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

Case No: CPA.15.115

Complainant – Ms. Veronique Barra
Respondent – Claude Rosette

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

For the Complainant
Ms. Karine Dick – Legal Officer (FTC)

Respondent – Absent

RULING

[1]The Fair Trading Commission registered a complaint from Ms. Veronique Barra (Annex 1) of Corgate Estate on the 18th of May, 2015 against Mr. Claude Rosette of Copolia who is a licensed Class I draughtsman (See CE4). The complaint was to the effect that through an oral agreement Ms. Barra had contracted the respondent, Mr. Rosette for the drawing of the architectural plan of her proposed three bedroom house at the sum of SR.7,500 (See CE2). After several failed attempts to locate the respondent (See CE5 to CE8), the Commission recorded a signed statement from the respondent on the 4th of December, 2015 whereby he stated that the plan had been drafted (See CE15) and he undertook to finalise and cause the plans to be formally submitted to the Seychelles Planning Authority by the 15th of December, 2015 (See CE9). By virtue of this

undertaking the respondent accepted liability as per the complainant's complaint. It is submitted that although the complainant paid to the respondent the sum of SR 7,500 as full payment the respondent only provided a receipt for the sum of SR.5,000 (See CE3). The respondent subsequently failed to honour his undertaking as agreed on the 4th of December. On the 13th of January, 2016 the respondent appeared before the Commission and again undertook to submit a copy of the plan electronically to the Commission and a hard copy to the Seychelles Planning Authority, the former on the same day and the latter the next day on the 14th of January, 2016 (See CE12). This undertaking was also not honoured (See CE13 and 14). The Commission therefore filed a case before the Board of Commissioners for the contravention of Section 40(1)(a) as well as Section 36(a) of the Consumer Protection Act, 2010 which respectively states as follows;

> *"**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.*
>
> **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 does not intend to supply the goods or services."*

[2]The case was mentioned before the Board of Commissioners on Wednesday 20th April, 2016 to fix a date for hearing. The respondent was duly served but failed to appear. The case was fixed for hearing on the 18th of May, 2016 at 2:00pm with fresh summons issued on the respondent.

[3]On Wednesday 18th May, 2016 the case was called before the Board of Commissioner for hearing at 2:20pm and the respondent, who had again been duly served, was absent. Ms. Karine Dick, Legal Officer of the Fair Trading Commission, who was presenting the case on behalf of the complainant, moved that the hearing proceeds *exparte*. The Board of Commissioners unanimously granted that application. Ms. Dick proceeded to present the Commission's findings to the Board and prayed that the Board finds in favour of the complainant and order the respondent to refund to the complainant the sum of SR.7,500 in accordance with Section 40(2). Ms. Dick also prayed that the respondent be penalized for failing to provide the complainant with

receipt reflecting the full amount that was paid to him for the transaction, namely, for the sum of SR.2,500. Ms. Dick concluded by stating that the respondent be fined accordingly pursuant to Section 67(1) of the Consumer Protection, 2010 while having regards to Section 67(3) of the same Act. Ms. Dick added that Mr. Rosette has been very uncooperative with the Commission by not complying with the Commission's summons and even not answering the Commission's phone calls or any other attempts of communicating with him. Moreover, that the respondent has several cases before the Commission and is a repeated offender before the Board of Commissioners.

[4]The complainant Ms. Veronique Barra addressed the Commission with closing arguments to her defence and eloquently expressed her frustrations and hardships she has had to endure because of the respondent's actions, namely the delay it has caused the development of her project which has forced her to live in someone's home whereby she feels that the environment is not favourable to her infant child.

[5]The Board of Commissioners has deliberated on the matter and hereby finds the respondent, Mr. Claude Rosette, to be in contravention of Section 40(1)(a) and Section 36(a) of the Consumer Protection Act, 2010 by failing to complete the service paid for by Ms. Veronique Barra. **The respondent is hereby ordered in accordance with Section 40(2) to refund to the complainant the sum of SR.7,500 not later than thirty (30) days from the date of this ruling for failing to complete and submit the architectural drawings for her proposed three bedroom house.** In addition the Board finds the respondent to be in contravention of Section 25(1) of the Consumer Protection Act, 2010 which provides that *"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."*

[6]When deciding on an appropriate penalty to impose on the respondent for the above contraventions the Board has considered the hardships endured by the complainant due to the respondent's actions including the large delay to the complainant's project. Furthermore, the Board has considered the respondent's behaviour towards the Commission which has been one of uncooperativeness and disrespect. Additionally, the Board takes notice of the fact that it had previously ruled against this same defendant in case numbers CPA.11.138.99, CPA.11.127.99, CPA.13.147 and CPA.14.043. **Consequently, the Board of Commissioners hereby imposes a fine on the respondent to the sum of SR.15,000 pursuant to Section 67(1) of the Consumer Protection Act, 2010 to be paid not later than sixty (60) days from the date of this ruling.**

[7]All payments (refunds and fine) are to be paid to the office of the Fair Trading Commission.

[8] 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).*

[9]We so rule accordingly.

Pronounced by us on this .....10th..... day of June, 2016.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Victor Pool
Commissioner