THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
JOSEPH SIMON FRANCOIS

Case No: CPA.15.294

Complainant – Ms. Maggie Lablache
Respondent – Mr. Joseph Simon Francois

QUORUM:
Ms. Karen Domingue – Chairperson
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioners

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

Respondent – In person

RULING

[1]The Commission registered a complaint from one Ms. Maggie Lablache of Beau-Vallon, Mahe on the 26th November, 2015 against Mr. Joseph Simon Francois now of Grand-Anse, Mahe. The complaint was to the effect that the complainant had paid to the respondent the sum of SR.50,000 to start construction of the foundation of her house. The respondent never undertook the work. Instead he agreed to refund the amount in instalments of SR.5,000 but after payment of only one instalment the complainant was no longer able to contact the respondent. She therefore sought redress from the Commission in the form of a full refund of the outstanding balance.

[2]During the investigation process Mr. Francois, the respondent, was contacted by officers of the Commission whereby he again agreed to refund the complainant the sum of SR.45,000. Over the course of the investigation the respondent refunded a total sum of SR.16,000 through the Commission. After failing to make any more payments the Commission filed a case before the Board of Commissioners for the contravention of Section 40(1)(a) of the Consumer Protection Act, 2010 for failure to provide a service seeking redress under Section 40(2) of the Act.

[3]The case was fixed for hearing before the Board of Commissioners on 12th April, 2017. All parties concerned were duly present. Mrs. Sylvie Faure, Senior Legal Officer of the Fair Trading Commission, representing the complainant, Ms. Lablache, informed the Board that the respondent had made a further payment of SR.10,000 just before the case was called, therefore bringing the outstanding balance to SR.19,000. Mrs. Faure moved the Board for a judgment ordering the respondent to refund the complainant the sum of SR.19,000.

[4]The Board of Commissioners heard from Mr. Francois who intimated that he has always been willing to refund the said amount but given some social and financial problems he has been unable to make the necessary payments. The respondent went on to suggest that he be allowed to pay the remaining sum in three instalments of SR.5000 and one final instalment of SR.4000 to which the complainant agreed.

[5]Based on the evidence produced and the respondent's own admission the Board of Commissioners finds the respondent in contravention of Section 40(1)(a) of the Consumer Protection Act, 2010 **and hereby orders the respondent to refund to the complainant, Ms. Maggie Lablache, the sum of SR.19,000 in accordance with Section 40(2) of the same Act to be paid to the office of the Fair Trading Commission.** Based on the mutual agreement reached before the Board the above sum shall be paid in the following manner;

- **SR.5,000 to be paid by the 31st of May, 2017;**
- **SR.5,000 to be paid by the 30th of June, 2017;**
- **SR.5,000 to be paid by the 31st of July, 2017 and**
- **SR.4,000 to be paid by the 31st August, 2017.**

[6]At this juncture the Board shall warn the respondent that failure to comply with an order or direction of the Commission constitutes an offence as per Section 53(1) of the Fair Trading Commission Act, 2009 hereby reproduced below;

> *"**53(1).** A person who refuses or fails to comply with a direction or order of the Commission commits an offence and is liable –*
>
> *(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.*
> *(b) Where the person is a person other than an individual, to a fine not exceeding 400,000 rupees."*

[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 rule accordingly.

Pronounced by us on this 24th day of May, 2017.

Ms. Karen Domingue
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner