THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
JUSTIN ESTICO

Case No: CPA.14.223

Complainant – Ms. Jane Benoiton
Respondent – Mr. Justin Estico

QUORUM:
Mr. Victor Pool – Commissioner (Presiding)
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

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

Respondent – Absent

RULING

[1]The Fair Trading Commission registered a complaint from Ms. Jane Benoiton of Roche Caiman on the 12th of August, 2014 against one Mr. Justin Estico of La Gogue. Her grievance was to the effect that she had paid to Mr. Estico, now the respondent herein, the sum of SR.6,000 for the fabrication and fitting of a steel gate at her residence but the service provided by the respondent was unsatisfactory. Upon assessing the complaint the Commission identified a possible contravention of Section 40(1) of the Consumer Protection Act, 2010 (See Exhibit 1). The matter was investigated further.

[2]As part of the investigation process a site visit was conducted to view the state of the gate. A site visit report was produced and photographs were taken (See Exhibit 4 &

5). On the 10th of September, 2014 a meeting was arranged between the parties to discuss this matter. During the said meeting the respondent stated that he made a gate according to the price the complainant paid but nevertheless he agreed to repair the problems the complainant had raised (See Exhibit 2). The respondent attempted to remedy the problems as was raised by the complainant but as was evidenced from the testimony of the complainant and officers of the Fair Trading Commission who investigated this matter the respondent failed to adequately remedy these problems with the gate as he agreed during the meeting. After several attempts made by the complainant and the Commission to have the respondent comply were unsuccesful the Commission filed a case before the Board of Commissioners for the contravention of Section 40(1)(c) which states that *"Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall 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."*

[3]The Board proceeded with the hearing of the matter on the 7th of October, 2015 and Mr. Ziggy Adam, Legal Officer of the Fair Trading Commission, appeared together with the complainant. The respondent was absent. The Board took notice that this was the fifth time this case has been called and it is the third time that the respondent has failed to make appearance but unlike the previous two occasions the respondent had not communicated his absence to the Commission. Attempts to contact him have been unsuccessful. The Board therefore ordered that the hearing proceed *exparte.* Hence, Mr. Adam presented the complainant's case to the Board and called two witnesses in support of his case.

[4]Firstly, the complainant, Ms. Jane Benoiton, gave evidence to the effect that she wanted to build the said gate to keep pests like dogs off her premises. She therefore approached the respondent who accepted to provide the service henceforth she paid him the sum of SR.6,000 (See Exhibit 3) and she provided SR.450 worth of steel. The complainant testified the gate she received was substandard and dogs are still able to get through and come onto her property. That despite the respondent attempting to repair the gate the end result was still unsatisfactory. She concluded by requesting that she be refunded the money she paid to the respondent so she can have someone else build a new gate.

[5]Mr. Nanet Bristol, an officer of the Fair Trading Commission gave evidence to the fact that she visited the premises of Ms. Benoiton on the 9th of September, 2014 and produced a site visit report and photographs to show her observations being that one of the steel rods in the gate had broken off and the hinges which held the gate in the concrete columns were broken (Exhibits 4 & 5). Mr. Adam concluded the

Commission's case by urging the Board to find in favour of the complainant and make orders as provided by Section 40(2)(b) which states that *"Where a supplier fails to perform a service to the standards specified in subsection (1), the supplier shall at the direction of the consumer refund to the consumer a reasonable portion of the price paid for the service performed and goods supplied, having regard to the extent of the failure."*

[6]The Board of Commissioners has deliberated on the matter. It is evident from the testimony of the complainant, Ms. Jane Benoiton and the report and photographs attached as well as the testimony of the investigating officer Ms. Nanet Bristol that the gate is substandard in quality. The respondent agreed to remedy the problems but did a poor job at the repairs. It is therefore the finding of the Board of Commissioners that the respondent, Mr. Justin Estico, is in contravention of Section 40(1) of the Consumer Protection Act, 2010. Consequently, the respondent is ordered **to refund to the complainant, Ms. Jane Benoiton the sum of SR. 4,500 not later than thirty (30) days from the date of this ruling.**

[7]In addition pursuant to Section 67(1) of the Consumer Protection Act, 2010 the Board of Commissioners hereby imposes a **monetary fine on the respondent in the sum of SR. 1,500 to be paid not later than sixty days from the date of this ruling.**

[8]**All payments are to be made to the office of the Fair Trading Commission**

[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 .....11th..... day of November, 2015.

Mr. Victor Pool
Commissioner (Presiding)

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner