THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
CLAUDE ROSETTE

CPA.11.127.99

Complainant - Mr. Harry Agathe
Respondent – Mr. Claude Rosette

QUORUM:
Dr. Shelton Jolicoeur – Chairman (Resigned)
Mrs. Vijaykumari (Dolly) Tirant – Commissioner
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mrs. Annie Vidot - Commissioner

Present:
Mr. Georges Tirant – Director for Consumer Protection Affairs (FTC)
Mr. Alex Robert – Senior Consumer Analyst (FTC)

Case presented on behalf of the Complainant by Mr. Alex Robert the Senior Consumer Analyst, FTC.

RULING

[1]On the 1st of July, 2011 Mr. Harry Agathe (complainant) filed a complaint with the Fair Trading Commission (F.T.C) against Mr. Claude Rosette (respondent) (Refer to Exhibit A1). The complaint involved Mr. Agathe obtaining the services of Mr. Rosette, a draughtsman, in June, 2011 to prepare his house plans. The complainant

claimed that he paid Rs. 1, 200/- to the respondent to purchase materials needed for the process as well as for registration and planning fees. The respondent received a further Rs. 2, 000/- when he advised the complainant that the plans were ready. It should be noted at this point in time that no receipts have been produced documenting these two transactions. Attempts by both the complainant as well as officers of the Commission to contact the respondent via phone calls have proven to be futile. When the parties convened for the hearing of the matter on the 7th of December, 2011 the complainant informed the Board of Commissioners (B.O.C) he met the respondent in Victoria in September, 2011 and they together went to the Mont-Fleuri Police Station whereby a document was signed to the effect that Mr. Rosette owed Mr. Agathe monies and he would pay him in one week. Their mere presence before the Board of Commissioners indicates that this did not materialize. The complainant added that since then he had not heard from Mr. Rosette.

[2]For such behaviour the Commission has found the respondent to be in contravention of Section 25(1), 36(a) and 40(1)(a) and (b) which provide that:

> *"**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.*
>
> ***36.** A person shall not, in trade or commerce, as a supplier, accept payment or other consideration for goods or services where at the time of the acceptance –*
>
> *(a) the person did not intend to supply the goods or services;*
>
> ***40.**(1) Subject to this part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall –*
>
> *(a) perform and complete that service in a timely manner and give to the consumer timely notice of any unavoidable delay in the performance of the service;*
>
> *(b) perform the service in a manner and of a quality that person are generally entitled to expect;"*

[3]When asked to comment to on the case laid down against him Mr. Rosette stated that he had already prepared Mr. Agathe's plans but subsequently Mr. Agathe said that he no longer needed it and to refund him the money he had paid. Initially the respondent had accepted and confirmed to the Board that they had indeed made and signed a statement which encompassed this at the Mont-Fleuri Police Station but then had a change of mind and decided that he should be compensated for the work he had already done. Mr. Agathe countered this claim by stating that the plan Mr. Rosette was referring to was just a draft and not the completed plan that is ready for submission at the Seychelles Planning Authority. In any event Mr. Rosette voluntarily expressed his willingness to refund Mr. Agathe the sum he owes to him in two equal instalments namely at the end of January and February, 2012. Instantly a written undertaking was prepared and signed on the same day to that effect. The same is attached herewith.

[4]This is therefore to order the endorsement of the said undertaking dated 7th December, 2011 as final settlement of the case. **It is hereby ordered that the respondent refunds the complaint the full amount of Rs. 3, 200/- in two equal instalments of Rs. 1, 600/-; the first on or before the 31st January, 2012 and the second on or before 29th February, 2012.** It is necessary at this juncture to mention that failure to comply with an order, direction or undertaking of this Commission or Tribunal constitutes an offence under Section 70 of the Consumer Protection Act, 2010 which stipulates a person is liable upon conviction to a fine not exceeding Rs. 100, 000/- or to a term of imprisonment not exceeding a period of two years or to both such fine and imprisonment.

[5]We so order as per the undertaking.

Pronounced by us on this 7th day of December, 2011.

Mrs. Vijaykumari (Dolly) Tirant
Commissioner

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mrs. Annie Vidot
Commissioner