THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
ABRAHAM FANCHETTE

CPA.12.027

Complainant – Mr. Raymond Masgonthy
Respondent – Mr. Abraham Fanchette

QUORUM:
Mr. Colin Jean-Louis – Chairperson
Mr. Philippe Chong-Seng - Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Mr. Ziggy Adam – Legal Officer (FTC)

Respondent – In person

RULING

[1]The Fair Trading Commission (the Commission) is empowered to receive and evaluate complaints pursuant to Section 4(3)(c) of the Fair Trading Commission Act, 2009. In accordance with Section 5(2)(b) of the Consumer Protection Act, 2010 the Commission registered a complaint from Mr. Raymond Masgonthy (complainant), of Glacis, Mahe, on the 17th of February, 2012 against Mr. Abraham Fanchette (respondent) of Union Vale, Mahe. The complaint was to the effect that the complainant paid to the respondent on the 15th of June, 2011 a sum of SR.20,000/- to build a wooden fence to be completed in six months. The respondent failed to complete the work hence the complainant requested a full

refund. On the 10th of April, 2012 the respondent entered into an Undertaking with the Commission pursuant to Section 75 of the Consumer Protection Act, 2010 to refund to the complainant the total sum of SR. 20, 000/- in three instalments of SR. 7, 000/- at the end of May, SR. 7, 000/- at the end of June and SR. 6, 000/- at the end of July, 2012 (See Exhibit 1). On the 18th of September, 2012 the respondent paid to the Commission the sum of SR. 7, 000/- which was refunded to the complainant on the 8th of October, 2012 (See Exhibit 2). To date, the remaining sum of SR.13,000/- remains unpaid. The Commission therefore deemed it necessary for a case against Mr. Abraham Fanchette to be heard by the Board of Commissioners.

[2]The parties appeared before the Board of Commissioners on Wednesday 27th November, 2013 for hearing. Mr. Ziggy Adam, the Legal Officer of the Fair Trading Commission presented the complainant's case and outlined that the respondent had contravened Section 70 of the Consumer Protection Act, 2010 by failing to comply with an Undertaking of the Commission. He urged the Board to consider penalties as set out in Section 67(1) of the Act while having regards to Section 67(3) of the same Act.

[3]Mr. Fanchette admitted to the facts as presented by the Commission and asked to be excused for the delay in refunding the outstanding balance. The respondent informed the Board that he would be able to refund the SR. 13, 000/- in instalments at the end of January, February and March, 2014. The complainant reluctantly agreed.

[4]The Board of Commissioners has deliberated on the matter at hand and has taken into account all evidence adduced. The Board has also considered the mutual agreement between the two parties during the hearing of the matter and hereby rules that the **respondent, Mr. Abraham refunds to the complainant, Mr. Raymond Masgonthy the sum of SR. 13, 000/-** in three instalments to be paid in the following manner:

- **1st instalment in the sum of SR. 4, 000/- on or before the 31st of January, 2014;**
- **2nd instalment in the sum of SR. 4, 000/- on or before the 28th of February, 2014;**
- **3rd instalment in the sum of SR. 5, 000/- on or before the 31st of March, 2014.**

All payments are to be made to the offices of the Fair Trading Commission.

[5]To conclude it is necessary to point out that the Board of Commissioners takes notice of the fact that Mr. Fanchette appeared before the Board in case number CPA.12.253 involving a similar conduct. Be that as it may having regards to Section 67(3) of the Consumer Protection Act, 2010 the Board will not impose any financial penalty on the respondent but instead shall issue out a strong warning to the respondent to immediately cease such unlawful practice and to remind Mr. Abraham Fanchette that an individual who fails to comply with an order of the Commission commits an offence and is liable to a fine not exceeding SR. 100, 000/- or to imprisonment not exceeding a term of two years or to both such fine and imprisonment (See Section 53(1) of the Fair Trading Commission Act, 2009).

[6]The parties are free to appeal against this ruling (See Section 44 of the Fair Trading Commission Act, 2009). We so order.

Pronounced by us on the .....6th..... day of December, 2013.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong – Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner