THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
JIMMY POOL

Case No: CPA.15.147

Complainant – Mr. Robert Louise
Respondent – Jimmy Pool

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

For the Complainant
Mrs. Sylvie Faure– Senior Legal Officer (FTC)

Respondent – Absent

RULING

[1]The Fair Trading Commission registered a complaint from Mr. Robert Louise of Anse Boileau on the 6th July, 2015 against one Mr. Jimmy Pool of Bel Ombre. The complaint was to the effect that the complainant, Mr. Louise, had paid to the respondent the sum of SR.19,000 for the purchasing and importing spare parts for his vehicle which included a complete engine with gear box, front head lamp, rear tail lights and front windscreen as well as the repairing of the said vehicle. On the 14th of August, 2014 the complainant received the engine with the gear box amounting to SR.10,182.13. The complainant has not received any other parts since then. On the 2nd of September, 2015 the respondent gave a signed undertaking, thereby accepting liability, to the Commission to refund to the

complainant the sum of SR.8,817 in three instalments, the first of which was paid on the 2nd of September in the sum of SR.3,000. There being no other forthcoming payments or performance of service from the respondent the Commission filed a case before the Board of Commissioners for the contravention of Section 40(1)(b) of the Consumer Protection Act, 2010 which states that;

> *"40.(1) Subject to this Part, where a supplier undertakes to perform an service for or on behalf of a consumer, the supplier shall – (b) perform the service in a manner and of a quality that persons are generally entitled to expect."*

[2]The case was called before the Board of Commissioners on Wednesday 4th May, 2016. The respondent duly appeared and informed the Board that he was not contesting the matter and requested some time to be able to refund the balance owed to the complainant, namely, SR.5,817. There being no objection from the Commission the Board granted the application and the respondent was directed to make said payment on or before Monday 23rd May, 2016. The parties were instructed to appear before the Board again on Wednesday 25th May, 2016 to either enter a judgment by consent, had payment been made or in default thereof for a hearing.

[3]When the case was called on the 25th of May, 2016 the respondent was absent. Mrs. Sylvie Faure, Senior Legal Officer of the Fair Trading Commission, who was presenting the case on behalf of the complainant, moved that the hearing proceeds *exparte* given that the respondent had been warned by the Board to appear. The Board of Commissioners unanimously granted that application. Mrs. Faure proceeded to present the Commission's findings to the Board and prayed that the Board finds in favour of the complainant and order the respondent to refund to the complainant the outstanding sum of SR.5, 817 in accordance with Section 40(2) of the Consumer Protection Act, 2010. The complainant, Mr. Louise also addressed the Commission with closing arguments to his defence, expressing his frustrations towards the respondent.

[4]The Board of Commissioners has deliberated on the matter and hereby finds the respondent, Mr. Jimmy Pool, to be in contravention of Section 40(1)(b) of the Consumer Protection Act, 2010 by failing to provide to the complainant the complete set of gear box and spare parts for his vehicle. **The respondent is hereby ordered in accordance with Section 40(2) to refund to the complainant the sum of SR.5,817 not later than thirty (30) days from the date of this ruling**.

[5]The Board shall now address the issue of suitable penalty for the above contravention. The Board has considered the fact that the respondent not only failed to comply with a written undertaking with the Commission but he also did not honour the oral undertaking he made with the Board of Commissioners. Additionally, he has failed to appear before the Board on the 27th of May, 2016 as directed and did not communicate any reason to the Commission for his absence. We have also taken into account the difficulty suffered by the complainant due to the respondent's non-performance. Consequently, the Board of Commissioners hereby imposes **a fine on the respondent to the sum of SR.10,000 pursuant to Section 67(1) of the Consumer Protection Act, 2010 to be paid not later than sixty (60) days from the date of this ruling.**

[6]All payments (refunds and fine) are to be paid to the office of the Fair Trading Commission.

[7] 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).*

[8]We so rule accordingly.

Pronounced by us on this 10th day of June, 2016.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner