



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/23UE/PHC/2019/0009**

Property : **9 Quedgeley Park
Greenhill Drive
Tuffley
Gloucester
GL4 0LW**

Applicant : **Mr Nick Newman**

Representative : **None**

Respondent : **Mrs P W Lovett**

Representative : **None**

Type of Application : **Determination of Commission
payable to Park Home site owner
upon sale of Park Home**

Tribunal Members : **Mr I R Perry FRICS
Mr P E Smith FRICS**

Date of Inspection : **20th November 2019**

Date of Decision : **20th November 2019**

DECISION

Summary of Decision

1. On 20th November 2019 the Tribunal determined that the commission payable on the sale of the 9 Quedgeley Park (the Home) which took place on 21st November 2018 is £1,000.

Background

2. The case concerned the determination of the amount of commission payable upon the sale of the subject property from Miss V Hancock to Mrs P W Lovatt pursuant to the Mobile Homes Act 1983.
3. On 21st November 2018 Miss V Hancock (the Seller) and Mrs P W Lovatt (the Buyer) served a Schedule 2 Notice of Proposed Sale Form, an Assignment Form, and a Notice of Assignment Form under the Mobile Homes Act 1983 on the Park site owner Donaldson and Newman Ltd. The Notice stated the sale price to be £10,000 and the date of the sale to be 21st November 2018.
4. On 21st November 2018 Mrs Lovatt paid the commission sum of £1,000, being 10% of the sale price, to Mr Newman as the appropriate commission on the sale price.
5. Mr Newman (the Park owner) believed that the sale price was significantly below the open market price. On the 20th April 2019 and after various correspondence with Mrs Lovatt he referred the matter to the First-Tier Property Tribunal.
6. The Tribunal office informed the parties that the Tribunal intended to determine the commission based on an inspection of the property and an oral hearing.
7. The buyer and the Park owner submitted written representations, copies of which were sent to the parties.

Inspection

8. At 10.00 a.m. on the 20th November 2019 the Tribunal inspected the property accompanied by the Buyers' husband Mr Lovatt and Mr Newman.
9. The Tribunal found the property to be a mobile home situated at the upper end of a sloping site to the southern side of Gloucester. The Home was well appointed.
10. At 11.00 a.m. the Tribunal held an oral hearing at the Gloucester and Cheltenham County and Family Court, Kimbrose Way, Gloucester, GL4 0LW. Both parties represented themselves.

11. Mr Newman stated that he was trying to establish the true sale price of the Home as the £10,000 declared within the sale paperwork was significantly below the open market value.
12. Mr Newman had previously offered the Seller £35,000 for the Home which she had rejected. He also stated that the Home had been offered for sale through a local estate agent for sale at an asking price of £50,000 and referred to a list of other properties on the Site sold for figures between £45,000 and £80,000.
13. He had questioned whether further undisclosed payments had been made and had asked for more evidence of the sale. The Buyer had sent him a copy of her bank statement with the appropriate entry on 21st November 2018 showing £9,000 paid to the Seller.
14. He contended that the property had not been sold 'at arm's length'.
15. Mrs Lovatt explained that she had first met the Seller in September 2018 at the Café she owns in Shurdington. In conversation the Seller had told her of the difficulties she had in selling the Home and the Buyer went to view the Home as possible accommodation for her brother.
16. Mrs Lovatt told Miss Hancock that she was living in a Camper Van at the time, having sold her Narrow Boat, and was waiting for her new Narrow Boat to be built which was likely to take many months. In passing she had said that if she had enough money she would buy it for herself but she only had £10,000 in available cash.
17. The Seller and the Buyer then came to an informal agreement that the Buyer would acquire the Home for £10,000, to include the Park owners commission, and when her new Narrow Boat was completed she would sell the Home and pay any monies received in excess of £10,000 to the Seller.
18. This was born out within the statement from Miss Hancock dated 5th August 2019 'We agreed to then put the park home back on the market in Easter 2019. This we have done.'
19. When questioned Mrs Lovatt confirmed that there was no legal agreement in place to this effect, no written document and that if anything happened to her then her representatives or beneficiaries would not be obliged to make any payment from the subsequent sale to Miss Hancock.
20. Mr Newman contended that this was not a proper sale as Mrs Lovatt can live in the Home until it is sold again. Mrs Lovatt contended that the sale price was £10,000 and that Mr Newman would receive a second commission when she moved on and the Home was sold.

The law

Mobile Homes Act 1983 Schedule 1
Sale of mobile home

- 7A (1) This paragraph and paragraph 7B apply in relation to a protected site in England.
- (2) Where the agreement is a new agreement, the occupier is entitled to sell the mobile home and to assign the agreement to the person to whom the mobile home is sold (referred to in this paragraph as the “new occupier”) without the approval of the owner.
- (3) In this paragraph and paragraph 7B, “new agreement” means an agreement-
- (a) which was made after the commencement of this paragraph, or 6 A “tribunal” means a residential property tribunal or, where the parties have entered into an arbitration agreement that applies to the question to be determined and that question arose before the agreement was made, the arbitrator.
- (b) which was made before but which has been assigned after, that commencement.
- (4) The new occupier must, as soon as reasonably practicable, notify the owner of completion of the sale and assignment of the agreement.
- (5) The new occupier is required to pay the owner a commission on the sale of the mobile home at a rate not exceeding such rate as may be prescribed by regulations made by the Secretary of State.
- (6) Except to the extent mentioned in sub-paragraph (5), the owner may not require any payment to be made (whether to the owner or otherwise) in connection with the sale of the mobile home and the assignment of the agreement to the new occupier.
- (7) The Secretary of State may by regulations prescribe procedural requirements to be complied with by the owner, the occupier or the new occupier in connection with-
- (a) the sale of the mobile home and assignment of the agreement;
- (b) the payment of commission by virtue of sub-paragraph (5).
- 7B (1) Where the agreement is not a new agreement, the occupier is entitled to sell the mobile home and assign the agreement without the approval of the owner if—
- (a) the occupier serves on the owner a notice (a “notice of proposed sale”) that the occupier proposes to sell the mobile home, and assign the agreement, to the person named in the notice (the “proposed occupier”), and

- (b) the first or second condition is satisfied.
- (2) The first condition is that, within the period of 21 days beginning with the date on which the owner received the notice of proposed sale (“the 21-day period”), the occupier does not receive a notice from the owner that the owner has applied to a tribunal for an order preventing the occupier from selling the mobile home, and assigning the agreement, to the proposed occupier (a “refusal order”).
- (3) The second condition is that—
 - (a) within the 21-day period—
 - (i) the owner applies to a tribunal for a refusal order, and
 - (ii) the occupier receives a notice of the application from the owner, and
 - (b) the tribunal rejects the application.
- (4) If the owner applies to a tribunal for a refusal order within the 21-day period but the occupier does not receive notice of the application from the owner within that period—
 - (a) the application is to be treated as not having been made, and
 - (b) the first condition is accordingly to be treated as satisfied.
- (5) A notice of proposed sale must include such information as may be prescribed in regulations made by the Secretary of State.
- (6) A notice of proposed sale or notice of an application for a refusal order—
 - (a) must be in writing, and
 - (b) may be served by post.
- (7) An application for a refusal order may be made only on one or more of the grounds prescribed in regulations made by the Secretary of State; and a notice of an application for a refusal order must specify the ground or grounds on which the application is made.
- (8) The person to whom the mobile home is sold (“the new occupier”) is required to pay the owner a commission on the sale of the mobile home at a rate not exceeding such rate as may be prescribed by regulations made by the Secretary of State.
- (9) Except to the extent mentioned in sub-paragraph (8), the owner may not require any payment to be made (whether to the owner or otherwise) in connection with the sale of the mobile home and the assignment of the agreement.

(10) The Secretary of State may by regulations prescribe procedural requirements to be complied with by the owner, the occupier, a proposed occupier or the new occupier in connection with—

- (a) the sale of the mobile home and assignment of the agreement;
- (b) the payment of commission by virtue of sub-paragraph (8).

7C (1) Regulations under paragraph 7A or 7B must be made by statutory instrument and may—

- (a) make different provision for different cases or descriptions of case, including different provision for different areas or for sales at different prices;
- (b) contain incidental, supplementary, transitional or saving provisions.

(2) Regulations under paragraph 7A or 7B are subject to annulment in pursuance of a resolution of either House of Parliament.

Consideration

The Park owner is entitled to receive a commission on the sale of the Home at the rate set by the Secretary of State. This rate is presently set at 10%.

The new occupier is required to pay the Park owner this commission

The Tribunal had to decide the price of the sale of the Home between Miss Hancock and Mrs Lovatt which took place on 21st November 2018, stated to be £10,000.

Mrs Lovatt was perfectly open that the sale price was below the open market value but that was all she could afford at the time. Miss Hancock was prepared to accept this price and it was the sale price as declared by both the Seller and the Buyer.

The intention is that the property will be resold again when Mrs Lovatt's new narrow boat has been built, the excess of the price above £10,000 achieved at that time will pass to Miss Hancock on an entirely informal basis and Mr Newman will receive a commission at the rate applicable at the time.

Determination

21. The Tribunal therefore decided that the sale price of the Home was £10,000 and the commission of £1,000 as already paid was correct.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking