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.13.194

Complainant – Ms. Sylvianne Ah-Tong
Respondent – GEQ Building Contractor

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

For the Complainant
Ms. Emily Mousbé – Legal Officer (FTC)
Ms. Sylvianne Ah-Tong (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 registered a complaint on the 4th of June, 2013 from one Ms. Sylvianne Ah-Tong (complainant) (See Exhibit 1) against GEQ Building Contractor (See Exhibit 2) represented herein by Mr. Gerard Jeannevole (the respondent) (See Exhibit 3). The complainant alleged that following a signed agreement dated 11th May, 2012 for the construction of her three bedroom house at Anse Poules Bleues (See Exhibit 5) she paid to the respondent, Mr. Jeannevole an instalment of SR.70,000 to construct the foundation of the said house (See Exhibit 9). One year later on the day the complaint was lodged the respondent had failed to complete those works. Ms. Ah-Tong also complained that while on site the respondent wrongly cut the terrace at a location near the road where he had been specifically warned not to. As a result the terrain has become unsafe and may cause

the road to collapse. The area now requires a retaining wall to stabilise the terrace. On the 10th of May, 2013 the complainant wrote to the respondent terminating the contract (See Exhibit 11).

[2]The Commission investigated the matter and in the process contacted the respondent who informed the Commission that he twice attempted to build the retaining wall for the foundation but it collapsed. A site visit was conducted by officers of the Commission on the 23rd of June, 2013 whereby photographs were taken (See Exhibit 14). Following several correspondences with the Commission, the respondent expressed his willingness to refund the amount of SR.70,000 paid to him as well as to build a stone retaining wall to stabilise the terrain (See Exhibit 12) but the respondent refused to sign an Undertaking to that effect and instead stated that he was in the process of obtaining a loan and it was agreed that he would settle the matter by end of November, 2013. The respondent has failed to honour his agreement. The Commission therefore deemed it necessary for a case against GEQ Building Contractor, represented by Mr. Gerard Jeannevole, to be brought before the Board of Commissioners for determination.

[3]All relevant parties appeared before the Board on the 23rd of April, 2014 for a formal hearing. Ms. Emily Mousbé, Legal Officer of the Fair Trading Commission presented the case on behalf of the complainant. Ms. Mousbé averred that because the respondent failed to lay the foundation for the house as he had been contracted to do he was in contravention of Section 40(1)(b) of the Consumer Protection Act, 2010 which provides that *"... where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall perform the service in a manner and of a quality that persons are generally entitle to expect"*. She urged the Board of Commissioners to find in favour of the complainant and order the respondent to refund the complainant the total sum of SR.70,000 pursuant to Section 40(2) and to consider penalties set out in Section 67(1) of the Consumer Protection Act, 2010 while having regards to Section 67(3) of the same Act and enforcing Section 68(1) where applicable. Moreover, Ms. Mousbé requested that the respondent be ordered to rectify the damage done to the complainant's property.

[4]Mr. Gerard Jeannevole admitted to the facts of the case as presented to the Board and reiterated his willingness to refund the SR.70,000 paid to him by Ms. Ah-Tong. With regards to the retaining wall which now needs to be constructed again Mr. Jeannevole had no issues with bearing the cost for the said works. To that effect it was agreed that the complainant would provide a quotation to facilitate the same. The hearing was adjourned.

[5]Upon being provided with a quotation by the complainant from one Randy's Contruction the Board of Commissioners convened to deliberate on the matter. The Board took in to consideration all the evidence submitted before it. Based on that evidence, the Board finds the respondent, GEQ Building Contractor represented herein by Mr. Gerard Jeannevole to be in contravention of Section 40(1)(b) of the Consumer Protection Act, 2010. The Board of Commissioners hereby orders the respondent to refund to the complainant, Ms. Sylvianne Ah-Tong the sum of SR.70,000 in accordance with Section 40(2) of the same Act. **Payment is to be made to the office of the Fair Trading Commission by or before the 30th of September, 2014.**

[6]The Board shall now address the issue of the retaining wall which the complainant is now required to build due to substandard earth cutting conducted by the respondent. Section 76 (1) states – *"Where, in any proceedings under this Act, the Commission finds that a person, whether or not that person is a party to the proceedings, has suffered, or is likely to suffer, loss or damage by the conduct of any other person that constitutes or would constitute (a) a contravention; of a provision of this Act, the Commission may whether or not it makes any order under this Part of this Act, make all or any of the orders referred to in subsection (2)".* In turn Section 76(2) states – *"For the purpose of subsection (1), the Commission may make the following orders – (d) an order directing the person who engaged in the conduct referred to in subsection (1) to pay to the person who suffered the loss or damage the amount of the loss of damage".*

[7]Pursuant to the above paragraph and mindful of the respondent's admission that he was responsible for the damage caused to the complainant's property by his the Board of Commissioners finds it fair and just to order the respondent, GEQ Building Contractor, to pay the complainant the sum of SR.252, 000 being the sum required for the complainant to build a retaining wall to support the terrace and preventing the overlaying road from collapsing (See Annex 1). **This payment is to be made to the offices of the Fair Trading Commission in instalments or in full by or before the 1st of December, 2014.**

[8]To conclude the Board of Commissioners would like to put on the record that this is the third time the respondent has been found in contravention of the Consumer Protection Act, 2010. This behaviour by the respondent is not acceptable and should cease. Consequently, in accordance with Section 67(3) of the same Act, **the Board of Commissioners shall imposed a fine in the sum of SR.5,000 on the respondent to be paid to the offices of the Fair Trading Commission by or before the 31st of December, 2014.**

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

[10]We rule accordingly

Pronounced by us on the ....23rd..... day of July, 2014.

Mr. Philippe Chong-Seng
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Victor Pool
Commissioner