

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982

IN THE MATTER OF A REFERENCE

R/67/2004

BETWEEN

CHARLES McCANN – APPLICANT

AND

DEPARTMENT FOR SOCIAL DEVELOPMENT – RESPONDENT

Re: 17 Cornmarket, Belfast

COSTS
WRITTEN SUBMISSIONS

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.FIAVI

1. By Notice of Reference dated 1st December 2004 the Applicant sought compensation for compulsory acquisition. The dispute has been resolved save as to the amount of costs, over and above the now defunct Ryde's Scale, to be paid to Mr Joe Allen as expert witness and advocate.
2. Mr Allen appeared for the Applicant and Mr Harry Smyth appeared for the Respondent Department.
3. Mr Allen had already been paid a fee of £3,727.70 based on the settlement figure of £185,000 and Ryde's Scale. This appears to have been agreed to cover all work other than
 - a. The preparation of expert evidence for the Tribunal, and
 - b. Preparations for hearing and attendance at the hearing (case management and advocacy).Miscellaneous and out of pocket expenses of £50 have now been agreed.
4. There was little between the parties in terms of the time spent in preparation of the expert evidence. Mr Allen claimed 30 hours but Mr Smyth suggested something

closer to 27 hours was appropriate because an early stage of Mr Allen's work was criticised and became redundant. The Tribunal accepts the criticism to a degree and also notes that some of the work went beyond the role of an expert witness and strayed into the role of advocate. It therefore concludes the appropriate time should be 27 hours.

5. Mr Allen claimed 22 hours 15 minutes for the case management and advocacy element. Mr Smyth suggested 9 hours 20 minutes and that Mr Allen's claim was disproportionate.
6. The Tribunal rounds this element up to 24 hours to reflect some of the time incorrectly claimed as part of the expert witness role. It does not find Mr Allen's estimated time to be unreasonable or disproportionate. On the Respondent's side, a time of more than one hundred hours was recorded by a Senior Legal Assistant/Senior Principal Legal Officer. Junior counsel was paid a fee of several thousand pounds. The Tribunal concludes that Mr Smyth's suggestion that this element was disproportionate is inconsistent with the clearly substantial effort brought to bear by his legal colleagues.
7. In the course of rather acrimonious exchanges of written submissions Mr Allen claimed an hourly rate of £150. He referred to correspondence from surveyors in England and Wales supporting a figure of £150 per hour. Mr Smyth suggested the adoption of £100 per hour which he said was the Northern Ireland Housing Executive rate (Mr Allen disagreed with that analysis- he suggested £122 per hour). Mr Smyth saw no reason for uplift in this case where he said any additional difficulty was reflected in the additional time taken. He also referred to an agreed fee paid to another surveyor of £120 per hour, in what he said was an equally contentious case in the same scheme. But he suggested a lower figure for Mr Allen because of the additional overheads of a city centre office (Mr Allen worked from home) and the surveyor in question was understood to command a market rate often in excess of the rate agreed.
8. It is appropriate to distinguish between the hourly rate to be applied to Mr Allen in his role as an expert witness and in his role as case manager and advocate. Mr Allen is an expert witness but is not a skilled court advocate. In saying this, the Tribunal does not imply adverse criticism of Mr Allen - many important issues of compensation for

disturbance might not have reached the Tribunal if it were not for Mr Allen's enthusiasm.

9. The Tribunal accepts that the place where the work was done is a factor to be taken into account. It therefore prefers evidence relating to Northern Ireland rather than elsewhere. Mr Smyth suggested that the fact that Mr Allen worked from home and did not have the overheads of a city office was a factor to be taken into account. The Tribunal agrees but there was no evidence on which it might form a view as to the appropriate relationship.
10. The Tribunal adopts an hourly rate of £115 per hour for Mr Allen for the preparation of expert evidence and adopts a slightly lower figure of £100 per hour in his role as case manager and advocate. The Tribunal determines costs, over and above the now defunct Ryde's Scale -

Preparation of expert evidence for the Tribunal, 27 hours	
@ £115 per hour	£3105.00
Case management and advocacy, 24 hours @ £100 per hour	£2400.00
Miscellaneous and out of pocket expenses (as agreed)	<u>£50.00</u>
Total	£5555.00
Plus VAT as applicable	

ORDERS ACCORDINGLY

30th October 2007

**Michael R Curry FRICS IRRV MCI.Arb Hon.FIAMI
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances

Mr J Allen, Chartered Surveyor, appeared for the Applicant.

Mr Harry Smyth, Valuation & Lands Agency, appeared for the Respondent.

ADDENDUM

R/67/2004

Costs on Costs Written Submissions

1. By a decision dated 30th October 2007 the Tribunal determined the amount of costs to be paid to Mr Joe Allen. Mr Allen applied for his costs ('costs on costs') in respect of that determination.
2. Mr McNeill objected on two grounds. The first was that Mr Allen should have included his application for costs on costs as part of his application for costs. The second was that if Mr Allen was entitled to make such an application he did not so sufficiently promptly.
3. The corresponding procedure in regard to costs on a substantive issue was discussed in McKillen & Others v Ferguson & Another [2005] R/35/2002 Part II. Essentially the Tribunal does not invite any application on the allocation of costs until after the substantive issue or issues have been determined because firstly the parties cannot properly consider whether to make an application until they have that determination and secondly there may be material, such as Calderbank Offers or conduct, to which the Tribunal may not be or should not be referred before determining the substantive issue. The Tribunal does not encourage wasteful applications.
4. In the view of the Tribunal the same considerations apply to costs on costs.
5. In this case the decision dated 30th October 2007 was sent to the parties subject to editorial corrections. Having allowed time for any suggested editorial corrections the perfected decision was sent to the parties on 7th November 2007 with an accompanying letter, in accordance with the Tribunal's usual practice, advising that any application should be made promptly. Mr Allen's application for costs on costs was dated 19th November 2007.

6. The Tribunal concludes that Mr Allen has properly applied for his costs on costs and sufficiently promptly for the application to be considered by the Tribunal.

ORDERS ACCORDINGLY

2nd June 2008

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