THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
V
SHANKAR PILLAY
(trading as Srisai Supermarket)

Case No: CPA/PRSINS18/1

Complainant – Fair Trading Commission
Respondent – Shankar Pillay

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

For the Complainant
Ms. Salina Sinon – Legal Officer (FTC)

Respondent – In person

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 Shankar Pillay trading as Srisai Supermarket situated at St Joseph, Grand-Anse, Praslin (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 item 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 11 products (190 items) being offered for sale without their prices being displayed contrary to Section 20(1) of the same Act. Further, 26 products (139 items) were found to be on display for sale past their expiry date contrary to Section 24 of the Act by virtue of which is also in contravention of

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 this incident happened during the festive season when the shop was very busy and his workers did not check all the products on the shelves properly. The respondent stated that this was the first time his shop had been found in contravention of the Consumer Protection Act and have 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. The respondent assured the Board that this incident will not recur. Ms. Salina Sinon, 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. Sinon 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 suitable 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. Sinon first addressed the nature, duration, gravity and extent of the contravention. She submitted that 20 out of the 26 products observed to be expired were food and therefore the Board should consider the potential health risks to consumers who could have consumed those products. She also pointed out that all of the products in contravention of Section 24 had been expired for over a year hence consumers had been at risk of purchasing and consuming those products for some time and this also indicates the possible profit the respondent could have derived from those products as discarding expired products signifies a loss in earnings for retailers. Ms. Sinon also submitted that the number of items found in contravention of the Consumer Protection Act was quite high i.e. 190 items were being displayed for sale without a price and 139 items were being offered for sale past its expiry date. Ms. Sinon noted that the respondent mentioned that he had four workers working in his shop thus it would be highly unlikely that one of them would not have spotted these products during the time they had been there, implying that the respondent's actions were deliberate. She concluded by submitting that the respondent is a first-time

offender who has co-operated with the Commission and accepted all liability before the Board therefore not wasting the Board's time but the fact remains that the respondent has engaged in several prohibited conducts.

[4]Based on the evidence before it and the respondent's admission the Board of Commissioners hereby finds the respondent, Mr. Shankar Pillay trading as Srisai Supermarket 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. Sinon. 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 SR500;**

- **For the contravention of Section 20(1) read with Section 20(3) the sum of SR12,000;**

- **For the contravention of Section 24 the sum of SR12,000;**

- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR12,000.**

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

[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 27th day of May, 2019.

Mr. Victor Pool
Commissioner
(Presiding)

Mr. Michael Nalletamby
Commissioner

Mrs. Jenna Thelermont
Commissioner