IN THE DISPUTES TRIBUNAL **[2011] NZDT 311**

BETWEEN	**AEU Ltd**
	APPLICANT
AND	**ZVA**
	RESPONDENT
AND	**ZUZ**
	SECOND RESPONDENT

Date of Order:	20 October 2011
Referee:	Referee Reuvecamp

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the First Respondent, ZVA, and the Second Respondent, ZUZ, jointly pay the Applicant the amount of $1,188.57 on or before 28 October 2011.

Facts

[1] The Applicant acted as agent for the Respondents, as principals, for the purposes of a property management contract to manage its tenanted property at an Auckland address. The contract provided for full authority of the agent to act for the principal in respect of the property, including the taking of emergency measures at the Respondents' cost. The contract provided no specific limits as to costs or otherwise if that was to occur. An emergency event occurred in respect of a sewage drain blockage at the premises. The Applicant commissioned in consultation with the Respondents' work to be done by contractors. It rendered a bill for its expenses incurred in that regard. That bill was paid. A second bill rendered for that purpose was rejected for reasons addressed below in paragraph 7. The Respondents terminated the agency contract. The Applicant claims the amount of $1,188.57 remaining outstanding in respect of that second bill.

Law

[2] The relevant law is the law of contract, law of agency, and Consumer Guarantees Act 1993.

Issue

[3] The issue to be considered is whether the Applicant, as agent, is entitled to be compensated for the costs incurred by it with a third party in the performance of its property management services for the Respondent.

Decision

[4] An agency contract has as its main feature that, although the agent acts for its principal with a third party such as a contractor, the contract is between the third party and the principal. Therefore, the principal is entitled to the benefits of the contract but also bears the cost of any obligations incurred. Expenses incurred by the agent are to be borne by the principal. This applies as long as the agent acts within its authority as set out in its contract with its principal.

[5] The converse is also true. If a party acts as agent without any authority whatsoever, or if the agent exceeds its authority, the principal is not liable at all in the first case and in the second case is not liable for the excess. I find that nothing described in this paragraph applied in the case before me.

[6] I find that there was communication with the Respondents from the very beginning when emergency measures were required and lack of authority is not claimed by the Respondents. As stated above, they reimbursed the agent for the cost incurred in respect of the first bill. They decline to pay the cost of the second bill, which is the subject of the Applicant's claim before me.

[7] The Respondents suggest that the cost relates to work done by the contractors that may have been caused in whole or in part by one or more of their neighbours under the cross lease at the relevant site, who should contribute to payment. Further, the Respondents argue that those cost relate to work done in whole or in part outside the boundary of the relevant site for which a public authority or utility may be responsible. Finally, the Respondents claim that the Applicant should have ascertained where responsibility rests for the cost incurred by it on behalf of the respondents before commissioning the work.

[8] It is important at this stage to note that the relationship between the agent acting with contractors on behalf of the Respondents, as principals, should be distinguished from the relationship or claims the Respondents have or may have against third parties, such as the neighbours, local authority or utility. If the Respondents are confident that there are sufficient grounds for such claims they may pursue those by bringing a separate action against the relevant parties. Such a claim is, however, not part of the claim before me. Therefore, I will

only deal with the relationship between the Applicant, acting as agent for the Respondents, and the contractors.

[9] I find that the Applicant had full authority and acted in its own name with the contractors. Bills were rendered to it and dealt with. If this happens and the relationship of agency with the principal is not disclosed, the agent may become personally liable to the contractor. That was the case here. However, any expenses so incurred by the agent within its authority are recoverable from the Respondents. I find that this was in fact acknowledged by the Respondents paying the first bill. The legal principles applicable to the second bill relating to the expenses incurred by the agent on behalf of the Respondents are not any different.

[10] Although I accept that the Respondents' arguments in paragraph 7 above may have some merit in respect of possible claims against third parties, I find that they do not deprive the agent from its right to be compensated for liabilities incurred by it on behalf of the Respondents. Therefore, unless other persuasive grounds are established to resist its claim in this regard, I will allow that claim.

[11] The Respondents have also advanced the ground stated in paragraph 7 that, in essence, the Applicant did not perform its contractual obligations as it should have and was in breach of contract, thereby causing or contributing to the loss suffered by the Respondents. To recover such a loss, the Respondents have the burden of proving that the Applicant failed to exercise due care, skill and competency in the provision of its services.

[12] I find that the emergency required immediate action. This was taken. There was sufficient consultation with, and consent from, the Respondents to instruct the contractors. I find that at that stage the cause or location of the blockage causing the emergency in respect of which the costs were incurred was not known and could not have been known. Therefore, I find that the Applicant could not reasonably be expected at that stage to be able to pinpoint possibly liable third parties. These matters became relevant only once the costs of remedial measures had been incurred and the cause and location of the blockage was determined.

Therefore, I find that there is no persuasive evidence that the applicant failed to perform its contractual obligations with reasonable care, skill or competence in that regard.

[13] The Respondents also allege that the Applicant converted certain rental payments after they had terminated the agency contract by putting pressure on the tenants of the property to continue paying rent to them rather than the Respondents.

[14] On the evidence of the terms of the agency contract, I find that for the purposes of the tenancy contract, the agent was deemed to be the landlord. Matters relating to the tenancy agreement were matters between the landlord and the tenants. There was a notice period agreed for termination of the agency relationship, and, therefore, also of that arrangement. However, that notice period had not yet expired, entitling the Applicant as "landlord" to continue its relationship with the tenants until the effective expiry date of the agency contract. This included the collection of rent. I am not persuaded by evidence that the agent acted in breach of the agency contract in continuing to act as it did for the notice period.

[15] Since I have not found that the Applicant acted in breach of its agency contract with the Respondents, and the amount of the bill remains unpaid by the Respondents, I find that the Respondents should pay the amount claimed by the Applicant and order accordingly.