

**STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL  
DEFAULT HEARING**

H H Inv LLC,  
Petitioner,

MTT Docket No. 310810

v

Township of Bushnell,  
Respondent.

Tribunal Judge Presiding  
Jack Van Coevering

**OPINION AND JUDGMENT**

**INTRODUCTION**

Pursuant to Tax Tribunal Rule 247, a default hearing was held in the above-captioned case on February 16, 2007. Lisa Kreager represented Petitioner. Assessor Patricia Rathbun represented Bushnell Township.

The Tribunal entered an Order of Default on April 28, 2006 due to Respondent's failure to file and exchange a valuation disclosure and prehearing statement as required by the Tribunal. Respondent failed to cure the default and failed to file a motion to set aside the default within 21 days.

This case involves a dispute regarding the valuation of the real and personal property of a golf course built and owned by two family-run business enterprises. The subject property is designated as Parcel No. 59-003-031-010-41 and classified as commercial. It is located at 11877 S. Sheridan Road, Fenwick, Michigan, 48834. The issues can be summarized to include: whether the leasehold improvements should be taxed as personal property, whether Petitioner

should be assessed with taxes for the leasehold improvements, and whether the assessed and taxable values are correct.

The Tribunal determines that Petitioner failed to present market evidence of the value and cannot establish the existence of a lease between the two family-run business enterprises. The assessment values thus remain unchanged. Those values are:

Tax Year	TCV	SEV	TV
2004	426,422	213,200	205,373

SUMMARY OF PETITIONER'S EVIDENCE

Petitioner presented the following evidence:

1. Property Tax Appeal Petition Form received June 29, 2004. Petitioner contends that the property's true cash value is less than the property's assessed true cash value for the tax year 2004.
2. Letter to the Tribunal contesting that Petitioner is an entity that holds the land on which the leasehold improvements are located, but does not own them. Rather, Petitioner claims that Hickory Hills Golf Course, Inc., a lessee, owns the leasehold improvements.
3. Form L-4175: 2004 Personal Property Statement of Hickory Hills Golf Course, Inc. listing the leasehold improvements.
4. Petition to Board of Review dated March 8, 2004, protesting the assessed value for tax year 2004.
5. Decision by Board of Review dated on March 22, 2004, denying Petitioner's protest.
6. Notice of Assessment for tax years 2003 and 2004.
7. Petition received February 15, 2005. Petitioner contends that the land is leased to Hickory Hills Golf Course, Inc. and it is Hickory Hills Golf Course, Inc. that owns the leasehold improvements, not Petitioner. Petitioner states that these leasehold improvements are listed on Hickory Hills Golf Course Personal Property Tax (Form L-4175) filing.
8. Petitioner's Prehearing Statement received February 24, 2006, with the following exhibits:

- a. List of land improvements made by Petitioner, HH Investments, LLC.
- b. List of comparable properties that are all golf courses.

Petitioner did not present any new evidence at the Default Hearing.

SUMMARY OF PETITIONER’S CLAIM

Petitioner claims that H H Investments, LLC (“H H”) and Hickory Hills Golf Course, Inc. (“Golf Course”) are separate entities, and the taxes on the improvements should have been assessed to Golf Course, instead of H H.

H H is a partnership that owns the land where the leasehold improvements are located. The land is leased to Golf Course, starting in May 2002. Golf Course built the leasehold improvements and it owns them, not H H.

Petitioner also claims that the increase in the assessed value of \$50,200 in 2003 to \$213,200 in 2004 exceeded the 1.023 Inflation Rate Multiplier for the stated year. Petitioner’s contention as to the true cash value (TCV), state equalized value (SEV) and taxable value (TV) are:

Tax Year	TCV	SEV	TV
2004	160,890	80,445	73,803

SUMMARY OF PETITIONER’S TESTIMONY

Lisa Kreager represented Petitioner and testified on its behalf. Ms. Kreager called no witnesses and presented no evidence other than the documents listed above.

Ms. Kreager explained that she works for both entities, Petitioner, H H, and Golf Course. She prepares the tax return for Petitioner. She also is the treasurer<sup>1</sup> of Golf Course and prepares Golf

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<sup>1</sup> Transcript, p. 14, lines 8-9; p. 15, line 1.

Course's financial statements at the end of the year and its tax returns.<sup>2</sup> Golf Course is a C corporation.<sup>3</sup> Ms. Kreager stated that she had filled out the personal property statement, H H is a partnership<sup>4</sup> that owns the land<sup>5</sup> and Golf Course leases the land from H H.<sup>6</sup> There exists no written lease. Since May 1, 2002,<sup>7</sup> an oral agreement existed between the two entities, as represented by her husband, father-in-law, mother-in-law and herself establishing that the amount of taxes on the land was to the rental amount for the first three or four years.<sup>8</sup> No documents were submitted supporting the existence of this oral lease by conduct.

Ms. Kreager testified that the two entities were separate entities. In support, she stated that H H and Golf Course filed separate state tax returns in the initial filing year, 2002<sup>9</sup>, and that Golf Course was incorporated within the State of Michigan through separate documents.<sup>10</sup> She stated that improvements were made to the land from 1992 through 2001,<sup>11</sup> and the golf course was opened on May 1, 2002.<sup>12</sup> She stated that the year 1992 was the beginning of the development of the golf course and took 10 years because they designed and developed it themselves for cost savings.<sup>13</sup> She rejected Respondent's contention that Petitioner owns the leasehold improvements, stating that "Hickory Hills Golf Course paid for and built the actual structure

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<sup>2</sup> Transcript, p. 14, lines 9-11.

<sup>3</sup> Transcript, p. 14, lines 4-5, 18.

<sup>4</sup> Transcript, p. 14, lines 14-15.

<sup>5</sup> Transcript, p. 14, line 14 (holding the land).

<sup>6</sup> Transcript, p. 14, lines 18-19.

<sup>7</sup> Transcript, p. 22, lines 13-15.

<sup>8</sup> Transcript, p. 23, lines 6-8.

<sup>9</sup> Transcript, p. 15, lines 6-11.

<sup>10</sup> Transcript, p. 15, lines 12-17.

<sup>11</sup> Transcript, p. 15, lines 23-25.

<sup>12</sup> Transcript, p. 16, lines 1-3.

<sup>13</sup> Transcript, p. 16, lines 15-22.

after they began to lease the property.”<sup>14</sup> Thus, Petitioner contends it should not be assessed for taxes for the leasehold improvements.

Ms. Kreager further testified that the value of the land for tax year 2004 was \$159,800.00. She calculated the total value of improvements to be \$49,000.00<sup>15</sup> based on the actual cost of improvements.<sup>16</sup> She did not include a market cost of labor because her father-in-law and her husband performed all the work.<sup>17</sup> Then she added the estimated value of the land in 2001 as it appeared on property tax bill, \$92,400.00. By adding these two values, she came to the land value of \$142,109.00 as of 12/31/01.<sup>18</sup> This land value of \$142,109.00 was then increased by taking an incremental increase of five percent, which gave Petitioner a land value of \$159,800 for year 2004.<sup>19</sup>

Based on this valuation, Ms. Kreager contended that Petitioner should have paid summer taxes of \$484.00 and winter taxes of \$3,055.00.<sup>20</sup> Petitioner paid the assessed summer taxes in amount of \$1,245.00 and winter taxes in amount of \$7,853.00,<sup>21</sup> which were based on taxable value of \$205,373.00 as indicated in tax bills.<sup>22</sup>

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<sup>14</sup> Transcript, p. 10, lines 15-19.

<sup>15</sup> Transcript, p. 18, lines 23-25; p. 19, line 1.

<sup>16</sup> Transcript, p. 19, line 3.

<sup>17</sup> Transcript, p. 19, lines 4-9.

<sup>18</sup> Transcript, p. 16, lines 22-25; p. 17, line 1.

<sup>19</sup> Transcript, p. 17, lines 1-3.

<sup>20</sup> Transcript, p. 18, lines 11-14.

<sup>21</sup> Transcript, p. 18, lines 14-16.

<sup>22</sup> Transcript, p. 18, line 20.

Ms. Kreager requested the return of overpayment of taxes, which would be the difference between the amounts of Petitioner's proposed taxes and the actual payment of taxes made by Petitioner.<sup>23</sup> She also requested additional fees to be reimbursed, which included postage incurred, all the certified mailings and so forth, the filing fee of \$100 and the court reporting fees.<sup>24</sup>

#### SUMMARY OF RESPONDENT'S EVIDENCE

1. Property Tax Appeal Answer Form received June 3, 2005. Respondent contends that the subject assessments are based on the value of new additions, nine-hole golf course and clubhouse. Respondent contends that Petitioner did not supply a copy of the lease nor did Hickory Hills Golf Course Personal Property Tax (Form L-4175) filed before or with the March Board of Review list the leasehold improvements.
2. Letter to the Tribunal dated May 18, 2006 stating that Respondent has presented a packet with a stipulation to Petitioner and that the parties were unable reach an agreement. It also stated that Respondent requested a lease agreement, but was told that there is no written lease agreement.
3. Comparable Property Tax Statements of Other Golf Courses in the County.
4. Assessor or Equalization Director's Notice of Property Incorrectly Reported or Omitted from Assessment Roll (Form L-4154) dated May 14, 2006.
5. 2004 Personal Property Statement of Hickory Hills Golf Course, Inc. received before March Board of Review.
6. Record Card and Picture taken in 2004.

Respondent did not submit evidence at Default Hearing.

#### SUMMARY OF RESPONDENT'S CLAIM

Respondent claims that the assessed amount for the tax year 2004 was based on the improvements made on the land, which are a nine-hole golf course and clubhouse. Respondent claims that it had requested the lease agreement between H H and Golf Course in order to

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<sup>23</sup> Transcript, p. 20, lines 1-6.

<sup>24</sup> Transcript, p.20, lines 8-12.

determine whether these improvements are leasehold improvements, but Petitioner never provided a copy of a lease agreement. Additionally, the value of the assessments changed because the land should have been assessed as a nine-hole golf course, not as agricultural property. Thus, Respondent assessed the taxes on the improvements to H H, a landowner.

Respondent contends that the true cash value (TCV), state equalized value (SEV) and taxable value (TV), as stated on the tax rolls, should be affirmed. Those values are:

Tax Year	TCV	SEV	TV
2004	426,422	213,200	205,373

SUMMARY OF RESPONDENT’S TESTIMONY

Upon the Tribunal’s request, assessor Patricia Rathbun explained her assessment. She acknowledged that she was unaware of the statutory change to MCL 211.8.<sup>25</sup> She testified that Petitioner filed a personal property tax statement for 2004, but the one that was filed before the March Board of Review did not list anything or have any information on it as to a building.<sup>26</sup> She also stated that she had accepted the personal property tax statement prior to 2004 since the leasehold improvement in dispute was not on the land prior to year 2004, but she did not accept the statement for year 2004.<sup>27</sup>

Ms. Rathbun explained that she had requested how to separate Golf Course from H H and thus sought a lease agreement.<sup>28</sup> She stated that she requested the corporate documents indicating

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<sup>25</sup> Transcript, p. 11, lines 2-6; lines 7-9.  
<sup>26</sup> Transcript, p. 11, lines 15-18.  
<sup>27</sup> Transcript, p. 12, lines 5-7; lines 8-10.  
<sup>28</sup> Transcript, p. 20, lines 16-18.

that Golf Course was separate from H H, but never received them.<sup>29</sup> Ms. Rathbun stated that she has nothing indicating Golf Course is a separate entity other than a personal property statement<sup>30</sup> and the deed to H H.<sup>31</sup>

Ms. Rathbun stated that her assessment was based on the [State Assessors] manual,<sup>32</sup> computed by using the 1998 costs.<sup>33</sup>

### FINDINGS OF FACT

The Tribunal's factual findings must be supported by competent, material and substantial evidence. *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1984). In that regard, the Tribunal finds that:

H H Investments, LLC ("H H"), a partnership, and Hickory Hills Golf Course, Inc. ("Golf Course"), a C Corporation, are separate business entities, owned and operated by a husband and wife and their daughter and son-in-law. H H owns the land where the leasehold improvements are located. Petitioner claims that the land is leased to Golf Course starting in May 2002. Golf Course built the leasehold improvements and it owns them, not HH. No written lease exists between the entities. No documents exist establishing an oral lease between the entities. No documents establish that lease payments were made.

H H Investments, LLC owns the subject property designated as Parcel No. 59-003-031-010-41 and classified as commercial. The improvements, a nine-hole golf course and clubhouse, were made on the subject property in 2004. Township of Bushnell taxed H H Investments, LLC for

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<sup>29</sup> Transcript, p. 21, lines 3-4.

<sup>30</sup> Transcript, p. 21, lines 10-12.

<sup>31</sup> Transcript, p. 21, lines 4-5, 7-8.

<sup>32</sup> Transcript, p. 27, lines 2-3.

<sup>33</sup> Transcript, p. 27, lines 2-7.

the improvements for tax year 2004. On March 8, 2004, H H Investments, LLC appeared before the March Board of Review and appealed the 2004 assessments, which was denied by the Board of Review.

## CONCLUSIONS OF LAW

### **A. Burden of Proof**

Petitioner carries the burden to prove by a preponderance of the evidence that the assessment is in error. The Michigan Court of Appeals held in *Kostyu v Michigan Department of Treasury*, 170 Mich App 123 (1988):

[T]he Tax Tribunal has authority to allocate the burden of proof in a manner consistent with the legislative scheme. *Zenith Industrial Corp v Dep't of Treasury*, 130 Mich App 464 (1983). Although the revenue statute at issue here, M.C.L. § 205.21 ... does not state which party has the burden of proof, imposing the burden on the taxpayer is consistent with the overall scheme of the tax statutes and the Legislature's intent to give the Department a means of basing an assessment on the best information available to it under the circumstances. See also *Vomvolakis v Dep't of Treasury*, 145 Mich App 238 (1985), *lv den* 424 Mich 887 (1986).

### **B. Default Hearing**

Tax Tribunal Rule 247 states:

- (2) If a party has failed to plead, appear, or otherwise proceed as provided by these rules or as required by the tribunal, then the party may be held in default ... on the initiative of the tribunal. A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of the entry of the order placing the party in default or as otherwise ordered by the tribunal. Failure to comply with an order of default may result in the dismissal of the case or the scheduling of a default hearing as provided in this rule.
- (3) For purpose of this rule, "default hearing" means a hearing at which the defaulted party is precluded from presenting any testimony or submitting any evidence not submitted to the tribunal before the entry of the order placing the party in default and may not submit, unless otherwise ordered by the tribunal, examine the other party's witnesses.

### **C. Leasehold Improvements**

Michigan Compiled Law 211.8 states in pertinent parts:

For the purposes of taxation, personal property includes all of the following:

\* \* \*

(d) ...For taxes levied after December 31, 2002, buildings and improvements located upon leased real property, except buildings and improvements exempt under section 9f or improvements assessable under 8(h), shall be assessed as real property under section 2 to the owner of the buildings or improvements in the local tax collecting unit in which the buildings or improvements are located if the value of the buildings or improvements is not otherwise included in the assessment of the real property.

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(h) During the tenancy of a lessee, leasehold improvements and structures installed and constructed on real property by the lessee, provided and to the extent the improvements or structures add to the true cash taxable value of the real property notwithstanding that the real property is encumbered by a lease agreement, and the value added by the improvements or structures is not otherwise included in the assessment of the real property or not otherwise assessable under subdivision (j). The cost of leasehold improvements and structures on real property shall not be the sole indicator of value. Leasehold improvements and structures assessed under this subdivision shall be assessed to the lessee.

Furthermore, State Tax Commission Bulletin No. 8 of 2002 states that “starting in assessment year 2003, buildings located on leased real property shall be assessed on the real property roll to the owner of the building,” and “the leasehold improvements and structures assessable under MCL 211.8h are assessable to the owner on the real property assessment roll.”

### **D. Assessments**

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined “true cash value” to mean “the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price which could be obtained for the property at private sale, and not at forced or auction sale.” See MCL 211.27(1). The Michigan

Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that “true cash value” is synonymous with “fair market value.”

Fundamental to the determination of a property’s true cash value is the concept of “highest and best use.” It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 623 (1990).

In such cases, the Tribunal is charged with finding a property’s true cash value to determine the property’s lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property’s taxable value as provided by MCL 211.27a. MCL 205.737 does, however, provide, in pertinent part, “[t]he petitioner has the burden of proof in establishing the property’s true cash value...[t]he assessing agency has the burden of proof in establishing the ratio of average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.” See *Kern v Pontiac Twp*, 93 Mich App 612 (1974), and *Shaughnesy v Tax Tribunal*, 420 Mich 246 (1984). See also *Hoerner-Waldorf Corp v Village of Ontonagon*, 26 Mich App 542 (1970), and *Brittany Park Apartments v Harrison Township*, 104 Mich App 81 (1981).

The Tribunal is also obligated to select the methodology that is accurate and bears a reasonable relationship to the property’s true cash value. See *Safran Printing Co v Detroit*, 88 Mich App 376 (1979), *lv den* 411 Mich 880 (1981). Regardless of the valuation approach employed, the

final value determined must represent the usual price for which the subject property would sell.

*Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473 (1991).

The Court of Appeals in *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348 (1992), on remand, ordered the Tribunal to make an independent determination of true cash value. The Court further stated:

We note that the tribunal is not bound to accept either of the parties' theories of valuation. It may accept one theory and reject the other, it may reject both in arriving at its determination. *Meadowlanes Ltd Dividend Housing Ass'n, supra* at 485-486; *Wolverine Tower Association v Ann Arbor*, 96 Mich App 780 (1980).

The Tribunal concludes that Respondent correctly determined that Petitioner is the entity to be assessed with taxes for the leasehold improvements made in tax year 2004. Petitioner has failed to establish that Hickory Hills Golf Course, Inc., leases the land and owns the leasehold improvements, or that Respondent erred in assessing Hickory Hills Golf Course, Inc. instead of Petitioner, who is owner of the land on which the leasehold improvements were made.

Petitioner has not provided any evidence establishing the existence of a written lease agreement as required by the Michigan Statute of Frauds for lease of real property that is longer than one year in duration. More than that, Petitioner has failed to establish that a valid, enforceable, arms-length lessor-lessee relationship exists between Petitioner and Hickory Hills Golf Course, Inc. These two entities are closely owned by the family members. As indicated by Ms. Kreager, H H Investments, LLC and Hickory Hills Golf Course, Inc. were owned by the same persons, her husband and her father-in-law. Although Ms. Kreager and her mother-in-law were also involved in Hickory Hills Golf Course, Inc. and not in H H Investments, LLC, it is apparent that these two

entities were essentially owned by the same family. Petitioner has also failed to demonstrate that the entities are separate legal entities as Petitioner failed to produce any corporate documents. Moreover, there was no consideration paid to Hickory Hills Golf Course, Inc. for leasing the property from Petitioner. According to Ms. Kreager's testimony during the hearing, the parties agreed that Hickory Hills Golf Course, Inc. was to pay the taxes, which would constitute as rents. However, no proof of these payments was given. The Tribunal finds that Petitioner owns the improvements.

As to the issue of whether the assessed and taxable values are correct, the Tribunal concludes that Petitioner failed to prove with a preponderance of the evidence that the assessments are incorrect. At the hearing, Petitioner presented and discussed various costs to the actual owners in constructing and maintaining the property, but none of these costs were proven to reflect market costs for this area of Michigan. Indeed, Petitioner argued that actual costs should be used even though those costs would not reflect the market as she concluded that labor costs were excluded because the labor was provided by the owner-operators. Michigan law requires that taxes be based on fair market value, not the individual value unique to the owners of the property.

As Respondent was subject to a default hearing, any potential counterclaim that personal property should have been placed on the real property roll and potentially may have increased the value of the real property is also not subject to review. Such potential claims were not timely raised in any pleading or any other document, no value influence was determined and the matter generally was not appropriately defended. On the other hand, while Respondent did not submit a

valuation disclosure, Petitioner has failed to carry its burden of proof. The Tribunal finds that Respondent's assessments are affirmed under the circumstances of this case, as set forth here:

Tax Year	TCV	SEV	TV
2004	426,422	213,200	205,373

**JUDGMENT**

IT IS ORDERED that the subject property's true cash, state equalized, and taxable values for the tax year(s) at issue are as set forth in the Conclusions of Law.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's assessed and taxable values as finally shown in the Proposed Opinion and Judgment within 90 days of the entry of this Final Opinion and Judgment, subject to the processes of equalization. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 90 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the

date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Opinion and Judgment. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, and (xii) after December 31, 2006, at the rate of 5.42% for the calendar year 2007.

MICHIGAN TAX TRIBUNAL

Entered: September 5, 2007

By: Jack Van Coevering, Tribunal Chairman