THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
Esparon Construction
(Rep herein by Mr. Keven Esparon)

Case No: CPA.14.104

Complainant -Mrs. Louisa Woodcock
-Mr Nicholas Woodcock
Respondent - Mr. Keven Esparon

QUORUM:
Mr. Collin Jean-Louis– Chairperson
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner
Mr. Victor Pool – Commissioner
Mr. Philip Chong-Seng – Commissioner

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

For the Respondent
Mr. Keven Esparon– Respondent

RULING

[1]The Fair Trading Commission received a complaint on the 8th of April, 2014 (CE1) from one Mrs Louisa Woodcock(the complainant) represented herein by Mr. Ziggy Adam of Fair Trading Commission against Esparon Construction(the respondent) represented herein by Mr. Keven Esparon. The complaint was to the effect that a contract(see exhibit (CE2)to build a 2 bedroom housing extension at the complainant's residence within a period of 4 months' time was signed between the complainant and the respondent on the 12th of February, 2013 and the respondent failed to complete the

works in the agreed time frame. The complainant made attempts to contact the respondent by telephone several times to enquire about the status of the construction after he had stopped coming to the site but received no response.

[2]Upon receiving the complaint, officers of the Commission investigated the matter. A site visit was conducted on 24th of April 2014. The respondent was not present during the site visit, the officers of the Commission proceeded with the site visit in the company of the complainant. It was confirmed during that site visit that works on the site was incomplete as was stated by the complainant on the complaint form. A compliance notice was sent to the respondent on the 29th of April, 2014, stating that he should complete the works by 21st May, 2014. A second site visit held on 13th of June, 2014 to verify the status of the construction. The site visit revealed no change on the site since the first site visit was conducted on 24th of April 2014.The respondent was therefore in breach of the compliance notice issued on the 29th of April, 2014.

[3]On the 8th of August, 2014, the complainant sought advice from the Commission to the effect that she wished to resume and complete the works on the site out of her own financing and with the help of a new contractor pending the outcome of her case with the Respondent. This was recorded in a statement that the Complainant filled with the Commission. Copies of receipts were filled with the Commission as proof of payments made to complete the works. On 22nd September, 2014 the respondent came to the office of the Commission and signed an undertaking to the effect that he would refund to the complainant the final amount of Rs104, 969.80 due resulting from the incomplete works left from the total amount he had received from the complainant in 6 monthly instalments starting the end of October 2014.

The respondent did not respect the dates and conditions set out in the undertaking thus breaching the undertaking. In consequence, the Commission deemed it necessary to file a case before the Board of Commissioners for the contravention of section 40(1) (a) and Section 70 (CPA, 2010) which provides respectively.

*"**70.** 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 an offence and is liable on conviction –*

of the Consumer Protection Act, 2010which provides that; and

*"**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 compete that service in a timely manner and give to the consumer timely notice of any unavoidable delay in the performance of the service."

[3]The Board of Commissioners convened for a formal hearing of the case on Wednesday 20th May, 2015. Mr. Ziggy Adam, Legal Officer from the Commission appeared on behalf of the complainant and presented the Commission's findings to the Board. He urged the Commissioners to find in favour of the complainant given that the respondent had breached both a compliance notice and an undertaking and that the complainant has had to complete the works at her own cost. Mr. Adam called one witness to the hearing, Ms. Nanet Bristol, Compliance Officer from the Commission to present some facts about the site visit conducted on 24th of April, 2014. The witness referred to the site visit report (CE5) which she compiled and stated that the works on the complaint form (CE1)was indeed incomplete as stated. She also stated that the respondent was not present during the site visit even if he was informed of the time and date. Ms Bristol pointed out that the complainant informed her that the respondent mentioned the money provided for the construction of the house was not enough only after the complaint was logged. Given the chance to speak, Mr Woodcock, the complainant's spouse also supported the fact that the respondent complained about the money not being enough only after he knew that a complaint had been logged against him.

[4]In his reply, the respondent acknowledged that he had not completed the works within the agreed time. He urged that he was indeed on the site since 1.30pm on the day that the site visit was scheduled, given that the site visit was scheduled at 2pm. He mentioned that he crossed the Commission's vehicle at Anse la Mouche after taking the bus to Pointe Larue at 2.05pm and that he received a call from the Commission's officer to check his whereabouts only when he was at Les Canelles. Furthermore, he stated that the project had not been completed in view that the money provided was not sufficient. He informed the Board that his first quotation for the project amounted to Rs750, 000.00, the complainant had sought advice from a Quantity surveyor and negotiated that the quote was to be reduced to Rs575, 000.00. The respondent stated that he accepted the reduced price as he had good ties with the family and he wanted to help them. He further agreed that he will refund to the complainant what he owes her by instalment in due time.

[5]The Board of Commissioners has listened to all witnesses and has had sight of all the relevant documents that was produced. After taking time to deliberate on the matter, the Board of Commissioners finds the respondent Esparon Construction, herein represented by Mr. Keven Esparon to be in contravention of Section 70 of the Consumer Protection Act, 2010 by breaching a signed undertaking. The Board of

Commissioners orders the respondent to **refund the complainant the sum of Rs104, 969.80 in six instalments of Rs17, 494.96 starting from the end of October 2015. The deadline for full repayment is the 30th of April 2016.**

[6]To conclude the Board shall now consider a suitable penalty for the above contravention. Taking into account that the respondent has breached an undertaking and that he is a repetitive offender, the Board of Commissioners shall impose a **fine pursuant to Section 70 of the Consumer Protection Act, 2010 in the sum of Sr 11,000.00 to be paid in full by the respondent, Mr. Keven Esparon at the offices of the Fair Trading Commission no later than the 30thof May, 2016.**

The Board of Commissioners draws to the attention of the respondent section 70 of the Consumer Protection Act, 2010 which states;

*(CPA, 2010) "**70.** 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 an offence and is liable on conviction –*

(a) 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;
(b) Where the person is a person other than an individual to a fine not exceeding 400, 000."

[7]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).*We rule accordingly.

Pronounced by us on this 24th day of June, 2015.

Mr. Collin Jean-Louis
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner

Mr. Philip Chong-Seng
Commissioner