THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
FRANKY MADELEINE

CPA.12.123

Complainant: Mr. Eddie Laporte
Respondent: Mr. Franky Madeleine

QUORUM

Mr. Philippe Chong-Seng – Commissioner (Chairperson)
Mrs. Vijaykumari (Dolly) Tirant – Commissioner
Mrs. Jenna Thelermont – Commissioner

For the Complainant

Mr. Georges Tirant – Director for Consumer Protection Affairs (FTC)
Ms. Lorraine Fred – Enforcement Officer (FTC)
Mr. Patrick Laporte – Witness
Mrs. Geraldine Laporte – Witness

For the Respondent

Mr. Chander Parkash – Witness

Case presented by Mr. Georges Tirant, Director for Consumer Protection Affairs (FTC) on behalf of the complainant.

RULING

[1]The complaint lodged by Mr. Eddie Laporte (the complainant) on 3rd August, 2012 against one Mr. Franky Madeleine (the respondent) (See Annex 3) is to the effect

that the complainant paid the respondent SR.9, 500/- to carry out electrical installation works on Rooms 4 and 5 of his guest house known as "Georgina's Cottage" at Beau-Vallon (See Annex 4 & 5). It is undisputed that the respondent conducted the wiring works and installed the meter boxes. All that remains is for the respondent to personally file a completion form at the Public Utilities Corporation (PUC) informing them that he has completed the necessary works. This is where the dispute arose between the parties. In that the respondent is refusing to file the said form at PUC as he claims the complainant owes him money in the sum of SR.16, 000/- for other electrical works he undertook at "Georgina's Cottage" and he will not do otherwise until he is paid in full (See Annex 6 & 7). Through further investigation of the Commission it was discovered that the respondent, Mr. Franky Madeleine, was subcontracted by one Mr. Chander Parkash to conduct all electrical works on the said premises except for Room 4 & 5 (See Annex 8). It is the contention of the complainant that it is therefore Mr. Parkash who owes the respondent. Mr. Laporte contracted Mr. Madeleine directly to conduct works on Rooms 4 & 5 which the respondent was paid for as this was a separate contract (See Annex 4 & 5). A site visit was conducted and photographs taken which were produced as evidence (See Annex 12). Based on the evidence the Commission was satisfied that the respondent had contravened Section 40(1)(a)(c) by not performing the service for which he was paid accordingly. Being unable to reach a consensus the Commission felt it obligatory for this case to be heard before the Board of Commissioners.

[2]The hearing of the matter proceeded as scheduled on Wednesday 21st November, 2012 attended by all relevant parties. Mr. Georges Tirant, the Director for Consumer Protection Affairs of the Fair Trading Commission, presented all the findings of the Commission to the Board, prayed for a ruling in favour of the complainant and recommended that the respondent be penalized in accordance with Section 67(1) of the Consumer Protection Act, 2010 whilst having regards to Section 67(3) of the same Act for the contravention of Section 40(1) as well as for an order pursuant to Section 76(2)(d) directing the respondent to pay the complainant who has suffered loss and damage by not being able to operate his business because of this incident for the loss and damage. The respondent maintained his original position that he would not complete the works until he is paid monies which he feels the complainant owes him. At this juncture the Board was required to provide a determination.

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[3]We have looked at the evidence and we have heard the testimonies of both parties. The Board of Commissioners finds that the issue of the complainant at hand originated from a separate contract from that of the main house where there is the dispute of payment. The Board cannot therefore combine the two. With regards to the complaint before us it is unchallenged by both parties that the complainant paid the respondent the sum of SR.9, 500/- for electrical works on Rooms 4 & 5 of "Georgina's Cottage". Hence, the respondent should complete the works for which he was paid. Consequently, we rule that the respondent, **Mr. Franky Madeleine, completes and files the completion form at the Public Utilities Corporation (PUC) not later than fifteen (15) days from the date of this ruling.** We so order.

[4]The parties are free to appeal against this ruling.

Pronounced by us on this ....12th.... day of ....December...., 2012.

Philippe Chong-Seng (Mr.)
Commissioner
(Chairperson)

Vijaykumari (Dolly) Tirant (Mrs.)
Commissioner

Jenna Thelermont (Mrs.)
Commissioner