THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
GEQ BUILDING CONTRACTOR
(Rep herein by Mr. Gerard Jeannevole)

CPA.13.145

Complainant – Mr. Clet Lawen
Respondent – GEQ Building Contractor

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

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

For the Respondent
Mr. Gerard Jeannevole

RULING

[1]The Fair Trading Commission (the Commission) established under Section 3(1) of the Fair Trading Commission Act, 2009 brought a hearing before the Board of Commissioners, appointed under Section 5 of the Fair Trading Commission Act, 2009, pursuant to Section 30(1) of the same Act and Section 9(1) of the Consumer Protection Act against one GEQ Building Contractor represented herein by Mr. Gerard Jeannevole (the respondent) (See Annex 22, 23 & 26) consequent to a complaint lodged with the Commission on the 25th of March, 2013 by Mr. Clet Lawen (the complainant) (See Annex 3), heard on the 5th of March, 2014 detailing the contravention of Section 70 of the Consumer Protection Act, 2010 reproduced below:

> ***70.*** *A person who fails or refused 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, a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 year, 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 rupees.*

[2]The undisputed facts of the case are that the complainant signed an agreement with the respondent on the 3rd of September, 2012 for the construction of a three bedroom dwelling house on land parcel S6158 at Pointe Larue belonging to the complainant at the total sum of SR. 714, 090/- (See Annex 2). The complainant effected the payment of SR.40,000/- on the 1st of September, 2012 as advance payment for the purchase of building materials (See Annex 4) and a further sum of SR.45, 650/- on the 27th September, 2012 as down payment for the project (See Annex 5) amounting to a total of SR.85,650/-. Subsequent to being implored by the complainant to begin work on the project given that the agreed commencement date (1st of October, 2012) had passed, the respondent conducted unsanctioned excavation works which damaged the site and the complainant was (ordered by the planning Authority) that he had to build a retaining wall to remedy the unnecessary earth cuttings. On the 17th of January, 2013 the complainant received a stop notice from the Seychelles Planning Authority indicating that no commencement notice had been issued for the excavation works on his property and that the said earth cuttings had rendered the site and surrounding properties to be at risk (See Annex 9). Coupled with the fact that no other works had been undertaken by the respondent the complainant, through legal his Counsel, terminated the contract on the 20th of March, 2013 (See Annex 8). A scheduled site visit conducted by officers of the Commission to confirmed the state of the site (Annex 14). During a meeting held with respondent regarding the matter Mr. Jeannevole agreed to refund the total sum paid to him by the complainant. A written Undertaking was subsequently signed to that effect whereby Mr Jeannevole was directed to pay to the complainant three consecutive monthly instalments each in the sum of SR.28, 550/- starting from the end of August, 2013 (See Annex 12). To date solely the sum of SR.18, 000/- was paid to the Commission on the 19th of September, 2013 (See Annex 24).

[3]In his defence Mr. Jeannevole stated that at the time he signed the Undertaking he was supposed to have received contracts which did not materialise resulting in him being unable to fulfil this commitment. He reiterated that he is willing to refund the

complainant but given that he was no longer in the construction business he would need some time to complete procedures to secure permanent employment so he could in turn be eligible to apply for a loan and pay off all his debts. Mr. Jeannevole intimated that he would need up till June of 2014 to commence the remaining payment.

[4]Mr. Ziggy Adam, Legal Officer presented the case on behalf of the Commission concluded by urging the Board of Commissioners to find in favour of the complainant and order the respondent to consider penalties set out in Section 70 of the Consumer Protection Act, 2010. Mr. Adam also prayed that the complainant be awarded SR.60,000/- being the extra cost he has to incur to remedy the damages the respondent's bad workmanship has caused to the site i.e. the building of the retaining wall.

[5]The Board of Commissioners has deliberated on the matter and has considered all the evidence submitted before it. The Board finds the respondent, GEQ Building Contractor, represented herein by Mr. Gerard Jeannevole to be in contravention of Section 70 of the Consumer Protection Act, 2010. In accordance with Section 40(2) the respondent is hereby ordered to refund to the complainant. Mr. Clet Lawen, the **sum of SR. 85, 650/-. Given that Mr. Jeannevole has already made one payment of SR. 18, 000/- this sum is to be deducted from the said former amount which would leave a difference of SR. 67, 650/- to be paid to the office of the Fair Trading Commission by or before the 30th of June, 2014.**

[7]It is further ordered, pursuant to Section 76(2), that the respondent, **GEQ Building Contractor, pays to the complainant, Mr. Clet Lawen, the sum of SR. 60, 000/-** to cover the complainant's expenses of having to remedy the defects caused to the site as a result of the respondent's bad workmanship. **This sum is to be paid to the offices of the Fair Trading Commission by or before the 31st of October, 2014.**

[8]To conclude the Board of Commissioners wishes to remind the respondent that breaching an Undertaking of the Commission is not an act that the Commission takes lightly. The Board also takes note that the respondent is not a first offender having appeared before the Board of Commissioners in case number CPA.11.148. In those circumstances, in accordance with Section 70 of the Consumer Protection Act, 2010 the Board shall **impose a fine on the respondent, GEQ Building Contractor, in the sum of SR. 5, 000/- to be paid to the offices of the Fair Trading Commission by or before the 29th of November, 2014.**

[9]The parties are free to appeal against this ruling (See Section 44 of the Fair Trading Commission Act, 2009)

[8]We rule accordingly.

Pronounced by us on the 26th day of March, 2014.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner