

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL**

TRO AVENUE OF THE ARTS, LP,	:	AUGUST TERM, 2009
	:	
Plaintiff,	:	NO. 02305
	:	
v.	:	COMMERCE PROGRAM
	:	
THE ART INSTITUTE OF PHILADELPHIA,	:	Control Nos.: 10022235, 10022390
LLC, GREGORY S. SOFFIAN, and STUDLEY,	:	
INC.,	:	
	:	
Defendants.	:	
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THE ART INSTITUTE OF PHILADELPHIA,	:	JANUARY TERM, 2010
LLC,	:	
Plaintiff,	:	NO. 03204
	:	
v.	:	COMMERCE PROGRAM
	:	
TRO AVENUE OF THE ARTS, LP,	:	Control Nos.: 10013382, 10031553
	:	10022240
Defendant.	:	

ORDER

AND NOW, this 14th day of May, 2010, upon consideration of the Preliminary Objections of The Art Institute of Philadelphia, LLC (“AIP”), Gregory S. Soffian, and Studley Inc. to TRO Avenue of the Arts, LP’s (“TRO”) Second Amended Complaint, the response thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that the Preliminary Objections are **SUSTAINED**, and all of TRO’s claims are **DISMISSED**.

Upon consideration of TRO’s Preliminary Objections to AIP’s Petition to Confirm Award, AIP’s Preliminary Objections to TRO’s Preliminary Objections, the responses thereto,

and all other matters of record, it is **ORDERED** that both sets of Preliminary Objections are **DISMISSED** as **MOOT**.

Upon consideration of AIP's Petition to Confirm Award, the response thereto, and all other matters of record, it is **ORDERED** that said Petition is **GRANTED**, and the Fair Market Rent for purposes of the renewed Lease between the parties is **CONFIRMED** as the mean of the two closest rental determinations made by the parties' brokers on July 17, 2009.

BY THE COURT:

ARNOLD L. NEW, J.

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OPINION

Plaintiff TRO Avenue of the Arts, LP (“TRO”) is the landlord, and defendant The Art Institute of Philadelphia, LLC (“AIP”) is the tenant, under a commercial lease agreement (the “Lease”). The initial term of the Lease expired September 30, 2009, and AIP exercised its option to renew the Lease. As part of the renewal process, the parties had to determine the “Fair Market Rent” for the leased premises.¹ Since the parties could not agree, they had to resort to the process for determining Fair Market Rent, which is set forth in the Lease:

After receipt by Landlord of Tenant’s Renewal Notice, Landlord and Tenant will have a period of twenty (20) days within which to agree on the Fair Market Rent. . . . If Landlord and Tenant are unable to agree for any reason on the Fair Market Rent within said twenty (20) day period, then the parties agree that the current Fair Market Rent will be based upon an amount as determined by

¹ Second Amended Complaint (“SAC”), Ex. A (Lease), ¶ 3(a)(2).

a board of three (3) licensed real estate brokers. Landlord and Tenant shall each appoint one (1) broker within seven (7) days after expiration of the twenty (20) day period, or sooner if mutually agreed upon, satisfying the requirements set forth below. The two so appointed shall select a third within seven (7) days after they both have been appointed (if they are unable to do so, the same shall be appointed by a court of competent jurisdiction by motion of either Landlord or Tenant). Each broker shall be licensed in Pennsylvania as a real estate broker, specializing in the field of commercial leasing in Philadelphia, Pennsylvania, having no less than five (5) years experience in such field, and recognized as ethical and reputable within his or her field.

Each broker, within seven (7) days after the third broker is selected, shall submit his or her determination of the Fair Market Rent. The current Fair Market Rent for purposes of this Lease shall be the mean of the two closest rental determinations. In arriving at their individual determinations of Fair Market Rent, each broker shall consider the standard set forth in Paragraph 3(c) [of the Lease] and shall analyze all the components of the Lease, and apply to them the current market factors.²

TRO selected as its broker Jonathan Stavin, who is a licensed real estate broker. AIP selected as its broker Paul Garvey, who is a licensed real estate salesperson. Stavin and Garvey selected defendant Gregory S. Soffian as the third broker. Soffian is also a licensed real estate salesperson, rather than a broker.

TRO, AIP, and Soffian entered into a Letter Agreement modifying the renewal rent valuation provisions of the Lease, and Soffian agreed to comply with the modified terms of the Lease. The Letter Agreement specifically provided:

Landlord and Tenant acknowledge that Mr. Garvey may act as Tenant's broker and that Mr. Soffian may act as the "third broker" notwithstanding the fact that these individuals are licensed by the Commonwealth of Pennsylvania as real estate salesmen and not as real estate brokers, and the Fair Market Rent determined by Mr. Stavin, Mr. Garvey and Mr. Soffian shall be binding on Landlord and Tenant pursuant to the terms of the Lease. Landlord and Tenant further acknowledge that Mr. Soffian is not a licensed appraiser; and Landlord and Tenant each hereby waive and release any claim that either of them may have against Mr. Soffian and/or [his employer, defendant Studley, Inc.] arising out of, or with respect to, Mr. Soffian's participation in the Fair Market Rent determination as described herein and contemplated hereby, except in connection

² SAC, Ex. A, ¶ 3(c).

with any fraud, malfeasance or other misconduct on the part of Mr. Soffian or any other employee of Studley.³

The three brokers arrived at a Fair Market Rent value on July 17, 2009. TRO, the Landlord, did not agree with their conclusion, nor with the process by which they reached it. On August 19, 2009, TRO filed the first of these consolidated actions against AIP, Soffian, and Studley to rescind the Letter Agreement and to void the brokers' Fair Market Rent valuation. AIP, Soffian, and Studley filed Preliminary Objections claiming TRO's filing of this action was untimely. Defendants are correct.

In Pennsylvania, a party who wants to contest a common law arbitration award must file its petition to vacate or modify the arbitration award within thirty days after the award was rendered.⁴ Likewise, a party challenging an appraisal must file it within thirty days.⁵ An "appraisal" is

A valuation or an estimation of value of property by disinterested persons of suitable qualifications. The process of ascertaining the value of an asset or liability that involves expert opinion rather than explicit market transactions.⁶

The Fair Market Rent valuation undertaken by the three brokers was an "appraisal." As an appraisal, it is akin to an arbitration and governed by the rules governing common law arbitrations.⁷ TRO was required to file this action within thirty days of the brokers' determination of Fair Market Rent. TRO filed this action challenging the brokers' valuation

³ *Id.*, Ex. B, ¶ 7.

⁴ 42 Pa. C. S. § 7342(b).

⁵ Riley v. Farmers Fire Ins. Co., 735 A.2d 124, 130 (Pa. Super. 1999).

⁶ Black's Law Dictionary, p. 100 (6th ed. 1990).

⁷ See Riley, 735 A.2d at 130.

thirty-three days after the brokers reached their decision. Therefore, TRO's claims must be dismissed as untimely.

AIP filed the second of these consolidated actions to confirm the brokers' Fair Market Rent award. Since AIP's Petition was filed more than thirty days after the broker's determination of the Fair Market Rent, this court must confirm their award.⁸

CONCLUSION

For all the foregoing reasons, TRO's Complaint objecting to and seeking modification or rescission of the brokers' award is dismissed, and AIP's Petition to Confirm the award is granted.

BY THE COURT:

ARNOLD L. NEW, J.

⁸ 42 Pa. C. S. § 7342(b).