THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
HAROLD AUGUSTE
(Rep by Mr. Sammy Freminot)

CPA.11.231

Complainant - Ms. Maria Rapide
Respondent – Mr. Harold Auguste

QUORUM:
Mrs. Vijyaykumari (Dolly) Tirant – Commissioner
Mr. Philippe Chong-Seng – Commissioner
Mrs. Annie Vidot - Commissioner

Attendance:
Ms. Chantale Barallon – Senior Legal Officer (FTC)
Ms. Aaishah Gerry Assistant Legal Officer (FTC)
Ms. Lorraine Fred – Enforcement Officer (FTC)
Ms. Dolores Barrack – Enforcement Officer (FTC)

Mr. Sammy Freminot – Attorney-At-Law, for the Respondent

Case presented on behalf of the Complainant by Ms. Aaishah Gerry, Assistant Legal Officer, FTC.

RULING

[1]This case was brought before the Board of Commissioners against the respondent, Mr. Harold Auguste, under the provisions of Sections 25 and 40(1)(a) of the

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Consumer Protection Act, 2010 relating to the gist of the complaint lodged by the complainant, Ms. Maria Rapide, (Annex 1) to the effect that Mr. Auguste received Rs. 5, 000/- from her in mid September, 2011 as down-payment for boulder blasting and drilling works to be done at her parents' premises at Nageon Estate, Pointe Larue. Those works have not been completed. There was no receipt provided for the transaction but there is produced a statement from one Greta Philoe who witnessed this (See Annex 2). Before we go any further we find necessary to reproduce Section 25 of the Act;

> *"**25.**(1)A supplier of goods and services shall provide a written record of each transaction to the consumer to whom any goods or services are supplied.*

[2]The complaint goes on to state that despite her efforts the complainant failed to establish contact with respondent save for one occasion when she managed to get hold of the respondent's wife who informed her that the respondent would not be returning to the site as he had valued the work he had done until that point at more than Rs. 5, 000/-. Officers of the Fair Trading Commission visited the site in question on 6th December, 2011 where photographs of works done by the respondent were taken and produced hereto (Annex 4). The Commission therefore asked Ms. Rapide to provide an evaluation of those works done. On the 16th December, 2011 Mr. Willy Labiche submitted to the Commission a written statement to that effect and valued the works done by Mr. Auguste at Rs. 600/- (Annex 8). Upon being informed the respondent vehemently contested this valuation and in turn submitted his own written account and instead valuing the works done at Rs. 5, 708/- (See Annex 10). A meeting was scheduled for February 7th, 2012 but both parties did not attend, the complainant due to her work schedule whereas the respondent did not communicate any reason for his absence. Consequently, another meeting was set with the respondent whereby he informed the Commission that he was prepared to part refund the complainant a sum of Rs.2, 000/-. The Commission has had no further contact with the respondent since then. As a further attempt to find a solution to her ailment Ms. Rapide also lodged a complaint at the Port Glaud Police Station against the respondent and his conduct. There she was informed by the officers on duty that they have registered several complaints against Mr. Auguste. The Board has also been urged to take

notice of another complaint lodged against the same respondent on 5th December, 2011 by another aggrieved individual namely one Ms. Nadia Lenclume (Refer to Annex 17).

[3]To be able to determine on the case as a whole it is essential to take into account the provisions of Section 40(1)(a) of the Consumer Protection Act, 2010 as solicited by the Commission. The same provides that;

> ***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 timely notice of any unavoidable delay in the performance of the service;"*

[4]The hearing of the case was held on Wednesday 23rd May, 2012. The respondent did not appear in person instead he was represented by Attorney-At-Law, Mr. Sammy Freminot who ably represented the respondent despite being delayed causing the hearing to commence *exparte*. After being briefed of the circumstances of the case as well of the fact that after due consideration the complainant, seeking a remedy parallel to the provisions of Section 40(2)(b) which directs for a reasonable refund to the aggrieved consumer, was accepting a minimum of Rs.3,500/- refund to settle this case, Mr. Freminot informed the Board of Commissioners that he had been officially instructed to represent the respondent and that his client accepts that he has not completed works he had been hired to do and was prepared to refund the amount agreed to by the complainant.

[5]In those circumstance we therefore exercise the provisions of Section 75(1) of the Consumer Protection Act, 2010 which provide that *"The Commission may accept a written undertaking given by a person for the purposes of this section in connection with a matter relating to the Commission's functions under this Act"* and order that the respondent enters into an undertaking to the effect that he has not completed works he accepted to perform on behalf of Ms. Maria Rapide thus accepts to **refund Ms. Maria Rapide a lump sum of Rs. 3, 500/- to be paid not later than thirty (30) days from the date of this ruling** for his contravention. We shall therefore endorse this undertaking to be prepared and signed by the relevant

parties and attached hereto as final settlement of this case. Further we feel that this is an opportune time to remind the respondent that as per **Section 70 of the Consumer Protection Act** "*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 fine not exceeding 400, 000 rupees.*"

[6]We so order.

Pronounced by us on this 23rd day of May, 2012.

Mrs. Vijaykumari (Dolly) Tirant
Commissioner
(Chairperson)

Mr. Philippe Chong-Seng
Commissioner

Mrs. Annie Vidot
Commissioner