressed, weren't they?---(not transcribable) to my recollection, yes.

Now, if you just go to page 231 which is this memo that doesn't bear any signature?---Yes.

10 And you'll see that. Now, and you're also aware that there's an email I think, I think it's from Mr Kelly, expressing his opposition- -?---Mr Peters.

Mr Peters, sorry. To the approval of the grant of use?---Yes.

What I wanted to ask though was, prior to you going to the UAE did you, as was suggested, recommend or decide or suggest that the application should be either approved or disapproved or did you make, or did you not address the matter at all?---I hadn't addressed the matter at all.

20 THE COMMISSIONER: Save for your remark at the executive meeting? ---Yes, but I didn't recommend that it be approved or disapproved.

MR BEECH-JONES: Could I, and then I think you were asked a number of questions about the, the intervention or the – of Mr, I think Mr, Mr Cock from the, I think the facilities and management section into the reimbursement of moneys concerning work done by the Kazals?---Yes.

30 Maybe I could make that easier by taking you to your memo at 137 of volume 1, and I'll use that opportunity to (not transcribable) 99 George Street. And this may pick up matters the Commissioner raised with you?--- Yes.

The document at 137 is your memo to Mr Lang about 99 George Street, The Rocks?---Yes.

Is that right?---Yes.

40 Now, in the second paragraph of your memo you say, "The claim arose after the project the Kazals were originally working to comprising 460,000 base building costs, 533,000 for the fit-out, substantially increased beyond those original projections that were approved by the authority in renewing the lease to total a combined final spend of approximately 1.7 million." Do you see that?---Yes.

Now, just to be clear, is, is that, were you indicating there that at the time of the, I think it was the lease renewal, there was, it was assumed there would be work done by the Kazals getting close to \$1,000,000. Is that right?--- Yes.

THE COMMISSIONER: Assumed by whom?---By the Kazals.

MR BEECH-JONES: Of which \$460,000 were base building costs?---Yes.

Is that right?---Yes.

Now, is it your understanding that the base building costs are normally obligations that SHFA assumes?---Yes.

10 But the way, by having that in the budget, that is the Kazals would pay for it, SHFA would provide other accommodations on the lease such as rent abatements or rent-free periods or matters of that kind?---Yes.

Is that right? And then what in fact happened was, there was a blowout in these works to 1.7 million?---Yes.

So that they incurred what was beyond the original as it were economics of the lease renewal, something in excess of \$700,000?---Yes.

20 And of that in excess of \$700,000, they sought a reimbursement of \$429,495 on the basis of that, that was the extra amount representing base building costs?---Yes.

Is that right? And that's what you assessed in your recommendation over the page?---Yes.

Right. And, thank you.

30 THE COMMISSIONER: Just again so that I understand it. You assessed it without going and inspecting the premises?---I did because I had other people that were more experienced than me.

The heritage man?---Yes.

MR BEECH-JONES: Would you inspecting the premises have added anything to your assessment?---No.

40 THE COMMISSIONER: Do you have any expertise in assessing the costs? ---Not to the extent that the people that worked for me did, no.

Do you have any qualifications for assessing building costs?---No.

Do you have experience in assessing building costs?---In terms of looking at project budgets and the like, yes.

And what is the nature of that experience?---Well, my background at SHFA, I was the CFO for a number of years so I was experienced in, you know,

working on project budgets and understanding the cost components that formed part of them and what a reasonable cost- - -

I'm sure that's right, but I, what I don't understand is how you were able to determine whether costs were necessary, firstly, and whether the costs claimed were reasonable?---Well, in terms of the costs- - -

10 That is, costs of actual building work?---Yeah. Well, that's where the QS report came into it in identifying the reasonableness of it and then I had the heritage person who's able to talk to the individual items involved.

MR BEECH-JONES: They'd, they'd be the two sources of information?
---Yes.

20 Now, you were asked about this conflict of interest declaration and the ICAC guidelines and I take you back to those. If you go back to page 46 in volume 1. Yes, I realise I have breached your directions, I should have handed these documents over earlier, but I don't think that any of them will take Mr Newlinds by shock that I'll come to. Can I just take you to page- - -

THE COMMISSIONER: Well, Mr Beech-Jones, it's something that we jealously protect. It's not something to slip over.

MR BEECH-JONES; Well, equally decisions about what you're going to tender in examination- - -

THE COMMISSIONER: Well, I think that you should, how long will you be with Mr Kelly?

30 MR BEECH-JONES: About another 15 minutes.

THE COMMISSIONER: Based largely on these documents?

MR BEECH-JONES: Yes, based largely on these documents, they are fairly, I should say - - -

THE COMMISSIONER: Innocuous you were going to say.

40 MR BEECH-JONES: If Mr Newlinds doesn't have them, I'll be shocked.

THE COMMISSIONER: All right, Mr Beech-Jones unless Mr Newlinds says anything you may as well proceed.

MR BEECH-JONES: The guidelines, you see it's headed ICAC Direct Dealings Check-List?---Yes.

The context is direct dealings in relation to 100 George Street as opposed to taking it out to tender.---Yes, that's correct.

Right. And you've, if you turn over the page, page 47 there's a couple of actions to be taken.---Yes.

And the third line is obtain conflict of interest declarations.---Yes.

Is that right?---Yes.

And then the fifth entry is engage external assistance as necessary.---Yes.

10

And just dealing with the third item, the conflict of interest declaration that you provided was that provided in the context of this check list for undertaking direct negotiations.---Yes.

In other words, it wasn't something out of the blue it was in the context of what was happening on 100 George Street at that time. Is that right?---Yes, because this check list was put to the Board we had to demonstrate that we'd actually ticked off each item.

20

All right. Well, can I firstly and if you've got two entries down you'll see there – engage external assistance if necessary.---Yes.

Now, that fifth entry, the previous year the matter had come before the Board about dealing with, directly dealing with the Kazal brothers about 100 George Street.---Yes.

And there'd been independent legal advice obtained from Tresscox, probity advice. Is that right?---That's correct.

30

Right. And perhaps I'll just foreshadow it, that's an advice dated 7 November, 2005 which is what one of the documents I propose to tender.

MR NEWLINDS: Or put in the bundle.

MR BEECH-JONES: I'll just plonk it there rather than. Now the next year was there a significant matter that has to be reconsidered in the context of the 100 George Street?---Yes, that related to - - -

40

THE COMMISSIONER: Did you say the next year?

MR BEECH-JONES: The next year 2006.---Yes, so it was the 2005 report, it was the costs associated with the project work that needed to be done.

Could I just show you this which is your memo headed executive summary and I'll provide a copy to the Commissioner and to those around me of the 16 August, there's a copy for you Mr Kelly and a copy for the Commissioner.

THE COMMISSIONER: I think Ms Williams might be interested in it.

MR NEWLINDS: Mr Korn gets this.

MR BEECH-JONES: Mr Korn's replaced with Ms Williams.

MS WILLIAMS: I don't want it.

10 MR NEWLINDS: Ms Williams can have a look at mine if you like.

MS WILLIAMS: 16 August.

MR NEWLINDS: 16 August.

MS WILLIAMS: I think I'm (not transcribable) the document.

MR BEECH-JONES: Ms Williams is all over the document. Your Honour, Mr Kelly, that's your executive summary?---Yes.

20 And in the context was there'd been a blow out as it were in the amount that was to be required as part of the fit out including base build works?---Yes.

And under the heading – Previous Board Advice - - -?---Yes.

- - -you see there, it says the Lessee committed to a fit out of \$3 million minimum spend. The matter was discussed in June 2006 when the Board was advice of revised capital investment requirements.---Yes.

30 And was it that meeting, was in the context of that matter going before the Board in June 2006 that you provided your Conflict of Interest Declaration. Is that right?---Yes.

Because this was a revisitation of whether to go with direct dealings or go to the market. Is that right?---Yes.

And then did you arrange further probity advice to be provided to the CEO and the Chairman from Deloitte, this is Deloitte which address the very question of whether, and this is consistent with ICAC's guidelines as to go direct to the market or deal directly with the tenant?---Yes.

40

And I'll add that to the pile to be tendered. Do you recall that was in a memo of 6 September 2006 from you?---I don't recall the date but I recall it.

Now there's - - -

MR NEWLINDS: Commissioner, I think the appropriate course, we'll simply add those to the tender bundle where they fit chronologically and update the index.

THE COMMISSIONER: Well, yes, you can just give them the appropriate page number followed by the letter A or B as it may be the case.

MR NEWLINDS: That's what we'll do. I should say they're all documents that we're aware of and - - -

MR BEECH-JONES: Now, just one final matter. Could you go to volume 3, pages 904 to 905. There's a newspaper article. Now, see that's a
10 newspaper article from the Sydney Morning Herald on 4 September?---Yes.

Now, just to be clear, Commissioner, I think it's a matter - - -

THE COMMISSIONER: I haven't got to it yet, Mr Beech-Jones.

MR BEECH-JONES: Sorry. Sorry.

THE COMMISSIONER: Just give me a moment. Yes.

20 MR BEECH-JONES: Now, there was an earlier article three days earlier, 1 September, 2010 wasn't there, Mr - - -?---Yes, there certainly was.

Now, Commissioner, I have previously proposed to take him through that earlier article and I'm just saying in light of what you indicated earlier I understand that that's a course you wouldn't allow so I'll just note it and move on.

THE COMMISSIONER: I will allow anything that's relevant to the issues as opened by Mr Newlinds.
30

MR BEECH-JONES: But I've got a piece of paper here and if I could just take, it's saying something about, yes, I take you to this one, 9.05, this is the follow-up article and the author – now, if you go to that, two-thirds of the way down the page the paragraph begins “But the audits did not look at the personalities involved, after the decision in October 2005 the details of the lease”, this is 100 George Street, “still need to be natted out with Charif Kazal who represented the family, this would fall to Andrew Kelly.” And there's a reference to you. And then it says, “But few realised how friendly things became, Kelly took on a secret arrangement with the Kazals.” And it
40 goes on. If you go down three paragraphs it says, “In June 2006 he prepared a brief for the Foreshore Authority to make a final decision on the deal that would turn 100 George Street into Kazal's Bar 100, that's the matter we just addressed, is that right?---Yes.

And at that time had you – I'll come to later, but you didn't have any secret arrangement or otherwise with the Kazals, is that right?---That's correct.

Was that, that matter of the capital expenditure was that the last matter of any substance that you had to deal with in relation to the 100 George Street property?---In terms of confirming an approval, yes.

Yes. And we go down to the third last paragraph, it's got, "Karl and France Dion signed and returned an Agreement for Lease on July 26 the following year." That appears to be 2007?---Yes.

You see that?---Yes.

10

Now, between the matter of this capital expenditure and the agreement for lease had you – I'll withdraw that. What is the, is the agreement for lease some formal document or did it involve any substantive input on your part? ---Well, the Agreement for Lease is a document that reflects the conditions that were set down by the Board in their paper of 2006 so it was identifying all the things that had to be done by the Kazals such as, you know, the amount of fit-out works that they had to do et cetera so it was just formalising what the Board had approved in 2006 and it was more or less, you know, would've followed the standard lease memorandum otherwise.

20

Right. Then it says, "In the days before August 22" which appears to be the day this Agreement for Lease was signed August 22, 2007, "Kelly who had then been keeping his secret for four months put his signature next to Karl and France Dion's on behalf of taxpayers." Do you see that?---Yes.

Now, the secret appears to be a reference to the secret arrangement with the Kazals. Did you have any arrangement with the Kazals?---No, I didn't.

30

And, sorry, just to jump up the page. You go up to the paragraph about three-quarters down, say, "Certainly Kelly was aware of the rules. On June 21, 2006 he wrote a file note which declared a potential conflict of interest." Do you see that?---Yes.

That was, I think we just take, that was in a context of the decisions being made in 2006 as per ICAC's Direct Dealings Guidelines?---Yes.

Were during 2007 was there a need to consider any of the ICAC Direct Dealings Guidelines in the course of any decision you made or were involved in in relation to the Kazals?---No.

40

THE COMMISSIONER: That of course is a matter for argument, Mr Beech-Jones.

MR BEECH-JONES: Just one thing. I asked you earlier about whether you remembered checking out the same day and I'm told that I said as Mr David. No, I meant Mr Kazal. And those are my questions.

THE COMMISSIONER: Yes. Mr Newlinds.

MR NEWLINDS: I have nothing arising, Mr Commissioner.

THE COMMISSIONER: Yes. Mr Kelly, you're not being excused from the summons, you may be recalled - - -?---I understand.

- - - at a later stage but we will try and give you reasonable notice of that so that you, don't think you'll be recalled for at least a few days?---Okay.

10 Is that right, Mr Newlinds?

MR NEWLINDS: That's right. Highly unlikely it will be this week. I think he can go about his own business this week.

THE COMMISSIONER: We will let Mr Beech-Jones know and give you 24 hours notice if not more?---Thank you.

THE WITNESS WITHDREW

[12.47pm]

20

MR BEECH-JONES: Commissioner, can I ask, do you have a practice about whether potential witnesses stay in or stay out or?

THE COMMISSIONER: No, they can stay in. Mr Newlinds.

MR NEWLINDS: I call Mr Charif Kazal.

30 THE COMMISSIONER: Give those to Mr Newlinds, I'd like an answer before we adjourn. While we're waiting for Mr Kazal - - -

MR KORN: Commissioner, I, when we had that five minute break, he was just sitting outside just out past the scanner to the left.

40 THE COMMISSIONER: Well, Mr Korn, while we're waiting for Mr Kazal I want to say something that may be of interest to you and to Mr Beech-Jones, please be seated. The Commission is not investigating, I wish to make it quite clear that The Commission is not investigating in this public inquiry any issue not raised by Mr Newlinds in his opening because in the prior investigations of The Commission, that is prior to the commencement of this public inquiry The Commission has not found any reasonable evidence of corruption in regards to those issues. Now Mr Korn do you wish me to make a Section 38 order.

MR KORN: Yes, thank you.

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by

Mr Charif Kazal and all documents and things 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 or thing produced.

10 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR CHARIF KAZAL AND ALL
DOCUMENTS AND THINGS 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 OR THING PRODUCED.**

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

MR KAZAL: I would like to affirm.

THE COMMISSIONER: Yes. Would you administer the affirmation please.

THE COMMISSIONER: Mr Newlinds.

MR NEWLINDS: Mr Kazal, do you remember travelling to Dubai in the middle of 2007 with various people including Mr Rodric David and Mr Andrew Kelly?---Yes.

10 Now, casting your mind back to the weeks prior to that trip was it ever your intention to settle Mr Kelly's accounts in relation to his airfare and his accommodation in relation to that trip?---No.

That was never your intention?---Never.

Did you ever think that it was possible that you might be going to pay for Mr Kelly's expenses?---No, never.

20 Can I show you a document please. It's page 267 on it, it's not in the bundle at the moment but I think it can be brought up on the screen. I think it's in the Commissioner's folder. Is this an email you wrote on 23 May, 2007?---Yes.

Do you remember writing it?---Yes.

You're writing to the person at the hotel in Abu Dhabi booking six rooms for the purpose of the people coming on the trip, correct?---Yes.

30 The people - those six people were Rodric David, Tony Touma, Emile Tabet, Clint Willoughby, yourself and Mr Kelly, correct?---Yes.

And what you say in the middle of the letter is that in relation to Mr David, Mr Touma, Mr Tabet and Mr Willoughby, that they would be settling their own accounts and the hotel should invoice Parkview Pty Limited. Do you see that?---Yes.

Now, was that your understanding at the time?---Yes.

40 And in the next paragraph you say a similar booking is required for yourself and Mr Kelly and that I, that is you, will settle both accounts and could the invoicing be made to Australian World Trading Pty Limited, do you see that?---Yes.

Was that your state of mind at the time?---No.

Would you explain please to the Commissioner why if that was not your state of mind you wrote those words in this email?---Yes. Just purely to try to get the corporate rate for Mr Kelly, I asked him that he should make the

invoicing or the booking under Australian World Trading so it could the corporate rate.

Your understanding you say was that Mr David through Parkview was going to pay for Mr Kelly, wasn't it?---That's correct.

And so may we assume that if the booking was made through Parkview or under Parkview's name that would have triggered the corporate rate, yes?
---Yes.

10

Indeed, it's quite clear that the four rooms booked for Mr David, Touma, Tabet and Willoughby all would have attracted the corporate rate, correct?
---That's right.

So the explanation you have just given makes no sense, does it?---(NO AUDIBLE REPLY)

Does it?---This is what happened.

20 The explanation you just gave makes no sense, correct?---I've just explained that's what happened.

Please come to grips with what I'm putting to you. The explanation that you have given which is the reason you told the hotel that you would be settling the accounts and that the invoices should be sent to Australian World Trading Pty Limited for yourself and Mr Kelly were so as to attract the corporate rate does not make sense in light of the fact that if those people, that is you and Mr Kelly, had been booked under the name of Parkview that would have attracted the corporate rate. Can you see what

30 I'm getting at?---Sure.

Now, would you please comment as to whether you agree that your explanation- - -?---It was not my intention to- - -

Would you please comment, if you want to, as to whether you agree when I, with me when I put to you that the explanation you have given makes no sense?---Yes.

40 What is your comment, do you agree that it makes no sense?---As I've just explained- - -

Do you agree that it makes no sense?---Yes.

Can you offer any other explanation and perhaps this time focussing on one that does make some sense as to why you told the person at the hotel what you told them in this email?---As I've stated, this was the intention.

What was the intention?---So I could trigger the corporate rate.

That's the same explanation which you've agreed makes no sense, is it not?
---Looking back at it, yes.

What you're saying is with the benefit of hindsight you can see that what you did was completely and utterly illogical if you are to be believed?
---That's right.

10 There is another explanation for why you wrote the words in this email, isn't there- - -?---No.

- - -Mr Kazal?---No.

Well, may I invite you to consider this one, that in fact what you wrote in the email represented the truth. That would be an explanation that made sense, wouldn't it?---It wasn't.

But it obviously makes sense, doesn't it?---Yes.

20 What you say in this email could readily be explained by simply accepting that in fact you were telling the truth. That's fair, isn't it?---Yes.

But you say you intentionally did not tell the truth to the person at the hotel?
---Not quite. I might have misconstrued the email.

Well, let's get this straight. "I will settle both accounts." There's no room for doubt as to what those words mean, is there?---No, no.

30 They only have one meaning and it's clear. Correct?---Yes.

Right. So it's nothing about anyone misconstruing, is it?---No, but- - -

I'm not misconstruing what you wrote, am I?---No.

And you didn't misconstrue what you intended to write at the time you wrote it, did you?---No.

40 We might just come back to this after lunch, but can you consider over the lunch hour whether you want to change your evidence and accept the proposition that in fact as at 23 May, 2007, it was your intention that you were going to cover the cost of Mr Kelly's accommodation whilst he was in Dubai. Do you want time to think about that?---It was not my intention at all.

And you don't want time to consider whether you want to change that evidence?---No, because it was not my intention at all.

And in fact you did reimburse Mr Kelly for his expenses, that is the hotel accommodation and his airfare- -?---Never.

- - -after the trip, didn't you?---Never.

That would be a convenient time, Commissioner.

THE COMMISSIONER: The Commission will adjourn till 2.00pm.

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LUNCHEON ADJOURNMENT

[1.00pm]