THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
ANTOINE SERVINA

CPA.13.100

Complainant – Mr. Denis Cupidon
Respondent – Mr. Antoine Servina

QUORUM:
Mr. Philippe Chong-Seng – Chairperson
Mrs. Jenna Thelermont – Commissioner
Mr. Victor Pool – Commissioner

For the Complainant
Mr. Trevor Louise – Legal Officer (FTC)
Mr. Denis Cupidon (Complainant)

For the Respondent
Mr. Antoine Servina (Respondent)

RULING

[1]The Fair Trading Commission (the Commission) established under Section 3(1) of the Fair Trading Commission Act, 2009 registered on the 13th of February, 2013 a complaint against one Mr. Antoine Servina (respondent) (See Exhibit 1) lodged by Mr. Denis Cupidon (complainant) (See Exhibit 2). The complainant alleged that he paid to Mr. Servina, a draughtsman by profession (See Exhibit 3), the sum of SR.4, 250 on the 31st of July, 2012 as payment for the drawing of a plan for a boundary and retaining wall. After receiving a copy of the title deed to his property V18196 Mr. Cupidon gave a copy to the respondent so the same could be attached to the plan for submission at the Seychelles Planning Authority (See Exhibit 5). Mr. Cupidon was informed by the respondent that he will get his receipt the week of Monday 11th February, 2013. The complainant attempted to call the respondent on the 13th of February, 2013 but found that his phone was off. He also attempted to contact the respondent through the

offices of the Seychelles Planning Authority where he waited for the respondent but he never showed up therefore he filed the complaint with the Commission (See Exhibit 4). Subsequently, the complainant received a letter from the Seychelles Planning Authority dated 12th February, 2013 acknowledging receipt of his plan (See Exhibit 6) so on the 18th of February, 2013 he withdraw his complaint with the Commission through an official statement (See Exhibit 7).

[2]On the 15th of May, 2013 the Fair Trading Commission received a letter from Mr. Cupidon, the complainant, stating that he received a letter from the Seychelles Planning Authority dated 9th April, 2013 requesting him to provide a revised plan to reflect the required specifications of the boundary wall (See Exhibits 8 & 9). That he informed the respondent of this issue to which the respondent complied (See Exhibit 10). That through another letter from the Seychelles Planning Authority dated 26th April, 2013 he was informed that the revised plan failed to comply with the requirements set out in the letter dated 9th April, 2013 which outlined that the maximum height of the proposed boundary wall should be 1.8m with 1.5m solid wall and 0.3m decorative top contrary to 1.6m being proposed (See Exhibit 11). That again he contacted the respondent and managed to secure a meeting with Mr. Esparon of the Seychelles Planning Authority for the 14th of May, 2013 to address the issue which Mr. Servina failed to attend.

[3]Mr. Servina was contacted by the Commission and on the 30th of September, 2013 he agreed to refund to the complainant 75% of the SR.4250 paid to him which amounted to SR.3187.50 (See Exhibit 12). The Complainant agreed. A written Undertaking was signed by the respondent to that effect on the 4th of October, 2013 (See Exhibit 13). Not receiving any payment from the respondent officers of the Commission deemed it necessary for a case against Mr. Antoine Servina to be brought before the Board of Commissioners for determination (See Exhibits 14 & 15).

[4]The case was called for hearing before the Board of Commissioners on Wednesday 29th of April, 2014. Mr. Trevor Louise, Legal Officer (FTC), presented the case for the Commission on behalf of the complainant Mr. Denis Cupidon. Mr. Louise presented to the Board the alleged contravention of Section 40(1)(a) and (b) which states *"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 and (b) perform the service in a manner and of a quality that persons are generally entitle to expect"* as well as the alleged contravention of Section 70(a) which provides that *"A person who fails or refuses to comply with an order, direction or undertaking of the Commission or*

order or direction of the tribunal, commits and offence and is liable on conviction where the person is an individual, to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment." Mr. Louise also urged the Board of Commissioners to find in favour of the complainant and order the respondent to refund to the complainant the sum of SR.3, 187.50 pursuant to Section 40(2) of the Consumer Protection Act, 2010 and to consider penalties set out in Section 67(1) of the Consumer Protection Act, 2010 while having regards to Section 67(3) of the same Act and enforcing Section 68(1) where applicable.

[5]The respondent, Mr. Servina, claimed that he has always been willing to refund the said amount to the complainant and explained that he has been facing some financial constraints which have prevented him from doing so. That he is self-employed and has been having difficulties in securing work. That he has lined up a project that will enable him to generate some income and therefore requested for a time frame of three weeks to start making payments. He claimed that in a show of good faith he will make a first payment of SR.1000 and then continue to make payments as agreed i.e. in SR500 instalments.

[6]The Board of Commissioners deliberated on the matter and has taken into consideration all factors of the case including the respondent's plea. The Board of Commissioners hereby finds the respondent, Mr. Antoine Servina to be in contravention of Section 40(1)(a) and (b) of the Consumer Protection Act, 2010. Consequently, pursuant to Section 40(2) of the same Act, **the respondent is ordered to refund to the complainant, Mr. Denis Cupidon, the sum of SR.3, 187.50** in the following manner;

- **The sum of SR. 1, 100 by or before the 30th of June, 2014;**
- **The sum of SR. 1, 087 by or before the 31st of July, 2014;**
- **The sum of SR. 1, 000 by or before the, 31st of August, 2014.**

[7]Moreover, the Board of Commissioners finds Mr. Antoine Servina to be in contravention of the Section 70(a) of the Consumer Protection Act, 2010 and hereby **imposes a fine in the sum of SR.500 to be paid by or before the, 30th of September, 2014** for the said contravention given that Mr. Servina had six months from the signing of the Undertaking with the Commission to honour the said Undertaking before appearing before the Board and failed to do so.

[8]**All payments i.e. both refund and fine are to be made to the offices of the Fair Trading Commission.**

[9]The parties are free to appeal against this ruling (See Section 44 of the Fair Trading Commission Act, 2009 and Section 77 of the Consumer Protection Act, 2010)

[10] We rule accordingly

Pronounced by us on the 26th day of May, 2014.

Mr. Philippe Chong-Seng
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Victor Pool
Commissioner