EMPLOYMENT TRIBUNALS

Claimant: Mr J Morrell

Respondent: Manchester Money Ltd

Heard at: Manchester **On:** 7 June 2022

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: In person
Respondent: Mr Hoyle, legal Consultant

JUDGMENT

The judgment of the Tribunal is that the claims of the claimant are dismissed.

REASONS

1. The claimant brought financial claims against the respondent, and these had been identified and set out in paragraphs 10 and 11 on page 3 of a detailed record of a preliminary hearing which had been held by Employment Judge Allen on 16 June 2021. The Tribunal specifically confirmed with the claimant today that those were the claims which he was pursuing.

2. At an earlier preliminary hearing held again before Employment Judge Whittaker the claimant had not prepared or sent to the Employment Tribunal any written statement of evidence despite conceding on the previous occasion that the directions to do so had been made perfectly clear. Despite the time which had elapsed since the last preliminary hearing when the claimant was judged to have been a worker during the time of his work relationship with the respondent, the claimant had still not

taken the opportunity to prepare and submit any written statement explaining the basis on which he was pursuing the financial claims.

3. The Tribunal suggested to the claimant that the only written term of the contract between the claimant and the respondent which could assist the claimant was at page 66 and was numbered paragraph 5.1.2. This indicated that the written contractual basis for the claimant to receive payment from the respondent was on the basis of "contracts arranged by the Registered Individual". Following discussions with the claimant and having been given the opportunity to identify any other term of the written contract which the claimant felt was relevant, the claimant conceded that the only relevant written term was paragraph 5.1.2. However, the claimant then went on to concede that none of the six claims which the claimant was pursuing for a procuration fee had actually been completed by the date of termination of the written contract between the claimant and the respondent. That date was 3 July ,

4. Equally the claimant conceded that none of the three broker fee claims which the claimant was pursuing, and which were listed at paragraph 10 as above , had actually received mortgage offers by the date of termination, 3 July 2020. It was suggested therefore to the claimant by the Tribunal that his claims must therefore fail if the claimant was relying on the written terms of the contract between the claimant and the respondent because the claimant was unable to satisfy the specific requirements of paragraph 5.1.2. The claimant conceded that this was the case.

5. The Tribunal therefore explored with the claimant the possibility that there were other terms of the contract between the claimant and the respondent, outside the written terms of the contract, which would enable the claimant to successfully pursue his claims. The claimant had indicated at an earlier hearing that he would rely upon an oral agreement which he said existed between himself and the respondent company as a result of specific oral promises and assurances which had been issued to the claimant by the Managing Director of the respondent company. However, when giving evidence to the Tribunal today, on oath, the claimant reflected on that evidence and changed his mind and indicated that he was not in fact relying upon an oral discussion between himself and the Managing Director. Any suggestion therefore that there was an oral agreement which would enable the claimant to succeed in connection with his financial claims was therefore withdrawn by the claimant.

6. Instead, for the first time today, the claimant indicated that he was instead relying upon the content of an email at page 154 in the bundle which the claimant said was (in his opinion) a written agreement between himself and the respondent. In that email the respondent indicated that the claimant would be entitled to payment of fees in two specific sets of circumstances. The first was if the claimant was able to "get cases to offer". The claimant conceded however that in respect of the financial claims that he was pursuing that none of those reached the stage of a mortgage offer by the date of termination, and that on that basis the specific requirements offered and imposed by the respondent had not been met. The claimant could not succeed on that basis.

7. The second possibility was that the claimant would become entitled to payment of fees if he was able to "get cases at least as close to offer as possible".

8. The Tribunal again points out in this Judgment that even though the claimant was raising this as the basis of his claims for the first time, the claimant had not produced any written statement or any evidence in respect of any of the claims which would indicate that in the opinion of the claimant any of those cases had "got at least as close to offer as possible". The claimant acknowledged that he had not submitted any written statement. Furthermore, when giving evidence today the claimant confirmed that he was not able to provide any oral evidence, on oath, to the Employment Tribunal today to indicate how any of those cases met that second requirement imposed by the respondent. The claimant conceded that he was not able, on the basis of any evidence, to show that he met that requirement.

9. The Tribunal then, understandably, challenged the claimant as to the basis on which the Tribunal was being invited to include that there was a contractual obligation on the part of the respondent to make any payment to the claimant. The claimant indicated that he wanted to rely upon the content of a text message which appeared at page 252 in the bundle. The claimant said that a comment which had been made by a representative of the respondent that "all cases are fine" could only be interpreted in one way as meaning that all the cases which had been running by the claimant as at the date of termination of his contract met the requirement that they had got at least as close to offer as possible. The Tribunal refused to accept that those words were only capable of that interpretation. The Tribunal was extremely troubled by the fact that there was no copy of any earlier texts which would enable the Tribunal to put that comment made by the respondent into some form of context. The Tribunal therefore concluded that the words "all cases are fine" was capable of meaning many things. In the absence of any context, and taking into account the length of time that the claimant had had to prepare and present his case on this basis and therefore to submit to the Tribunal and include in the bundle any previous text messages which would have put the comment into context, the Tribunal refused to conclude that the comment "all cases are fine" could in any way satisfy the Tribunal that the imposed contractual requirement had been met. The claimant therefore simply could not succeed on the basis of those four words.

10. The claimant was making a claim in the sum of £220 in respect of the client by the name of Mr Fitzsimmons. The claimant said that he had been paid what he was due when a mortgage offer had been made but claimed that he was entitled to £420 as a procuration fee because he said that the case had completed in August. In any event this was after the date of termination of the contract between the claimant and the respondent. Furthermore, the claimant was not able to provide any evidence at all to indicate that the case had in fact completed in August. The evidence of the respondent was that even though the case eventually completed, it did not complete until October and the Tribunal accepted that as the case. The respondent, at the request of the Tribunal, made some enquiries during the lunch break and came back to confirm, on oath, that their records showed that the case had completed in October and not August. The claimant, despite having been given a significant length of time to produce or request an order for the disclosure of the relevant documents, produced no evidence at all to justify his claim that the case had completed in August. By contrast the respondent indicated that following the termination of the contract of the claimant, a new mortgage adviser by the same of Mr Hopkinson was appointed. The Tribunal accepted that Mr Hopkinson had to carry out a significant amount of work

before the case was completed in October. That was some 3/4 months after the contract between the claimant and the respondent ended on 3 July. The Tribunal also referred back to clause 5.2.2 at page 226 in the bundle and asked itself whether or not the contract was "arranged by the Registered Individual". The Tribunal concluded that it was arranged by a Registered Individual but that it was arranged by Mr Hopkinson and not by the claimant. In the opinion of the Tribunal, the case would not have been concluded without the work of the new adviser, and it would therefore have never reached completion. On that basis the Tribunal concluded that the claim in the sum of £220 relating to the client by the name of Mr Fitzsimmons could not be claimed by the claimant and it was therefore dismissed.

11. The claimant was then invited to indicate whether or not he believed he had any other specific evidence to support any of the other outstanding claims. The only other claim which the claimant made any reference to was the claim in connection with the client by the name of "Crawley". He made two claims, one in the sum of £175 and another in the sum of £440 as listed in the summary of the earlier preliminary hearing. The Tribunal was told very clearly by the respondent that by the time that the claimant had left he had failed to submit essential financial information relating to the mortgage application to the relevant financial institution, which was in this case the Coventry Building Society. The claimant was unable to dispute the fact that essential missing information needed to be submitted. The Tribunal was told by the respondent that it took approximately ten minutes for that information to be collated and sent off. The claimant suggested therefore that because this had apparently only taken ten minutes that on that basis he had satisfied the written term imposed by the respondent, namely that he had got the case at least as close to offer as possible. The Tribunal rejected that submission. Clearly if that information needed to be submitted, then the fact that it only took ten minutes to submit the relevant information was irrelevant. In the opinion of the Tribunal, it meant that the claimant clearly could have and ought to have submitted that financial information himself, and that would have moved the application forward. The wording imposed by the respondent was very clear. The claimant would only be entitled to payment where the case had got "as close to offer as possible". If information was missing, which the Tribunal accepted, then the claimant (The processin the opinion of the Tribunal) clearly had failed to meet that requirement which had been imposed by the respondent. On that basis the claim relating to Crawley was dismissed because the claimant could not demonstrate that there was any contractual entitlement to any such payments by the respondent.

12. In respect of the other claims, the claimant submitted no evidence at all to substantiate them. He submitted no evidence to show that any of those cases had got "as close to offer as possible". That was the only basis on which the claimant now claimed to be entitled to payment. It was therefore very clear to the Tribunal that if the claimant could not provide any evidence to support his alleged entitlement to those payments then on that basis his claims must fail. The Tribunal reminded the claimant that the burden of proof under section 13 of the Employment Rights Act 1996 was on his shoulders, and he openly acknowledged that. Clearly if the claimant was unable to provide any evidence in support of his claims then he must therefore fail to meet and satisfy the burden of proof and his claims must therefore be dismissed. It was for the claimant to prove his case. It was for the claimant to prove that he met the contractual terms entitling him to the payments which he claimed. The claimant was

unable to do that, and on that basis the remaining claims listed in paragraphs 10 and 11 of the summary of the earlier Preliminary Hearing were dismissed.

13. The respondent, through Mr Hoyle, indicated that the respondent was in any event entitled to withhold payment from the claimant as a result of the terms of clause 9 of the written contract between the claimant and the respondent. The relevant clauses and particulars of the contract were set out at page 270 onwards and related to the terms which dictated the basis on which the claimant was entitled to payments of commission. In the view of the Tribunal, the respondent was not entitled to rely on the provisions of clause 9 because they had not met the strict and clear requirements of the process. Clause 9.2.1 required the process to begin by the respondent preparing and submitting to the claimant a written list of clients and particulars of payments. The process then envisaged that by considering in detail the content of that list the claimant was entitled to dispute its accuracy and a process was then established for any areas of disagreement to be resolved. However, in the opinion of the Tribunal the whole process which was set out in clause 9 relied upon the respondent preparing and submitting a list which would then be the core of the dispute process. In the absence of such a list, and the respondent conceded that no such list had ever been prepared or sent to the claimant, then in the opinion of the Tribunal the respondent was in obvious and clear breach of the procedure which had been set out in the contract and was not therefore entitled to cherry pick the parts of the process which might benefit them. In the opinion of the Tribunal, the list and the details contained in the list were crucial to the process as it established the basis for agreement and disagreement. The list was the basis of assessment of any dispute and was never prepared or supplied to the claimant.

14. In that procedure Mr Hoyle urged the Tribunal to conclude that the appointment of a single auditor who was an employee of the respondent meant that the conclusions of that auditor then entitled the respondent to withhold payment to the claimant for monies which he may be entitled to. Again, however, the Tribunal firmly rejected that proposition. In the opinion of the Tribunal, the wording of clause 9 did not allow for the respondent to appoint an internal employee as an auditor in the event of a disagreement between the claimant and the respondent. The process, in the opinion of the Tribunal, evisaged the appointment of external auditors, either the company's accountants or alternatively a fully independent firm of accountants/auditors. That essential element of independence was entirely missing from the process which was followed by the respondent. Furthermore, the process required that the claimant would agree to the appointment of the relevant auditor and in this case there was no evidence whatsoever to indicate that the agreement of the claimant had ever been sought. There was certainly no evidence to show that the claimant had agreed to the appointment of the internal employed auditor so that his decision would be binding on the entitlement of the claimant to payments to which he claimed to be entitled.

15. The Tribunal therefore dismissed the suggestion that the respondent was entitled to withhold payment from the claimant, if he was so entitled, on the basis of the terms of clause 9 of the written contract between the claimant and the respondent.

Employment Judge Whittaker
Date: 23rd June 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
28 June 2022

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