

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

716 WEST FOURTH AVENUE, LLC,

Appellant,

vs.

LEGISLATIVE COUNCIL,

Appellee.

Case No. 3AN-16-10821CI

Order Denying 716 West Fourth Avenue, LLC's Motion for Hearing De Novo

I. FACTS AND PROCEDURAL HISTORY

716 West Fourth Avenue, LLC (716) was the lessor of an office building located in downtown Anchorage, Alaska. The Legislative Affairs Agency (LAA) was a tenant of the building under a lease entered into in 2004, in which Alaska legislators and the Legislative Information Office maintained offices. Seeking to secure more space, in 2013 LAA approached 716 about upgrading the building. Opting for a full renovation of the facility, the Legislative Council entered into a lease extension which set the level of renovations to be completed, the schedule within which 716 would complete them, and a fixed lease rate for ten years. 716 completed the renovations.

In March of 2015, the owner of one of the neighboring buildings filed suit challenging the lease extension, arguing that it was invalid. The court ruled that the

lease was in fact invalid. Concluding that it was forced to vacate the building due to the invalid lease, the legislature vacated the building.

After the legislature vacated the building, 716 lodged a contract claim with the legislature's Procurement Officer on July 8, 2016, seeking payment of \$37,016,021 based on estoppel and 716's reliance on LAA's representations. The Procurement Officer denied 716's claim on October 6, 2016. 716 appealed that decision to the Legislative Council Chair and requested a hearing. Without holding a hearing, the Legislative Council voted to adopt the Procurement Officer's decision as its final decision on November 21, 2016. 716 appealed to the superior court.

Believing that factual issues remain for the superior court to resolve on appeal, 716 moved for a trial de novo. The Legislative Council opposed 716's motion, arguing there are no material factual issues that would require a hearing for proper resolution. The Court held oral argument on 716's motion on May 19, 2017, where the parties addressed whether material facts remain to be determined and if so whether it is appropriate for the superior court acting as appellate court to make the necessary factual findings based on a trial de novo or whether the Court should remand the case to the Procurement Officer. The Court now addresses 716's motion.

II. DISCUSSION

716 requests a trial de novo. A trial de novo is appropriate when certain issues are not within the expertise of the reviewing body, the present record is inadequate, the procedures of the administrative body are inadequate, the agency was biased, or the

agency excluded important evidence.¹ Normally however, the court will review an agency decision on the record.² "A trial de novo is a departure from the norm."³

The Court finds that this case does not present the exceptional circumstances in which a trial de novo would be warranted. Further, the Court finds there are significant questions of law that must be resolved before any additional findings of fact are made. First resolving the questions of law is appropriate because the resolution of those issues may resolve the case. The record is adequate for the Court to rule on these legal questions. To the extent there are questions of fact or mixed questions of fact and law that remain at issue after the Court resolves the questions of law, the Court will decide whether to remand the case to the Procurement Officer to make any necessary factual findings or hold its own evidentiary hearings. Proceeding in this way will allow remaining factual issues, if any, to be more narrowly defined.

III. CONCLUSION

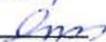
716's Motion for Hearing De Novo is DENIED. The parties should proceed with briefing the issues on appeal according to the appellate rules.

DATED at Anchorage, Alaska, this 31ST day of May 2017.



MARK RINDNER
Superior Court Judge

I certify that on 05/31/2017 a copy was sent to:

Feldman Langberg Cuddy


Administrative Assistant

¹ See *Treacy v. Municipality of Anchorage*, 91 P.3d 252 (Alaska 2004).

² *Id.* at 270; *City of Fairbanks Mun. Utils. Sys. v. Lees*, 705 P.2d 457, 460 (Alaska 1985).

³ *Pacifica Marine, Inc., v. Solomon Gold, Inc.*, 356 P.3d 780, 794 (Alaska 2015).