THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
V
RAVICHANDRAN CHETTY
NAGARAJAN CHETTY
(trading as Sri Vignesh Mini Shop)

Case No: CPA/INS18/24

Complainant – Fair Trading Commission
Respondents – Ravichandran Chetty
Nagarajan Chetty

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

For the Complainant
Ms. Nathalie Young – Legal Officer (FTC)

For the Respondents
Mr. Ravichandran Chetty – 1st Respondent

RULING

[1]The Fair Trading Commission (the Commission) conducted a routine inspection pursuant to Section 33(1)(j) of the Consumer Protection Act, 2010 (the Act) on the 17th January, 2018, at the business premises of Ravichandran Chetty and Nagarajan Chetty trading as Sri Vignesh Mini Shop situated at Mont-Buxton, Mahe (the respondent), a registered and licensed business and a supplier of goods as defined by Section 2(1)(a)(i) of the Act. During the inspection officers of the Commission observed 1 product (6 items) on display and being offered for sale with labels which contained information that were not in plain language contrary to Section 19(1)(b) of the Consumer Protection Act, 2010. Moreover, the officers observed 242

products (2556 items) being offered for sale without their prices being displayed contrary to Section 20(1) of the same Act. Further, 19 products (199 items) were found to be on display for sale past their expiry date contrary to Section 24 of the Act by virtue of which, together with the contravention of Section 19(1)(b) also contravenes Section 50(1)(a) of the act by offering for sale goods which do not meet the necessary safety requirements. 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 **50(1)(a)** read with Section **50(2)(a)** which provides that *"A person shall not in trade or commerce supply any consumer goods which fail to comply with general safety requirement."* ***[****50(2)(a) For the purposes of this*

section, consumer goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances, including the manner in which, and the purpose for which, the goods are being and would be marketed, their composition or structure, the use of any mark in relation to the goods and any instructions or warnings which are given or would be given in respect to the keeping, use or consumption of the goods.]

[2]The respondent was summoned to appear before the Board of Commissioners for mention on 30th October, 2018. On that date the respondent confirmed that he has received the case docket and will be accepting all liability in relation to the complaints filed before the Board. The respondent explained that during the time of the inspection his shop had just been burgled and he had lost about SR85,000 in the incident and moreover he has a child who is unwell. The respondent stated that because of all the problem he was facing he was distracted which caused him to neglect his shop but he has since then taken necessary measures to remedy all the issues detected during the inspection. The respondent then confirmed that he understood the consequences of accepting the charges and prayed for leniency given that he had just received a loan for the Small Business Finance Agency (SBFA) to help him get back on his feet which he has to repay a sum of SR4,600 monthly. The respondent assured the Board that this incident will not recur. Ms. Nathalie Young, Legal Officer representing the Commission, moved as per the contraventions in the notice of complaint and made an application to file written submissions on penalties which the Board granted.

[3]Ms. Young 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."* She submitted that when considering a fair and appropriate penalty the Board should 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; (e) the level of profit derived from the contravention; (f) the degree to which the respondent co-operated with the Commission."*

[4]Ms. Young first addressed the nature, duration, gravity and extent of the contravention. She submitted that the products observed as expired were food items, baby soap, health care and beauty products. This raises a serious health risks concern to consumers who could have purchased and consumed or use those products,

possibly resulting in allergies, food poisoning and others. She also pointed out that all of the products in contravention of Section 24 had been expired between the years of 2016 and early 2018 raising the risk of consumers purchasing and consuming those products and this also indicates the possible profit the respondent could have derived from those products and that he in fact intended to make a profit from those products given that he had not discard them after their expiry date. In addition, it was pointed out that prior to this routine inspection the Fair Trading Commission was part of a joint inspection with the Seychelles Bureau of Standards whereby the respondent was found to be in contravention of Section 20 and Section 24 of the Consumer Protection Act, 2010. The respondent received a circular from officers of the Commission educating him on the requirements of the Consumer Protection Act, 2010 and therefore with this knowledge the respondent could have taken reasonable steps to avoid contravention of the Act. Ms. Young also submitted that the number of items found in contravention of the Consumer Protection Act was quite high, for instance, 2556 items were being displayed for sale without a price affixed to it and 199 items were being offered for sale past their expiry dates. Ms. Young was of the opinion that this increased the gravity of the matter especially considering the breach of Section 20 meant the respondent had great leeway the respondent had to sell goods at different prices to different consumers. She concluded by submitting that the respondent had co-operated with the Commission and accepted all liability before the Board therefore not wasting the Board's time.

[5]Based on the evidence before it and the respondent's admission the Board of Commissioners hereby finds the respondents, Ravichandran Chetty and Nagarajan Chetty trading as Sri Vignesh Mini Shop 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 and Section 50(1)(a) read with Section 50(2)(a) of the Consumer Protection Act, 2010. The Board has considered all the mitigating factors put forth by the respondent as well as the submissions of Ms. Young. The Commissioners take note that the respondent is a first-time offender before the Board and is sympathetic to his personal struggles but the extent and gravity of the contraventions are too great to be swept under the carpet. Consequently, the Board shall impose a fine on the respondents 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 SR500;**

- **For the contravention of Section 20(1) read with Section 20(3) the sum of SR20,000;**

- **For the contravention of Section 24 the sum of SR6,000;**

- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR6,000.**

All payments are to be made by the respondents at the office of the Fair Trading Commission not later than ninety (90) calendar days from the date of receipt of this ruling

[5]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 29th day of May, 2019.

Mr. Victor Pool
Commissioner
(Presiding)

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner