THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
ESPARON'S CONSTRUCTION
(Rep herein by Mr. Keven Esparon)

CPA.12.143

Complainant: Ms. Paulette Esther
Respondent: Esparon's Construction

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

For the complainant:
Mrs. Aaishah Molle – Legal Assistant Officer (FTC)
Ms. Paulette Esther – Complainant

For the respondent:
Mr. Keven Esparon – Respondent

RULING

[1]On the 20th of August, 2012 the Fair Trading Commission registered a complaint from Ms. Paulette Esther of Pte Au Sel (the complainant) (see Annex 1 and 3) against one Esparon's Construction of Pointe Larue, a registered company) represented herein by Mr. Keven Esparon (see Annex 2). The complaint was to the effect that through a written agreement dated 9th February, 2011 duly signed by both parties the respondent agreed to construct a three-bedroom house on Parcel No. C6853 situated at Les Canelles belonging to the complainant for the sum of SR.700, 000/-(see Annex 4). It is the complainant's evidence that she was satisfied with the quality of work being delivered at a proper rate of progression until June, 2012 whereby the complainant claims that the respondent failed to

complete the works. Given that payments to the respondent were made in advance the complainant therefore requested a refund in the sum of SR.125,650/- for incomplete works. The Commission investigated the matter.

[2]On the 11th September, 2012 both parties attended a meeting at the offices of the Commission whereby the respondent agreed to complete all construction works on the complainant's project by the 30th of October, 2012. Mr. Esparon signed an undertaking to that effect (see Annex 5). A site visit was conducted on Ms. Esther's property on 31st of October, 2012 and it was discovered by officers of the Commission as depicted by photographs marked Annex 6 that works were still incomplete. Being in breach of the signed agreement with Ms. Esther as well as the signed undertaking with the Commission it was deemed necessary for a case against Esparon's Construction to be brought before the Board of Commissioners for determination.

[3]Convening to hear the matter on Wednesday 14th August, 2013 Mrs. Molles, the Assistant Legal Officer from the Fair Trading Commission, presented the findings of the Commission on behalf of Ms. Paulette Esther, the complainant, and placed three counts against the respondent before the Board of Commissioners. Count 1 related to the breach of an undertaking of the Commission, contrary to Section 70 of the Consumer Protection Act, 2010. Count 2 made reference to the contravention of Section 40(a) of the same Act which reads *"Where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall perform and complete that service in a timely manner and give to the consumer notice of any unavoidable delay in the performance of the service."* Finally count 3 was to effect that the respondent had failed to provide a receipt for each monetary transaction with the complainant, contrary to Section 25 of the same Act. Mrs. Molle concluded by praying that the Board endorsed the recommendations made by the Commission which was to order the part refund and that the respondent compensates the complainant for lack of enjoyment of her house in accordance with Section 76(2) of the Consumer Protection Act, 2010.

[4]The Board of Commissioners went on to hear the parties themselves and was perplexed to hear the peculiar nature of this case. The Board immediately noticed the under quotation of the project by the respondent from the outset, an odd situation made even more bizarre to the Board when it was brought out by the respondent and undisputed by the complainant that foundation works amounting approximately to SR. 66, 000/- had to be demolished and reconstructed through

no fault of the respondent but rather to an error in the structural design of the house. The project engineer submitted new drawings with new specifications for the house resulting in an increase in construction work. Astonishingly, rather than submitting a new quotation to reflect the new specifications the respondent maintained the original quotation, requested for a SR. 20, 000/- refund for the demolished works as well as thirteen bags of cement and did not charge any demolition fee. Although this is not part of the case before us we felt it worth mentioning as we are of the opinion that these issues intertwined with others are the cause of the current subject matter before us.

[5]In presenting her case to the Board the complainant provided documentary proof of several disbursements made to the respondent (See Annexes 9 to 15) save for the payment of SR. 15, 000/- for the purchase of doors for the entire house. This statement was not denied by the respondent. Ms. Esther stated that all along she was satisfied with the quality of work produced by the respondent until the final stage of completion when Mr. Esparon stopped coming to the site. With the involvement of the Fair Trading Commission Mr. Esparon, during a meeting with Ms. Esther and officers of the Commission, signed an undertaking dated 11th September, 2012 to the effect that he would complete all construction works on the complainant's project by 30th of October of the same year (See Annex 5). This undertaking was not respected. To this effect Mr. Esparon argued that it was the complainant herself who instructed him not to come back to the site before the time frame provided for by the undertaking had elapsed. Ms. Esther confirmed this explaining that after the meeting Mr. Esparon came to the site only about four to five times and this was unsatisfactory to her. In his defence the respondent testified that he tried his best to complete the house but lack of funds was a paralyzing constraint. That his only mistake was to believe that the contract sum would be sufficient to cater for the construction and those extra costs would be absorbed. Ms. Paulette Esther concluded her evidence by stating that to date the house of remains incomplete. She added that the issue of lack of funds was never brought to her attention by the respondent until the day of the hearing and therefore maintained her claim for the refund of SR. 60, 000/- and SR. 50, 000/- for incomplete plastering, painting and tiling work respectively and the SR.15,000/- meant for the purchase of all doors from the total of SR. 612, 000/- paid to the respondent. On that note the hearing was adjourned and the Commissioners left to deliberate on the matter.

[6]Having studied this case and weighed the evidence adduced by both sides. It is clear and acknowledged that construction works on Parcel No. C6853 belonging

to the complainant in this case are incomplete revealing a clear breach of Section 40. This would mean that Section 75 and 70 have also been contravened. To this end the Board is unflustered **to impose <u>a fine in the sum of SR.10, 000/-</u> on the respondent Esparon's Construction**, represented herein by Mr. Esparon. A direction of the Commission is legally binding and is not to be taken lightly by the respondent.

[7]When it comes to the second limb of the penalty the Board is uneasy to endorse the requested refund amount. The complainant is asking for SR.60,000/- for incomplete plastering and other works which the respondent had been paid for but did not complete, SR50, 000/- for painting and tiling which was not done at all and SR. 15, 000/- meant to buy doors which the respondent did not provide at all. When making a finding the Board of Commissioners bears several criteria in mind. A suitable redress to the consumer is one, imposing a suitable penalty on person who contravenes the law is another. At the end of the day consumers are to be protected from practices that may adversely affect their interests but at the same time the Commission must be careful so as not to unfairly penalize anyone.

[8]With the above said the Board has given due consideration to all the circumstances of this case and unanimously order that the respondent, Esparon's Construction refunds the complainant, Ms. Paulette Esther the sum of **<u>SR.50,000/-</u> for the incomplete painting and tiling as well as the sum of <u>SR.15,000/-</u> being the amount paid to the respondent to purchase doors. Payment is to be made to the Commission <u>not later than sixty (60) days from the date of this ruling</u>.** We rule accordingly.

[9]The parties have a right to appeal against this ruling *(See Section 44 of the Fair Trading Commission Act, 2009).*

Ruling pronounced by us on this 16th day of October, 2013.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner