THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
HOAREAU ENTERPRISE
(Rep herein by Mr. Robert Hoareau)

Case No: CPA.15.098

Complainant – Ms. Virginia Athanasius
Respondent – Hoareau Enterprise

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

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

For the Respondent
Mr. Robert Hoareau – Respondent

RULING

[1]The Fair Trading Commission registered a complaint from Ms. Virginia Athanasius (Annex 1) of Beau-Vallon on the 29th of April, 2015 against Hoareau Enterprise of Takamaka represented herein by Mr. Robert Hoareau who is a licensed, Class II contractor (See Annexes 2, 3 & 4). The complaint was to the effect that Ms. Athanasius had signed a contractual agreement with the respondent for the construction of two three bedroom apartments (See Annex 7 & 12). The respondent was paid SR.989,450 for the project (See Annex 8) which was never completed and the works done were substandard. The respondent signed an undertaking agreement on the 27th of August, 2015 for the

refund of SR.57,500 for incomplete and substandard works. To date the undertaking has not been honoured. Being unable to reach an amicable settlement the Commission therefore filed a case before the Board of Commissioners for the contravention of Section 40(1)(a)(b) and (c) as well as Section 70 of the Consumer Protection Act, 2010 which respectively states as follows;

> *"**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.*
>
> *(b) perform the service in a manner and of a quality that persons are generally entitled to expect;*
>
> *(c) where the goods are required for performance of service, use, deliver or install such goods that are free of defects and are of a quality that persons are generally entitled to expect."*
>
> **70.** *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 two years, or to both such fine and imprisonment;*
> (b) *where the person is other than an individual to a fine not exceeding 400,000 rupees."*

[2]The case was first mentioned before the Board of Commissioners on Wednesday 27th January, 2016 and from the outset the respondent admitted to the contravention and intimated that he was willing to settle the matter in full only that he needed some time to acquire the necessary funds to do so. In addition to the SR.57,500 being requested for unfinished works the respondent also agreed to refund the sum of SR.100,000 for the fencing and SR.25,000 for the doors which he was supposed to have supplied. Furthermore, he agreed to return 90 concrete pillars already constructed and the windows he had ordered for the project. There being no objection to his request the Board granted Mr. Hoareau's application. In the meantime the case was fixed for hearing on Wednesday 24th February, 2016.

[3]On the 19th of February, 2016 the respondent wrote to the Commission requesting for an extension of time to settle the case. This request was entertained before the Board when all parties convened for the hearing the following week. Mr. Hoareau explained that he was attempting to sell a piece of land so he can pay off this debt so he needed some additional time for the transaction to go through. The Board also heard from the complainant who explained the urgency of the matter given that many of her possessions are in storage and she fears that by the time the project is finally completed those possessions especially electrical appliances might no longer be in working condition. Taking all the circumstances into consideration the Board granted Mr. Hoareau's application but warned the respondent that it would be the last extension. The case was fixed for hearing on Wednesday 2nd March, 2016.

[4]There being no settlement the parties appeared again before the Board as scheduled. Mr. Adam, Legal Officer of the Fair Trading Commission appeared on behalf of the complainant and informed the Board that only the pillars were returned as agreed and to date no other refund had been made. He therefore moved the Board of Commissioners as per his notice of motion requested that the respondent be found in contravention of Section 40(1)(a)(b) and (c) as well as Section 70 of the Consumer Protection Act, 2010 and prayed that the respondent be ordered to refund to the complainant monies and materials owed to her. Mr. Adam also moved the Board for damages as per Section 76 of the same Act. Mr. Hoareau maintained his position that he was in the process of selling a plot of land in order to refund the. The Board therefore adjourned the matter and reserved its ruling.

[5]After due deliberations on the case the Board of Commissioners hereby finds the respondent, Hoareau Enterprise represented herein by Mr. Robert Hoareau, to be in contravention of Section 40(1)(a)(b) and (c) of the Consumer Protection Act, 2010 by failing to complete works paid for by Ms. Virginia Athanasius. The respondent is hereby ordered as per Section 40(2) to refund to the complainant the sum of SR.182,500 for incomplete works (fencing and doors included). The respondent is further ordered to have manufactured at his own cost all windows required for the project as well as the installing of those windows on site.

[6]Furthermore, the Board takes notice of the loss incurred by the complainant due to the respondent's poor workmanship which has contributed to large delays to the complainant's project which to date is still incomplete. It is unfortunate that over this time span the complainant has suffered loss of income given that the structures were to be used as apartments and she has also accrued interest on her loan. Consequently, the Board of Commissioners finds it necessary to order pursuant to Section 76(2) of

the Consumer Protection Act, 2010 that the respondent pay to the complainant monetary damages in the sum of SR.200,000.

[7]At this point the Board shall bring attention to Section 67(1)(A) of the Consumer Protection Act, 2010 which provides that *"Where the Commission determines after a formal hearing that a person has contravened any requirement or prohibition contained in sections of the Commission may order the person in the case of an individual, to pay a penalty of a sum not exceeding SR.100,000 rupees."* Consequently, the Board shall impose a fine on the respondent for the above contravention in the sum of SR.10,000.

[8]All payments (refunds and fine) are to be paid to the office of the Fair Trading Commission not later than sixty (60) days from the date of this ruling.

[9] 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).*

[10]We so rule accordingly.

Pronounced by us on this .....25th..... day of April, 2016.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner