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.11.138.99

Complainant - Mr. Akbar Umarji
Respondent – Mr. Claude Rosette

QUORUM:
Dr. Shelton Jolicoeur – Chairman (Resigned)
Mrs .Vijaykumari (Dolly) – Commissioner
Mr. Phillipe 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)
Ms. Nanet Bristol – Enforcement Officer (FTC)
Ms. Dolores Barrack – Enforcement Officer (FTC)

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

RULING

[1]Mr. Claude Rosette, the respondent herein, has been brought before the Board of Commissioners (B.O.C) on the subject of failing to perform services for which he

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had accepted payment for as well as not providing a sales record (receipt) for the said payment and not performing the said service in timely manner or providing the customer with timely notice of any unavoidable delay. Sections 25(1), 36(a) and 40(1)(a) provide that these are offences under the Consumer Protection Act, 2010. The aforementioned are respectively reproduced below:

> *"**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;"*

[2]The complaint was registered by the Commission from Mr. Akbar Umarji, the complainant herein, on the 22nd July, 2011 following which an investigation was launched by its officers (See Exhibit A2). The hearing of the matter occurred on Wednesday 7th December, 2011 attended by all pertinent parties. The complainant's case as put across by Mr. Alex Robert, the Senior Consumer Analyst of the Fair Trading Commission was to effect that Mr. Umarji had paid Mr. Rosette Rs. 1, 500/- to prepare the architectural plans to a boundary wall and fencing around his property and to also submit the said plans to the Seychelles Planning Authority after Mr. Rosette had verbally agreed to construct the wall. The Rs. 1, 500/- was paid to on two separate occasions. The first Rs. 500/- was handed over to the respondent on the 23rd of April, 2011 after requesting it from the complainant to cover printing and photocopying expenses of the plans following his visit to the complainant's property the previous day. The remaining Rs. 1, 000/- was paid two weeks later upon the respondent delivering the architectural

plans and submission form to the complainant to be signed. Copies of the plans submitted to the Commission by the complainant have been accordingly produced and marked as Exhibit A4). At this point Mr. Umarji requested a copy of a receipt for the transaction and he was advised that the same would be delivered to him the next day. This did not materialize. After failing several times to get hold of the respondent the complainant called the Seychelles Planning Authority where to his surprise he was informed that in fact no plan had been submitted on his behalf and further that they had not had any contact with Mr. Rosette for a long time. The Commission received confirmation from the Seychelles Planning Authority to that effect (See Exhibit A6). When heard by the Board Mr. Umarji was adamant with regards to having a refund of the money he paid to Mr. Rosette and proper action to be taken against him. He explained that the respondent gained his trust by coming to his house to take measurements on Good Friday, a public holiday, and moreover because he had obtained the contacts of the respondent from the Seychelles Planning Authority, he therefore felt he had no reason to doubt the respondent. That proved to be a mistake.

[3]The respondent's case was clear; *"I accept to refund him his money ... I will give him in instalments"*. When Mr. Umarji refused the latter he agreed to refund the full amount by the end of January, 2012 more precisely on or before 30th January, 2012. At this juncture the respondent was required to sign written undertaking to that effect to which he verbally assured compliance.

[4]This is therefore to endorse the said undertaking as final settlement of this matter. A signed copy of the said undertaking to be attached herewith. We find it imperative at this point in time 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 accordingly 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