

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND ACQUISITION & COMPENSATION (NORTHERN IRELAND) ORDER 1973

IN THE MATTER OF A REFERENCE

R/27/2007

BETWEEN

LORRAINE BROOKS – CLAIMANT

AND

NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT

Re: 4 Alexandra Park Avenue, Belfast

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAMI

1. The claimant was owner of a property at 4 Alexandra Park Avenue, Belfast which was acquired by the respondent by Vesting Order in March 2004. In June 2007 Mr Joe Allen, a Chartered Surveyor and Valuer, referred a claim for disturbance to the Lands Tribunal. The substantive issues relating to the disturbance claim were resolved but, in April 2008, the Tribunal was informed that issues had arisen in connection with valuer's and legal costs.
2. These issues were dealt with by written representations. Mr David French of Reid Black & Co, Solicitors, wrote on behalf of the Claimant in regard to costs relating to the reference to the Tribunal. Mr Joe Allen wrote on behalf of the Claimant in relation to his fee prior to the Tribunal proceedings. Mr Joe Kelly of Donaghy Carey, Solicitors, wrote on behalf of the Northern Ireland Housing Executive ('the Housing Executive').
3. There were two issues. The first was whether the reference to the Tribunal was premature. The second was whether, if some of Mr Allen's costs were not costs in the proceedings, they should be measured by an amount on what was known as Ryde's scale or should be on a time-based calculation.
4. The point in time at which costs should be regarded as costs of and incidental to the proceedings (see Rule 32 of the Lands Tribunal (NI) Rules 1976) is a matter of judgment in all the relevant circumstances. In many cases it will depend on the question of when the dispute took on the character of contentious litigation or when the

parties might no longer reasonably be expected to bear their own costs. In some of the work of the Tribunal the issue has to be addressed in the context of presumptions – for example in applications for modification of restrictive covenants, the applicant will be presumed to be liable for the reasonable costs of initial advice to the person entitled to the benefit; and in compulsory purchase cases, the acquiring authority will be presumed to be liable for the reasonable costs of person whose land has been acquired.

5. The parties and the Tribunal may take steps that affect that judgment. For example, if there were some difficulty as a result of delay it would be open to a party to write in peremptory terms to the other indicating that, unless satisfactory progress had been made by an appropriate date, it would be minded to refer the matter to the Tribunal. That would put the opposing party on notice that, among other things, that date might well be regarded as the point at which further costs might be presumed to be costs of and incidental to the proceedings. At a preliminary stage (often to caution unrepresented persons) the Tribunal may indicate that, from the date of a future review, it would be minded to regard the case as taking on the character of contentious litigation.
6. In this compulsory purchase case, the significance of the prematurity issue lies in the fact that extra statutory scales usually are applied to cover Claimants' costs that are not costs of and incidental to the proceedings.
7. When the matter was mentioned on 23rd August 2007 the solicitors for the Housing Executive said that negotiations had not yet reached an impasse. The Tribunal put the case back for mention on 16th October 2007 indicating that if all issues were not resolved it would be minded to make arrangements for a hearing. The mention was put back to the end of November and, by then, all substantive issues were in fact resolved. There was no peremptory letter prior to lodgement of the Reference.
8. The Tribunal concludes that the reference was premature and that costs incurred by the Claimant prior to 27th November 2007 should not be treated as costs of and incidental to proceedings.

9. Mr Allen suggested that his costs, other than those in the proceedings, should be on a time-based computation rather than Ryde's scale. As Mr Allen pointed out there are difficulties arising from the absence of any substitute for Ryde's scale as a common basis of remunerating agents in compulsory purchase cases.
10. However, the standard claim form, as provided to this Claimant by the Housing Executive, makes it clear that it will pay agents' fees based on Ryde's scale. Mr Allen signed the claim form on behalf of his client in March 2004 and did not raise the contention that he should be paid on a different basis until 15th February 2008. In light of the absence of any prompt objection to the Ryde's basis, the Tribunal's conclusion above that the reference was premature, and that costs incurred by the Claimant prior to 27th November 2007 were not costs of and incidental to proceedings, the Tribunal further concludes that his fee should be based on Ryde's scale.
11. The Tribunal trusts that these conclusions are sufficient to allow the parties to recompute the appropriate amounts. On default of agreement such amounts shall be taxed by the Tribunal.

ORDERS ACCORDINGLY

16th June 2009

**Michael R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI
LANDS TRIBUNAL FOR NORTHERN IRELAND**