

BETWEEN

ACM Ltd

APPLICANT

AND

ZXS

RESPONDENT

Date of Order:

17 June 2013

Referee:

Referee Meyer

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZXS is to pay to ACM limited the sum of \$862.50 by the 27th June 2013.

Facts

[1] ZXS contacted the Applicant (ACM Ltd) by email in November 2012 requesting a valuation of his motel premises in [a city]. After an exchange of emails clarifying what type of valuation was required, when it could be done by, and receiving an indication from ZXS of the value needed for his purposes, ACM Ltd conducted an inspection on 18 January 2013 and provided a report on 21 January 2013. ACM Ltd only charged half of the agreed fee of \$1,500 (excl GST) because it was clear that the value would not reach the level required by ZXS, so a full report was not provided. ZXS has declined to pay the fee, alleging that it was delivered outside his deadline and he did not like the amount of the valuation.

Issues

[2] The issues to be decided are:

- (i) Whether ACM Ltd delivered its report within the agreed time frame and whether the valuation was carried out with reasonable care and skill; and
- (ii) If so, what amount should be paid?

Decision

Whether ACM Ltd delivered its report within the agreed time frame and whether the valuation was carried out with reasonable care and skill

[3] I find that ACM Ltd delivered its report within the agreed time frame and with reasonable care and skill for the following reasons.

[4] ZXS states that he told Mr RS from ACM Ltd, who he corresponded with to arrange for the valuation, that it was required for a rent review due on 1 December 2012, and that he needed the report no later than 20 January 2013. He told this to Mr RS both by email and on

the phone. He should have been contacted by ACM Ltd when time was drawing out, and because the valuation came in late, it was of no use to him.

[4] However, Mr RS's emails make it clear that the firm would not be able to provide a report before Christmas 2012, that staff would return on 10 January, and that it might be another ten days or so before the report could be provided (as evidenced by the email to ZXS dated 12 December 2012). His email on 14 December repeated this, specifying that they would expect to be able to furnish the report by 20 January 2012 "as long as we can get access to the property from your lessee". ZXS's response in his return email was: "If you can do it till around 20 of Jan 2013, I am fine."

[5] KP from ACM Ltd carried out the inspection on Friday 18 January, as this was the earliest date his lessee would allow him access. The report was delivered on 21 January 2013.

[6] I have found that the report was delivered within the agreed timeframe. Even if ZXS did inform Mr RS of the urgency and that 20 January was the deadline, the emails back clearly stated the timeframe within which the report could be provided and ZXS clearly said that he was fine with that. I would have expected him to have sent another email subsequent to those on 14 January if he felt that the agreed date of 20 January was too late. As this was clearly the time frame, and it was flexible to some extent, as shown by ZXS's use of the word "around", I consider delivery of the report on 21 January to be within the agreed time frame.

[7] As to the issue of the exercise of reasonable care and skill, ZXS states that he told ACM Ltd that the valuation needed to be above a certain figure. Because the valuation was for less, the report is of no use to him and he had to go to another valuer to get a higher figure.

[8] On this point, ZXS's email of 27 November does quote a necessary figure for the purposes of requiring the tenant to pay more rent; however, in his email of 29 November Mr RS made it quite clear that ACM Ltd considered the property unlikely to value to that figure. ZXS's response was to continue with obtaining the valuation. While the report is not a full valuation, I can see that KP appears to have properly assessed the current market rental at

around the figure estimated by Mr RS. ZXS has presented no evidence that ACM Ltd is manifestly wrong in its valuation, only that the figure is not high enough or to his liking. He has presented no evidence from other valuers setting a higher figure. Accordingly, on balance, I find that ACM Ltd exercised proper care and skill in arriving at its valuation.

If so, what amount should be paid?

[9] I find that the amount claimed should be paid because ZXS agreed to a fee of \$1,500, plus GST, for the valuation. KP, sensibly, provided his report on an informal basis and charged half the agreed fee because he was aware that ZXS needed a higher figure and that as the valuation would be below that figure, it would be inappropriate to provide the full report and charge the full agreed fee.

[10] On that basis, I consider the fee to be reasonable and that ZXS should pay it without further delay.