# 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 and Mr. Clifford Andre, Attorney-At-Law)

**Case No:** CPA.13.317

**Complainant** – Mr. Samuel Fred
**Respondent** – GEQ Building Contractor

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

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

**For the Respondent**
Mr. Gerard Jeannevole – Respondent
Mr. Clifford Andre – Attorney-At-Law

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## RULING

[1]The Fair Trading Commission (the Commission) received a complaint on the 25th of September, 2013 from one Mr. Samuel Fred, now the complainant (See Exhibit 1) against GEQ Building Contractor, a then licensed building contractor (See Exhibit 2) now the respondent represented herein by Mr. Gerard Jeannevole (See Exhibit 3). The complaint was to the effect that the respondent had not honoured

their agreement to construct two identical blocks of flats for which the respondent had been paid the total sum of SR.797, 964. 91 (See Exhibit 4).

[2]Upon receiving the complaint the Commission commenced a formal investigation in the matter. The evidence collected is as follows; that on the 15th of March, 2012 the complainant and respondent signed a contract agreement for the construction of three identical block of buildings at Anse-Royale, Mahe, for a sum of SR.4,034,341 (See Exhibit 5). An agreement was reached between the parties that the respondent would construct only two blocks of buildings at the same price for the duration of fourteen months (See Exhibit 6). Consequently, the complainant paid to the respondent the sum of SR.797, 964.91 as part payment for the project. On the 7th of January, 2013 the complainant wrote to the respondent terminating their contract stating reasons of bad workmanship (See Exhibit 8). The complainant also produced a quantity surveyor's report who valued the work done by the respondent at only SR.244, 020 contrary to the SR.797, 964.91 paid to him and also that the said works were substandard (See Exhibit 9). Therefore, the complainant requested a refund of SR.553,944.91 for incomplete works.

[3]The respondent was contacted by the Commission and invited to convene for a meeting on the 10th of October, 2013 to discuss this case. Mr. Jeannevole duly attended and informed the officer that he does not owe Mr. Samuel Fred any money so he does not have anything to do with this case. The Commission therefore deemed it necessary for a case against GEQ Building Contractor to be filed before the Board of Commissioners for the contravention of Section 40(1)(a) and (b) of the Consumer Protection Act, 2010. The same is reproduced below:-

> *"**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 complete that service in a timely manner and give to the consumer notice of any unavoidable delay in the performance of the service;*
>
> *(b) perform the service in a manner and of a quality that persons are generally entitled to expect."*

[4]The Board of Commissioners convened for a formal hearing on Wednesday 11th of June, 2014 and again on Wednesday 23rd of July, 2014 for the continuation of the

said hearing which was duly attended by all relevant parties. Mr. Ziggy Adam, Legal Officer from the Commission presented the case on behalf of the complainant Mr. Samuel Fred and called two witnesses to support his case, namely, Mr. Angelo Lesperance, the Analyst from the Fair Trading Commission who worked on Mr. Fred's case and Ms. Cecile Bastille Quantity Surveyor.

[5]Mr. Lesperance testified that during a site visit on the 2nd of October, 2013 he observed that the construction was at an advanced stage (See Exhibit 12) so he therefore requested evidence from the complainant of how the respondent left the site. He also produced a copy of his investigation report (Exhibit 13) which detailed that the parties met for a meeting on the 10th of October, 2013 during which the respondent informed the Commission that he does not owe the complainant anything and he wants nothing to do with this case.

[6]Ms. Cecile Bastille, the Quantity Surveyor was questioned lengthily and she maintained the contents of her report and testified that the contractor had been given part payment in three instalments (See Exhibit 9), that in December, 2012 the project, which had started in early 2012, was still at foundation stage and in her professional opinion the progress on site was really slow and even then the works done were not to the required quality in that the steel works to the retaining wall were not according to the engineering drawings and requirements. Ms. Bastille also evaluated works done by the respondent based on the contract sum while taking into consideration the defective works on site at SR.244, 020.

[7]Mr. Adam concluded the Commission's case by urging the Board to find in favour of the complainant and order the respondent to refund to the complainant the sum of SR.553, 944.91 pursuant to Section 40(2) of the Consumer Protection Act, 2010 for not completing the service which he was paid for taking into account the fact that the complainant had to contract another contractor to rectify and complete his project. Furthermore, that the complainant is entitled to damages pursuant to Section 76 of the Consumer Protection Act, 2010 including payment for certain equipment that the complainant had sold to the respondent.

[8]Mr. Gerard Jeannevole, the Managing Director of GEQ Building Contractor was present at the hearing and he was being represented by Mr. Clifford Andre, Attorney-At-Law. Mr. Jeannevole maintained that the work he had undertaken at the site was equal to the sum paid to him by Mr. Fred therefore he owed no money to the complainant. Counsel for the respondent argued that the contract signed

between the two parties was null and void given that there was no commencement date and end date mentioned. That Exhibit 6, a letter from GEQ Building Contractor making mention of a 14 month duration is irrelevant and should not be relied upon as the contract supersedes that letter given that the contract was signed after the letter was written and the contract makes no reference of the letter. That the Quantity Surveyor's report should be rejected by the Board because it was made eight months after the pictures of the site as was left by the respondent was taken, said pictures which had not been taken by the Quantity Surveyor herself. On the side of the law Mr. Andre argued that the Commission has failed to produce the expectations of the complainant therefore the Commission has failed to prove that it was not what 'persons are generally entitled to expect' as stated in the law. Mr. Andre concluded by stating that the Commission's case had no merit and should not be allowed.

[9]The Board of Commissioners has deliberated lengthily on the matter and has taken all evidence produced, both verbal and oral, into consideration. From the outset the Board finds that the issue of equipment sold to the respondent by the complainant does not fall under the scope of this forum and therefore the Board of Commissioners shall make no pronouncement with regards to the same. Going to the crux of this case it is clear to the Board of Commissioners that the sum of SR.797, 964.91 was paid to the respondent in instalments (See Exhibit 9). This is undisputed. It is also undisputed that the state in which the respondent left the site is as depicted by the photographs attached in Exhibit 9 only that the date on the said photographs was hand written and they had not been taken by the surveyor. On that regard the Board finds this issue to be non-fatal to the Commission's case which is essentially failure to complete a service. Consequently, the Board of Commissioners finds the respondent, GEQ Building Contractor represented herein by Mr. Gerard Jeannevole to be in contravention of Section 40(1)(a) and (b) of the Consumer Protection Act, 2010 and hereby orders, pursuant to Section 40(2) of the same Act, **that the respondent refunds to the complainant the sum of SR.553,944.91. This payment is to be made to the offices of the Fair Trading Commission in full or in instalments not later than three months from the date of this ruling.**

[10]To conclude the Board takes notice of the fact that Mr. Gerard Jeannevole has been found to be in contravention of the Consumer Protection Act on three previous occasions. Hence exercising its discretion the Board finds it necessary to impose a financial penalty on the respondent in accordance with Section 67(1) of

the Consumer Protection Act, 2010. In those circumstances the Board shall hereby **impose a fine in the sum of SR.10, 000. Payment is to be made to the offices of the Fair Trading Commission by or before Friday 6th of March, 2015.** We so order.

[11]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)*

Pronounced by us on this .....10th..... day of November, 2014.

**Mr. Victor Pool**
**Chairperson**

**Mr. Philippe Chong-Seng**
**Commissioner**

**Mrs. Jenna Thelermont**
**Commissioner**

**Mr. Michael Nalletamby**
**Commissioner**