BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE COMMISSIONER OF ADMINISTRATION

In the Matter of	)	
	)	
NORTH STAR 1300, LLC	)	OAH No. 19-1092-CON
	)	Lease No. 2469

DECISION

I. Introduction

North Star 1300, LLC (North Star) appeals the denial of a contract claim against the State of Alaska for alleged underpayment of rent.

For many years, the State of Alaska leased a building from North Star and used it to house an office of the Division of Motor Vehicles (DMV). The lease went into holdover status for ten months beginning June 1, 2019, with the parties in open disagreement over the rental rate applicable to the holdover. North Star initiated its claim just before the holdover period began, with the total amount of the claim continuing to accrue until the State vacated the premises. Ultimately, North Star claims it was underpaid by $677,250 for the ten-month period, exclusive of interest.

On behalf of Shared Services of Alaska – Leasing, Contracting Officer Matt Moya denied the claims on August 22, 2019. North Star appealed the decision to Commissioner Tshibaka as permitted by AS 36.30.625. The commissioner delegated final decision authority to Deputy Commissioner Dave Donley and referred the matter to the Office of Administrative Hearings to conduct an evidentiary hearing or any other proceedings necessary to prepare the matter for final resolution. After a period of unsuccessful mediation, the parties submitted cross-motions for summary adjudication, which were argued on September 30, 2020.

This decision concludes that, as a matter of law, North Star's claim cannot be sustained. The outcome of Mr. Moya's decision (though not all of its reasoning) is upheld.

II. Material Facts

The back story for this case began in 2000, when the predecessor of Shared Services issued a request for proposals (RFP) to lease office and warehouse space to house the DMV in Anchorage. North Star submitted a build-to-suit proposal for a roughly 20,000-square-foot facility at 1300 West Benson Boulevard.

The RFP required an initial 108-month (nine-year) term, and required that the State be given a unilateral option to extend the lease for up to three additional 36-month terms.[1] Offerors had discretion to offer different rental rates for the initial term and the renewal periods, with the renewal rental rate to be no higher than the initial rate.[2] As is typical in build-to-suit proposals, North Star elected to recover its building cost fully during the guaranteed initial term, and then offered a discounted rate for any renewal terms.[3] Apart from the obvious economic driver to front-load the pricing in order to make sure building costs were fully recouped, the RFP did not create incentives or disincentives to structure an offer in any particular way.[4] The RFP purported to score offers based on the total cost at the end of 18 years.[5]

North Star's offer set rent at $87,075 per month in the initial term, discounted by $67,725 per month in any renewal terms.[6] Rental rates were subject to consumer a price index (CPI) adjustment over time, under terms that are not at issue in this dispute.[7]

North Star was the selected vendor at the end of the RFP process. Upon completion of the promised building, the parties entered into Lease No. 2469 on June 25, 2001, effective retroactively to June 1, 2001.[8] The lease contained two central rental terms. First, the main demise clause on the first page of the lease provided that the state would rent the defined premises "for the term of nine years . . . at and for the rental of $87,075.00 per month payable on the first day of each and every month of said term . . . ."[9] Second, covenant 3.d provided that:

> The Lessee shall have the sole option to renew this lease for three (3) additional three (3) year periods on the same terms and conditions as the original term of the lease. These renewal options may be exercised solely by the Lessee by giving the Lessor written notice prior to the expiration of each term. If the Lessee renews the lease the rental amount paid at that time shall be reduced by $67,725.00 per month for each month rented.[10]

There was also a holdover clause, as follows:

---

1 Agency Record (A.R.) 978.
2 A.R. 980.
3 *Id.* Insofar as the record is not explicit as to North Star's bidding approach, its counsel confirmed at oral argument that it recouped its construction costs in the initial nine years.
4 A.R. 1038.
5 A.R. 980. *But see* footnote 40 below.
6 *Id.*
7 A.R. 995-996; *see also* A.R. 1355 (correcting an error in the RFP's CPI provisions). The State has agreed to apply a CPI adjustment to the rental rate for the holdover period at issue in this case.
8 The lease, exclusive of attachments, is at A.R. 971-976. To avoid confusion during any appellate review, it will be mentioned here that A.R. 1070-1082 and 1220-1226 were not part of this lease.
9 A.R 971.
10 A.R. 973.

> [A]ll conditions and covenants of the lease shall remain in full force and effect during any extension hereof. Any holding over after the expiration date of this lease or any extension or renewal thereof, shall be construed to be a tenancy from month-to-month, at the same monthly rental and on the terms and conditions herein specified so far as applicable.[11]

This case, as will be seen, turns on the phrase "at the same monthly rental" in the above clause, and the phrase "for each month rented" in the previously-quoted renewal clause.

DMV occupied the premises through the initial nine-year period and the three three-year renewal options provided for under the original procurement. This 18-year, 216-month span would draw to a close on May 31, 2019.

At the end of January 2019, North Star asked Shared Services if it would be interested in another renewal.[12] Shared Services responded a week later,[13] leading to a teleconference and presentation of a State proposal on March 1.[14]

At this point, with all competitively-bid renewals having been exhausted, a renewal would have to be negotiated under AS 36.30.083, a provision that permits another ten years of renewal upon documentation that the rental offered is at least ten percent below market value. Both parties recognized this, and the ensuing negotiations focused on differing views on the best way to arrive at market value. The interchange was at times less than cordial, and little progress was made, but there was no breakdown of negotiations.[15]

On April 1, 2019, North Star broached the prospect that the lease would go into holdover status.[16] North Star took the position that a holdover would be at the rental rate of $100,024.36 per month, representing the undiscounted base rent from the initial nine-year term escalated by CPI adjustments.[17] Shared Services took the position that the holdover rate would be $31,449.07 per month, a continuation of the rent it was then paying.[18] On April 9, North Star indicated that it would be willing to proceed into the holdover period with each side reserving its rights regarding the correct rental.[19] This is what occurred, with Shared Services generating a unilateral lease amendment to support payment of rent during the holdover period at the rate it

---

11 A.R. 974 (covenant 3.j).
12 A.R. 3. There had been some prior informal discussion. Stewart Aff't ¶¶ 9-10.
13 A.R. 6.
14 A.R. 30-65 (Moya proposal and attachments).
15 A.R. 79-766.
16 A.R. 210-211.
17 *Id.*
18 A.R. 237-238.
19 A.R. 282.

advocated (augmented slightly to $32,299.36),[20] and North Star filing a timely contract claim for the $67,725.00-per-month difference between the rate the State would be paying and its own demand.[21] Both of these occurred before the holdover began.

Contracting Officer Matt Moya denied the North Star claim on August 22, 2019.[22] His reasoning was two-fold. First, he relied on the terms of the holdover clause in the lease. Second, he contended that North Star had shown "lack of diligence" in the efforts to work out an extension of the lease, had "forced the lease into holdover status," and was therefore precluded by the implied covenant of good faith and fair dealing from imposing a rent increase on the State in holdover. Shared Service has not argued the second ground in the dispositive motion practice before this tribunal, and therefore any facts that might bear on it can be left to one side.[23]

This appeal followed the contracting officer's decision, but it did not move forward immediately. The parties apparently continued to negotiate, in part under the auspices of a mediator, until Shared Services informed North Star that it was no longer interested in pursuing an AS 36.30.083 extension.[24] As had always been its right, North Star then elected to terminate the holdover tenancy on 30 days' notice, effective March 31, 2020.[25] This closed out the holdover tenancy period at ten months.

In a transaction wholly beyond the scope of this case, the parties separately negotiated a short-term rental—at a different rate—to cover a few months of transition while the State vacated the premises.[26]

III. Summary Adjudication

In general, a contract claim "appeal" to the Commissioner of Administration, if referred for a hearing, is a *de novo* proceeding.[27] Accordingly, the default path for such a proceeding is that an administrative trial is held and factual disputes are resolved based on a preponderance of the evidence. Here, however, the parties have both moved for summary adjudication, agreeing that there is no need to conduct a hearing to resolve factual disputes.

---

20 A.R. 1431-1433.

21 A.R. 1437-1439.

22 A.R. 1441-1443.

23 The factual record submitted to date falls well short of supporting this ground.

24 Brown Aff't ¶ 25. North Star's claim does not encompass, and this decision cannot address, whether delays between September 2019 and February 2020 prolonged the holdover in a manner that might give rise to a separate claim.

25 North Star Ex. 2.

26 Stewart Aff't ¶ 50; Shared Services Ex. B.

27 *See* AS 36.30.630(a); *In re Waste Management of Alaska, Inc.*, DOA Case No. 01-08 (Comm'r of Admin. 2002), at 9 (Procurement Code hearings conducted *de novo* with respect to factual issues).

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.[28] It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If facts that are undisputed establish that the moving party must prevail, the evidentiary hearing is not required.[29] In evaluating a motion for summary adjudication, if there is room for differing interpretations, all facts are to be viewed, and inferences drawn, in the light most favorable to the party against whom adjudication may be granted.[30]

Although the interpretation of a contract is ordinarily a question of law,[31] there can be underlying questions of fact, such as conflicting testimony about intent, that require an evidentiary hearing to resolve.[32] Here, however, there are no material conflicts in the limited affidavit testimony that has been submitted. All material questions can be resolved with reference only to the undisputed documentary record.

IV. Analysis

In this case, both parties agree that Lease No. 2469 supplies the rental rate for the ten-month holdover period. North Star contends that it supplies a rate of $100,024.36, while Shared Services contends it supplies a rate of $32,299.36, that is, a rate lower that North Star's claimed rate by the exact amount of the post-renewal reduction of $67,725.00. North Star's claim does not contend that the holdover was nonconsensual or wrongful, and does not seek damages. The only question to be answered, therefore, is which reading of the lease is the correct one.

A. Principles of Lease Interpretation

A lease is a contract.[33] The first step in interpreting a contract is to determine if its language is ambiguous. This is done by looking at the language as a whole and any extrinsic contextual evidence to determine whether the disputed terms "are *reasonably* subject to differing interpretations."[34] If the language is not genuinely ambiguous, it is simply enforced according to its terms. If there is true ambiguity, the tribunal proceeds to a broader, second inquiry. Then (and only then), as the tribunal seeks to deduce the reasonable expectations of the parties it may

---

28 *See, e.g., Schikora v. State, Dept. of Revenue,* 7 P.3d 938, 940-41, 946 (Alaska 2000).

29 *See Smith v. State of Alaska,* 790 P.2d 1352, 1353 (Alaska 1990); 2 Davis & Pierce, *Administrative Law Treatise* § 9.5 at 54 (3d ed. 1994).

30 *Samaniego v. City of Kodiak,* 2 P.3d 78, 82-83 (Alaska 2000).

31 *See Rockstad v. Global Fin. & Inv. Co.*, 41 P.3d 583, 586 (Alaska 2002).

32 *E.g., North Pacific Processors, Inc. v. City & Borough of Yakutat,* 113 P.3d 575, 584 (credibility determination made regarding testimony about intent).

33 *Rockstad,* 41 P.3d at 586.

34 *Id.* (quoting *Wessels v. State, Dep't of Highways,* 562 P.2d 1042, 1046 (Alaska 1977) (italics added).

apply a variety of construction principles, such as a preference for construing ambiguities against the drafter and another preference for construing ambiguities against the lessor.[35] In the present case, we will not reach the second stage.

B. Reading the Lease's Plain Language

There were three components to the rent under this lease. One was the base monthly rental rate of $87,075. The second was the CPI adjustment to that rate, a component not at issue in this case. The third was the reduction to occur upon renewal.

The renewal clause provided: "If the Lessee renews the lease the rental amount paid at that time shall be reduced by $67,725.00 per month for each month rented."[36] The trigger for the reduction was "[i]f the Lessee renews the lease." That trigger occurred in 2010, when the State first renewed. Once the trigger occurred, the reduction was not time-limited. The language did not say "for the duration of the renewal term." Instead, the reduction was to apply "for each month rented." The State rented the premises through three renewal terms plus—by consensual holdover—an additional ten months beyond, for a total of 118 months. The language is perfectly clear that the reduction applied for all of those "month[s] rented."

If there were any uncertainty about this—and there is not—the holdover clause would put it to rest. Holdover rent was to be "at the same monthly rental."[37] It was not set at "the base monthly rental" or "the monthly rental that applied prior to renewal." It was simply the "same" monthly rental, which can only reasonably be construed to mean the same rental the State was paying. The provision is wholly unremarkable; it aligns with standard landlord-tenant law that would apply by default in the absence of a lease provision.[38]

The single, once-and-for-all trigger for a shift to the discounted rental rate is sensible in the context of a build-to-suit lease. The idea of higher rent in the firm initial term is to ensure that building costs are recouped. Once that is done, the basis for extra rental does not recur, as long as the existing tenant continues to occupy the premises that were specially built to its specifications. It would be odd, in fact, to return to a rate designed to amortize the landlord's construction investment years after that investment had already been amortized. Thus, reading the language as written produces an entirely reasonable result.

---

35 *Id.*

36 A.R. 973.

37 A.R. 974 (covenant 3.j).

38 *See* Rest. (2d) of Property, Landlord & Tenant § 14.5 & comment (unless proof is offered of a different market value, the rental rate that will apply in an improper holdover is the previous rental rate).

The case is truly as simple as the above suggests. But let us turn to the counterarguments North Star has interposed.

C. North Star's Arguments

North Star points out that, in scoring bids, the RFP calculated a "Total Renewal Reduction" that was deducted in arriving at the "Grand Total Price" used in scoring bids.[39] North Star suggests that by calculating a reduction only during the renewal terms, the calculation is inconsistent with application of the reduction in a holdover occurring beyond the final renewal term.

There is nothing inconsistent here. The RFP also did not calculate a base rent beyond the renewal terms. This does not indicate that either item would be inapplicable in a consensual or nonconsensual holdover; it just means that in comparing cost between proposals, the RFP looked only at the rental periods the State would have a unilateral contractual right to receive.[40]

North Star next argues that "[p]ursuant to Covenant 3.d, the renewal reduction would only apply during the *renewal* periods and up to 108 months."[41] But this is precisely what Covenant 3.d does not say. It simply says that if the State ever renews the lease, then "at that time"—that is, at the time of renewal—the "rental amount . . . shall be reduced." And the reduction continues "for each month rented." A holdover month is a month rented. The clause does not remotely allude to a 108-month limit on the duration of the reduction.

North Star moves on to argue from a recent federal case, *Stromness MPO, LLC v. U.S.,*[42] involving an inadvertent holdover of a small amount of space whose lease was expiring, which came about as a result of improper construction of a dividing wall. But *Stromness* stands only for the unremarkable principle—which has been applied in this case as well—that "[a] holdover

---

39 Appellant's Motion and Memorandum for Summary Adjudication (NS Motion) at 11; *see also* A.R. 980.

40 Truth be told, the RFP methodology contained a colossal mathematical error and it did properly calculate the true grand total price. To arrive at total price for the potential 18-year term, the RFP should have multiplied the base rent by 216 months, and then applied the reduction to 108 months. Instead, it multiplied the base rent by only 108 months. The result was an understatement of North Star's total 18-year price under the lease by well over $9 million. The erroneous methodology opened this procurement to potential gamesmanship by bidders. To use an extreme example, an offeror could propose a Monthly Price of $200,000 and a Monthly Renewal Reduction of $200,000. The RFP's methodology would assess this offer as having a "Grand Total Price" of zero dollars, as though the building were offered for free. A cost of zero dollars would then be "used for evaluation purposes" (A.R. 980). Yet at the end of 18 years, the offeror would actually have $21.6 million in its pocket, plus CPI adjustments. This opportunity for gamesmanship, the full dimensions of which will not be explored here, has no bearing on the current issue of contract interpretation, however.

41 NS Motion at 11 (italics in original). The argument is repeated in different words at page 16 of the NS Motion.

42 134. Fed. Cl. 219 (2017).

tenancy is governed by the terms of the expired lease, unless it is replaced by statute, a new agreement, or an express holdover provision in the original lease."[43] And in *Stromness* (involving a lease with no holdover clause), the court proceeded to apply the last rental rate in effect before the expiration of the lease, not a new and higher rate advocated by the landlord.[44] None of this bolsters North Star's position.

North Star then turns to the holdover clause in Covenant 3.j of Lease No. 2469. North Star says that the phrase "same monthly rental" in that clause must mean the pre-2010 base rental plus CPI adjustments, because "the written terms of the Lease leave no question that the Monthly Renewal Reduction only applied during the specified renewal term."[45] Yet once again, that is exactly what the written terms did not do. The terms required the reduction to be applied "for each month rented" after the occurrence of the triggering condition, which was the first exercise of a renewal option. It did not address how many such months there could be.

North Star's opening brief makes some additional arguments predicated on the notion that the lease terms are ambiguous; the arguments are aimed at resolving the purported ambiguity.[46] The holding that the terms are not ambiguous will make it unnecessary to address most of these arguments,[47] but two of them merit a brief discussion.

North Star argues that the "same monthly rental" cannot mean the discounted rental the State was already paying, because "[s]uch an interpretation would render the $7,314,000 cap on reduced rent meaningless."[48] This would be a telling argument indeed, if there were such a cap. But there is not. $7,314,000 is not even mentioned in the lease.[49] The figure only appears on North Star's Price Offer Page submitted pursuant to the RFP, where its function is simply to quantify the total amount of reduction if the lease is extended 108 months, allowing the various offerors' price proposals to be compared.[50] North Star's "cap" is pure mirage.

Finally, North Star's opening brief argues:

> To the extent the State objected to paying [$100,024.36] beyond the expiration of the final renewal term, it was able to do so either by negotiating for the extension of the Lease in accordance with AS 36.30.083 or by vacating and surrendering

---

43 *Id.* at 279.
44 *Id.* The result paralleled the Restatement provision cited in footnote 38 above.
45 NS Motion at 13.
46 NS Motion 14-18.
47 In addition, some of them repackage arguments that have already been addressed above, notably in text accompanying footnote 41.
48 *Id.* at 16.
49 *See* A.R. 971-975.
50 A.R. 980.

> possession of the Property back to North Star. It failed to do either and now seeks to reap a financial benefit at North Star's expense.[51]

The suggestion of sharp dealing is inappropriate. As discussed on pages 3 and 4 above, this is a case where both parties went into a holdover consensually and with open eyes, both willing to defer determination of the rental rate to subsequent litigation and to live with whatever the result turned out to be.

In opposing Shared Services' cross-motion, North Star adds a new argument. It contends that the multiplied-out total of $7,314,300 for 108 months of Monthly Renewal Reduction represented the extent of the "offer that it made to the State" and was all that "the State was capable of accepting."[52] There are many flaws to this reasoning, but two stand out: (1) the $7,314,300 on the offer page was expressly identified as a calculation of how much reduction would occur during renewals, and nothing more, and (2) North Star subsequently offered to sign, and did sign, a lease containing Covenants 3.d and 3.j, and hence the State was unquestionably capable of accepting the benefits those provisions contained.

At oral argument, North Star appeared to contend that the phrase "monthly rental" in Covenant 3.j is a defined term, with a definition that refers directly and solely to the "Monthly Price" on the RFP's Price Offer Page.[53] North Star then pointed to the list of definitions at Agency Record (A.R.) page 1274, specifically referring to Definition 9.

The definitions at A.R. 1274 were part of a set of proposed lease provisions included in the RFP. Definition 9 was not, in fact, incorporated in the lease that North Star and the State later executed. More fundamentally, it is not a definition of "monthly rental" at all. It is a definition of "Base Monthly Rental Rate." That the "Monthly Price" on the RFP's Price Offer Page is the *base* monthly rental rate—before adjustments—is completely unremarkable. That fact in no way indicates that "monthly rental," used *without* the word "base," can only refer to the "Monthly Price" at the beginning of the rate calculation.

Having reviewed all of North Star's arguments, we return to the plain language of the lease. In *Rockstad v. Global Financial and Investment Co.,*[54] the Alaska Supreme Court not only held that unambiguous lease language should be enforced as written, but it also laid out a good example of how ambiguity occurs. The *Rockstad* lease was ambiguous because it was at war

---

51 NS Motion at 18.

52 Appellant's Opposition to the State's Motion for Summary Adjudication and Reply In Support of Motion for Summary Adjudication, at 4.

53 Recording file 19-1092-CON OA 093020 at 6:00 – 7:15.

54 *Supra* note 31.

with itself: interpret it one way, and two provisions would conflict with each other; interpret it another way, and a whole section would become "utterly superfluous."[55] There is no such internal inconsistency here; all of North Star's claims of superfluity or tension between provisions prove, on examination, to be chimerical.

V. Conclusion

We are left with a lease that started with a high monthly rental rate that was to last for nine years. Upon the occurrence of one condition—renewal at the end of the nine-year term—the monthly rental thereafter was to be calculated using a $67,725 deduction for each month rented. The ten months of the consensual holdover at issue in this case were months rented, occurring after fulfillment of the single condition. The $67,725 deduction was therefore part of the rental calculation for those months.

Shared Services' motion for summary adjudication is granted. North Star's motion for summary adjudication is denied. The denial of the contract claim of North Star 1300, LLC on Lease No. 2469, filed May 30, 2019, is sustained on the basis set forth above.

DATED this 30th day of November, 2020.

By: *Signed*
Christopher Kennedy
Administrative Law Judge - Tax

Adoption

The undersigned, by delegation of the Commissioner of Administration, adopts this Decision and Order as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this Decision.

DATED this 18th day of December, 2020.

By: *Signed*
Dave Donley
Deputy Commissioner of Administration

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

[55] 41 P.3d at 587-88.