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Fair Trading Commission
Seychelles

THE BOARD OF COMMISSIONERS

28th October 2021

CPA/INS18/88

Mr. Venkatarajan Pillay
Port Glaud

Dear Mr. Pillay,

RE: Fair Trading Commission Vs Mr. Venkatarajan Pillay (trading as Sekaar @ Port Glaud 2) – CPA/INS18/88

In accordance with Section 42(1) of the Fair-Trading Commission Act 2009, please find attached a signed copy of the ruling of the Board of Commissioners of the hearing conducted in the above-mentioned case. We trust in your expedient compliance as per the orders contained herein.

Also note that failure or refusal to comply with this ruling constitutes an offence under Section 53(1) of the Fair-Trading Act 2009. The same is reproduced below:

53 (1) A person which refuses or fails to comply with a direction or order of the commission commits and offence and is liable-

a) Where the person is an individual, to a fine not exceeding SCR 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both
b) Where the person is a person other than the individual to a fine not exceeding SCR 400,000 rupees

Moreover, you have the right to appeal against this decision. To that effect you may, **within Fourteen (14) days of this receipt of this document,** submit a Notice of Appeal setting out your grounds of appeal to:

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THE BOARD OF COMMISSIONERS

Chairperson for the Appeal Tribunal
P O Box 216,
Allied Building
Francis Rachel Street,
Mahe, Seychelles
Telephone: (248)4224881 /
Facsimile: (248)4225044
Email: john.renaud@renaudchambers.sc

Yours Sincerely,

FAIR TRADING COMMISSION BOARD OF COMMISSIONERS

Ms. Chrystal Loizeau
Assistant Registration Officer

For: Chairperson
Board of Commissioners
Fair Trading Commission

VISION2033

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER OF:

THE FAIR TRADING COMMISSION
V
MR VENKATARAJAN PILLAY
(Trading as Sekaar Port Glaud 2)

Case No: CPA/INS18/88

Complainant – Fair Trading Commission
Respondent – Mr. Venkatarajan Pillay

QUORUM:
Mr. Victor Pool – Presiding Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Mrs. Catherine Ombima– Senior Legal Officer (FTC)

For the Respondent
Mr. Venkatarajan Pillay- Owner

RULING

[1] The Fair-Trading Commission (the Commission), pursuant to Section 33(1)(j) of the Fair-Trading Commission Act, 2009 which empowers the Commission to inspect goods, conducted a routine inspection on the 04th December, 2018, at the business premises of Mr. Venkatarajan Pillay trading as Sekaar Port Glaud 2 situated at Port Glaud, Mahe (the respondent), a business and a supplier of goods as defined by Section 2(1) of the Consumer Protection Act, 2010 (the Act). The respondent holds a retailer's license number 165828 under the business name Sekaar Port Glaud 2 registered on the 09th May, 2014.

[2] During this inspection on the 04th December 2018, officers of the Commission observed several breaches of the Consumer Protection Act, 2010, namely;

- 27 types of goods amounting to 636 items for sale without displaying a price contrary to Section 20 (1) read with Section 20 (3) of the CPA 2010;
- 7 types of goods amounting to 52 items in total that were identified as passed their expiry dates contrary to Section 24 (1) of the CPA 2010
- 8 types of goods amounting to 51 items in total were identified as past their best before dates contrary to Section 24 (1) of the CPA 2010;
- 1 item was identified passed its 'Use by Date' contrary to Section 24 (1) of the CPA 2010
- Furthermore, supplying goods without including all the necessary requirement on the written record for each transaction of which, the address of the premises at which or from which the goods were supplied were not disclosed contrary to Section 25 (2) (b) read with 25 (1) of the CPA 2010;

[3] That consequently a compliance form was served on the 08th February 2019, and a compliance visit was conducted on the 15th March 2019 at the same premises.

[4] That from the observation made;

- 2 types of goods amounting to 17 items (SCR 831) were found on sale with labels/information not in plain language contrary to Section 19 (1) (b) read with Section 19 (2) (a) of the CPA 2010;
- 10 types of goods amounting to 154 items (SCR 2,630.80) were on sale without a price displayed in relation to them, contrary to Section 20 (1) read with Section 20 (3) of the CPA 2010
- A breach of Section 25 (2) (b), (g), (h) read with Section 25 (1) of the CPA 2010, by failing to disclose the address of the premises at which or from the goods were supplied, the total price of the transaction before any applicable taxes and the amount of any applicable taxes.
- Also, the fact that some of the goods in question were food products makes it more probable than not, that the goods failed to comply with the general safety requirements contrary to Section 50 (1) (a) read with Section 50 (2) (c) of the CPA 2010

[5] Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely: -

- Section **19(1) (b)** read with Section **19(2) (a)** which provides that "*Where a person is required in terms of this Act or any other written law to produce, provide or*

*display a notice, document or other visual representation to a consumer, that person shall produce, provide or display such notice, document or visual representation in plain language, if no form has been prescribed." **[19(2)** For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of a class of persons to whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to (a) the context, comprehensiveness and consistency of the notice, document or visual representation.]*

- Section **20(1)** read with Section **20(3) (a)** which provides that "*Subject to this subsection (2), a retailer shall not display any goods for sale without displaying to the consumer a price in relation to those goods." **[20(3)(a)** A price is adequately displayed to a consumer if, in relation to any goods or services, a written indication of the price expressed in the currency of the Republic is annexed or affixed to, written, printed, stamped or located on, or otherwise applied to the goods or to, any band, ticket, covering, label, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale.]*

- Section **24(1)** which provides that *"A person shall not offer to supply, display or supply any particular goods at a date later than the expiry date of the goods."*

- Section **25(1)** *"A supplier of goods and services shall provide a written record of each transaction to the consumer to whom any goods or services are supplied."*

[6] This matter was called before the Board of Commissioners for a mention. Mrs. Catherine Ombima, Senior Legal Officer of the Fair-Trading Commission, appeared on behalf of the Commission and Mr. Pillay the respondent. Board has informed that the respondent will be accepting all liabilities for the contraventions and has been requested to file written submissions of the complainant and respondent.

[7] In her submissions Mrs Ombima has urged the Board to impose penalties as set out under Section 67(1) of the Consumer Protection Act, 2010 which provides that *"Where the Commission determines after a formal hearing that a person has contravened any requirement or prohibition contained in sections the Commission may order the person, in the case of an individual, to pay a penalty of a sum not exceeding SR100, 000."* Mrs. Ombima submitted that when considering a suitable penalty, the Board shall have regard to Section 67(3) (a), (e) and (f) which states that *"In determining an appropriate penalty for the purposes of this section, the Commission shall have regard to the following (a) the nature, duration, gravity and extent of the*

contravention; (f) the degree to which the respondent co-operated with the Commission."

[8] Mrs Ombima states that following the compliance notice that was served on the respondent on the 08th February 2019 and that a compliance visit was conducted on the 15th March 2019, revealed that that respondent was still in contravention of the CPA 2010 namely,

- Section 19 (1) (b) read with Section 19 (2) (a) by displaying 2 types of goods amounting to 17 items with labels/information not in plain language;
- Section 20 (1) read with Section 20 (3) was breached because the respondent was displaying 10 types of goods amounting to 154 items in total for sale without displaying a price in relation to those goods;
- Section 25 (2) (b) (h) (g) read with Section 25 (1) by supplying goods without including all the information on the written record i.e., the address at which or from which the goods were supplied, the total price of the transaction before any applicable taxes and the amount of any applicable taxes
- Derivative from those breaches, there is a grave breach of Section 20 (1) read with Section 20 (3) of the CPA 2010, Section 25 (2) (e), (g), (h) which altogether makes the contravention serious.

[9] Mrs Ombima states that the respondent was issued with a compliance notice on the 08th February 2019, and therefore had more than a month to ensure that he had complied with what was stipulated their in. The Board should therefore take note of the behaviour of the respondent as stated under Section 67 (3) (c) of the CPA. It is also noteworthy that an extended breach of Section 25 (2) of the CPA was discovered during the compliance. There is also a new breach which was observed during the compliance visit, Section 19 (1) (b) read with Section 19 (2) (b).

[10] Mr. Pillay in his written submissions stated that, the purpose of this letter is to apologize for the notice to the Fair-Trading Commission about the Sections breached during the inspection at Sekaar Port Glaud 2.

[11] Mr Pillay states that Sekaar groups are facing man power issues where they are not able to recruit and keep employees to avoid this kind of issue and that they normally keep their shop to meet the Fair-Trading Commission compliance but due to lack of man power they are in problems. He states that they are trying to settle this man power issue to avoid these kinds of circumstances and that kindly give us a chance to prove that they are genuine traders and to please help them provide concession in the matter of a penalty since they are huge amounts which the shop will not be able to recover from.

[12] The Board has deliberated on the matter and hereby finds as follows. Based on the evidence before it together with the respondent's admission the Board of Commissioners hereby finds the respondent, Mr. Venkatarajan Pillay, trading as Sekaar Port Glaud 2, to be in contravention of Section 19 (1) (b) read with Section 19 (2) (a), Section 20(1) read with Section 20(3), Section 24 (1), and Section 25(2) (b) (g) (h) read with Section 25 (1) of the Consumer Protection Act, 2010. Section 30(1) of the Fair-Trading Commission Act, 2009 provides that *"The Commission may initiate a complaint against an enterprise."* Furthermore, Section 33(1) of the same Act provides that *"For the purpose of the performance of its functions under this Act or any written law that the Commission shall have power to (i) inspect goods; and (j) to do all necessary and proper acts in the lawful exercise of its powers or the performance of its functions."* The Board is of the unanimous view that this act by the Commission was "necessary and proper" in exercising their powers in the performance of its functions.

[13] The Board, in deciding on a suitable penalty, has considered the mitigating factors put forth by the respondent as well as the submissions of Mrs Ombima for the Commission. The Board takes notice that the respondent is not a first-time offender and that they have accepted the breaches thus not wasting the Board's time. The Board also takes notice that the volume of items found in contravention of the Consumer Protection Act, 2010 was high. Consequently, the Board shall impose a fine on the respondent in accordance with Section 67(1) of the Act for the above contraventions in the following manner: -

- **For the contravention of Section 19 (1) (b) read with Section 19 (2) (a) the sum of SCR 3,000;**
- **For the contravention of Section 20(1) read with Section 20(3) the sum of SCR 6,000;**
- **For the contravention of Section 24 (1) the sum of SCR 5,000;**
- **For the contravention of Section 25(2) (b) (g) (h) read with Section 25 (1) the sum of SCR 4,000;**

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than sixty (60) calendar days from the date of receipt of this ruling.

[14] The parties are free to appeal against this ruling to the Appeal Tribunal *(See Section 44 of the Fair-Trading Commission Act, 2009 and Section 77(1) of the Consumer Protection Act, 2010).*

We rule accordingly.

Pronounced by us on this 28th day of October, 2021.

Mr. Victor Pool
Commissioner
(Presiding)

Mr. Michael Nalletamby
Commissioner

Mrs. Jenna Thelermont
Commissioner