THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
V
T. PANDIYAN PILLAY FOR JOINT EXECUTOR OF V.T PILLAY
(trading as Vinayagar Trading)

Case No: CPA/INS18/38

Complainant – Fair Trading Commission
Respondent – T. Pandiyan Pillay for Joint Executor of V.T Pillay

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

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

For the Respondent
Mr. Nateshkumar Balasubramanian

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 3rd of May, 2018, at the business premises of V. T Pillay trading as Vinayagar Trading located at Anse a La Mouche, 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 103 products (1,935 items) being offered for sale without their prices being displayed contrary to Section 20(1) of the same Act. Further, 8 products (30 items) were found to be on display for sale past their expiry date contrary to Section 24 of the Act by virtue of which also prompts the contravention of Section 50(1)(a) of the act by offering for sale goods which do

not meet the necessary safety requirements. Moreover, upon inspection of the receipt being provided to consumer officers of the Commission discovered that said receipts did not contain the unit price of a particular good sold contrary to Section 25(2)(e) read with Section 25(1) of the Consumer Protection Act, 2010. Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely: -

- 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(2)(e)** read with Section **25(1)** which provides that *"A written record shall include **(e)** the unit price of any particular goods or services supplied."* [**25(1)** *"A supplier of goods and services shall a written record of each transaction to the consumer to whom any goods or services are supplied.]"*

- 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 one Mr. Nateshkumar Balasubramanian appeared before the Board and claimed that he was the Shop Manager who was currently leasing the business from the brother of the abovenamed

respondent who is the executor of the V.T Pillay estate. Mr. Balasubramanian stated that he was the one entirely responsible for all aspects of the operations of the shop including purchasing merchandise, paying the license and appearing for this case. The Board needed to satisfy itself that it was dealing with the right person and therefore instructed Mr. Subramanian to produce some form of documentation as proof of his claim. The case was called again on the 6th November, 2018. On that date Mr. Subramanian appeared and produced a copy of a handing over document of the shop situated at Anse a La Mouche from one V.T.R Pillay to one V.T.K Pillay. Attached to that document was photographs of the signed lease agreement between V.T.K Pillay of Anse a La Mouche and Mr. Nateshkumar Balasubramanian of Glacis for the lease of V.T Pillay Shop trading as Vinayagar Trading situated at Anse a La Mouche. The Board went over this document and took note of Clause 7(b) of the Lease Agreement which states *"The Lessee shall defend, indemnify and save harmless the Lessor from any and all liabilities, obligations, damages, penalties, claim, costs and expenses that may be imposed upon or incurred by or asserted against the Lessor arising from or in connection with the lease by the Lessee of the shop, including but not limited to any breach of the Lessee of the Lease."* With this document on record the Board was satisfied that Mr. Balasubramanian would be responsible for this case and went on to ascertain his position with regards to the matter. Mr. Balasubramanian confirmed that he received the case docket and will be accepting all liability in relation to the complaints filed before the Board. He explained that the incident was not deliberate but rather negligence on his part and on the part of his worker who was working alone in the shop at the time and was overwhelmed at having to check all the thousands of the merchandise they had in the shop. He added that since then he has taken necessary measures to remedy all the issues detected during the inspection. Mr. Balasubramanian confirmed that he understood the provisions of the Consumer Protection Act, 2010 and the consequences of accepting the charges and prayed for leniency while assuring the Board that this incident will not recur. Ms. Nathalie Young, Legal Officer co-representing the Commission moved the Board as per the notice of complaint on record in relation to the breaches. Ms. Salina Sinon, co-representor of the Commission opted to make oral submissions on penalties.

[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 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. Sinon first addressed the nature, duration, gravity and extent of the contravention. She submitted that 6 out of the 8 products observed as expired were food items hence raises serious health risk concerns to consumers who could have purchased and consumed those products, possibly resulting in food poisoning and others. She also pointed out that all of the products in contravention of Section 24 had been expired several months before the date of inspection 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 discarded 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 where 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. Sinon also submitted that the number of items found in contravention of Section 20 the Consumer Protection Act was high, in that 1,936 items were being displayed for sale without a price affixed to it. She was of the view that it would be impossible for the respondent not have noticed that all those items did not have an affixed price. Furthermore, that this increased the gravity of the breach as the respondent had great leeway to sell goods at different prices to different consumers. Ms. Sinon 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.

[4]Based on the evidence before it and the respondent's admission the Board of Commissioners hereby finds the respondent V.T Pandiyan Pillay for the Executor of V.T Pillay trading as Vinayagar Trading, represented herein by Mr. Nateshkumar Balasubramanian to be in contravention of Section 20(1) read with Section 20(3), Section 24, Section 25(2)(e) read with Section 25(1) 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 representations of Ms. Young and Ms. Sinon. The Commissioners take note that Mr. Balasubramanian who has been managing the shop entirely since 2012 (according to the lease agreement) has been previously found to be in contravention of the Consumer Protection Act, 2010. However, given that the license is on the respondent, the respondent must be taken as a first-time offender. Thus, 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 20(1) read with Section 20(3) the sum of SR20,000;**

- **For the contravention of Section 24 the sum of SR3,000;**

- **For the contravention of Section 25(2)(e) read with Section 25(1) the sum of SR6,000;**

- **For the contravention of Section 50(1)(a) read with Section 50(2)(a) the sum of SR3,000.**

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 29th day of May, 2019.

Mr. Victor Pool
Commissioner
(Presiding)

Mr. Michael Nalletamby
Commissioner

Mrs. Jenna Thelermont
Commissioner