THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
KAF BUILDERS
(Rep herein by Mr. Karly Faure)

CPA.11.260

Complainants: Mr. Kevil Telemaque
Ms. Brina Brutus

Respondent: KAF Builders

QUORUM
Mrs. Dolly Tirant – Commissioner (Chairperson)
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner

For the Complainant
Mr. Georges Tirant – Director for Consumer Protection Affair (FTC)
Ms. Aaishah Gerry – Assistant Legal Officer (FTC)
Mr. Angello Lesperance – Enforcement Officer (FTC)

Witnesses
Mr. Guilbert Madeleine – Manager of Engineering and Metrology Services (SBS)
Mr. Joel Philo – Senior Development Control Officer (Seychelles Planning Authority)
Mr. Franky Lespoire – Principal Engineer (Seychelles Planning Authority)
Mr. Gustave Larue – Quantity Surveyor
Mr. David Port-Louis – Engineering Consultant

For the Respondent
Mr. Karly Faure

Case presented on behalf of the complainants by Ms. Aaishah Gerry, Assistant Legal (FTC)

RULING

[1]On the 13th day of December, 2011 Mr. Kevil Telemaque and Ms. Brutus, the complainants herein lodged a formal complaint against KAF Builders, now the respondent represented by Mr. Karly Faure, to the effect that the respondent had not respected the contract the above-named had entered into on the 12th December, 2010 (See Annex 3) in terms of the time taken, standard and completion of work, that the respondent had accepted money but had not undertaken the work required and that the respondent had performed sub-standard work (See Complaint Form marked Annex 6).

[2]Consequently the Commission conducted an investigation in the matter and it was discovered that there is a signed written contract whereby it was agreed that the respondent would construct a three bedroom house on parcel H6240 situated at North-East Point for the complainants at a total sum of Sr. 485, 980/-, inclusive of labour and materials. It was an expressed term of the contract that the construction of the house would be completed within six months from the date of signing of the contract hence the house was to be ready on the 12th day of June, 2011 (See Annex 3, 4 and 5). The complainant disbursed a first instalment of Sr. 90, 000/- on the 21st of December, 2010 (Annex 7) and a second in the sum of Sr. 96, 107. 50/- on 14th October, 2011 (Annex 8) which was to go towards fulfilment of the contract after the respondent had extended the deadline of completion firstly to September, 2011 then to 5th December, 2011. Upon the respondent failing to meet both deadlines the complainants decided to seek assistance from the Fair Trading Commission in an attempt to remedy their ailment.

[3]The complainants' project faced numerous concerns other than delays. On the 9th of January, 2012 Mr. Joel Philo, the Senior Development Control Officer, from the Seychelles Planning Authority wrote to the complainants with reference to the their three bedroom house and informed them that some deficiencies had been observed with the ongoing approved development on their parcel H62401, to hence convene for a joint site visit to address the issues (Annex 15). Further, Mr. Telemaque requested for a structural report to be prepared to support his case. Mr. David Port-Louis of DDP Engineering Consultancy undertook to prepare the same. These are the observations he made:

> *"When I got to the site for my investigation I saw a house under construction with no workers on site. The ground floor slab, except at the veranda, has been done and part of the house is at lintel level.*
>
> *The workmanship on site has been appalling, almost non-existent. Some of the observations I made were;*
>
> - *The concrete floor slab does not seem level;*
> - *The partition block-work is not straight at certain parts but crooked;*

- *The steel mesh has not been placed correctly;*
- *The concrete mix seem of very poor and low quality;*
- *There are gaps in the foundation block-work where the backfill material can seep through;*
- *The foundation is not constructed properly at certain part that was visible."*

[4]As a consequence Mr. Port-Louis concluded that the way parts of the foundation that were visible had been built the same was not adequate to support the building. He went as far as to say that it was not a foundation and added that the correct way of constructing a foundation for a structure like the one in question is that excavation is done until a firm solid level is reached, then a blind, a weak concrete mix, is placed prior to casting the concrete grade 25 (B.S standard) foundation so that the dimension would be approximately 40cm wide by 15cm thick (See Annex 19). This finding was further supported by tests conducted by the Seychelles Bureau of Standards upon the request of the complainants and reports thereafter submitted. A Schmidt Rebound Hammer Test was conducted to test the concrete grade of the house and all the readings recorded from all the samples tested were below 25N/mm^2 which is the required concrete grade as per the British Standard, being the standard being used locally (See Annex 20). Armed with this information, the Seychelles Planning Authority proposed remedial solutions. That the complainants repair all the defects under the supervision of a private engineer or that the house is rebuilt requiring a complete demolition. The complaints decided the explore the former solution and again Mr. David Port-Louis was sought for his services whereby he compiled a report outlining the remedial works to correct the defects to the house which were mainly to the foundation, ground-bearing slab and partition. The scope of works outlined was as follows:

> *"**Foundation:** New concrete Base Grade 30, dimension 800x800x200 with reinforcement mesh A393 shall be done at approximately every 2.5m at the perimeter and internal foundation.*
> *New concrete ground-beam, 400x200mm reinforced with 12mm diameter tensile steel rod, top and bottom, and links diameter of 8mm at 225 c/c.*
>
> ***Ground-bearing Slab:** The existing slab shall be broken down to rubble and compacted prior to placing new 100mm concrete slab with mesh A142 placed with 25mm cover from the top. Care should be taken when placing the new D. P. M, and it should be in place before the casting of the new concrete slab.*
>
> ***Wall partition:** The perimeter wall can make good by plastering albeit the thickness of plastering may vary considerably. Due to work that shall be done*

to the foundation at the internal partition wall, the bricks at those places shall be carefully removed and re-used for the new remedial work to the foundation."

[5]With regards to the above the complainants acquired a quotation from another contractor, Donald Building & Contractors Pty Ltd estimating the remedial works at a total of Sr.185,000/- with a breakdown as follows:

"Readjustment of strip foundation with ground beams internal	*SR 25, 000*
Readjustment of strip foundation with ground beams external	*SR 55, 000*
Allow for new floor slab above existing	*SR 68, 000*
Readjustment of part of lintel	*SR 5, 000*
Two layers of 100mm hollow blocks above lintel level and gable roof	*SR 32, 000*
Total	*SR 185, 000"*

[6]Multiple correspondences were established between the parties in attempts to settle the matter amicably. During a meeting on the 27th December, 2011 the respondent gave his version of events and expressed that the site clearing was supposed to have been done by the complainants but instead he had to do it himself. That when he was to start the foundation work there were still rocks on site from the rock blasting and drilling works done by a Mr. Danny Gertrude which prevented him to commence. That both him and the complainants had an oral agreement to wait for a neighbour to collect the rocks which was done only two and a half months later due to the neighbour's ill health. That the excavation works done by another person other than the respondent was a problem and the respondent had to re-dig about 600cm more to locate the initial perimeter of the foundation since the excavation had moved timbers cut in the surrounding on the already set profile which further covered the foundation with soil. That he had informed the complainants that he had other works which included the complainants' sister's house and although setting the deadline for 5th December, 2011 his pick-up was involved in an accident in November, 2011. The respondent explained these above circumstances contributed to the then evident delay. (See minutes marked Annex 12)

[7]As another means to sustain his claim against the respondent the complainants obtained a detailed evaluation report from Mr. Gustave Larue, a quantity surveyor, who submitted the same on the 31st January, 2012 (Annex 17) and herein evaluated the total amount of work done on the complainants' property at SR 94, 450. 30/-. The complainants raised yet another concern about the second sum of money paid to the respondent yet no work had been done.

[8]During a meeting held for mediation on the 5th March, 2012 the respondent agreed to demolish the building and refund a sum of SR. 152, 357.50/- in one month (See Annex 26). This quickly became futile when the issue of one receipt signed by a Mr. Adolph

made out for excavation work done on the land by one Mr. Edmond in the amount of SR27, 500/- (Annex 25)was raised by the complainants who disputed its authenticity stating that they were not aware of such work taking place. On another occasion Mr. Joel Camille, an Attorney-At-Law and Barrister acting on behalf of the respondent, wrote to the complainants' attorney, Mr. Basil Hoareau, and made another offer to refund the full amount of SR 186, 107. 50/- and to demolish the building but this too did not materialize as the respondent could not be reached for a final resolution of the matter. A settlement was further constrained when the respondent was advised by his attorney, Mr. Joel Camille to not sign an undertaking prepared by the Commission to the effect that he would refund the complainants SR 186, 107. 50/- and to demolish the structure stating that he would be unable to abide to the terms of the said undertaking in the event that the bank does not approve the loan he had applied for to settle the dispute (See Annex 35). Mediation failing the Commission therefore deemed it necessary for the case against KAF Builders to be heard by the Board of Commissioners.

[9]The hearing of the case proceeded as scheduled on Wednesday 25th July, 2012 at 10:30am attended by all relevant parties. Ms. Aaishah Gerry the Assistant Legal Officer from the Fair Trading Commission presented the case on behalf of the complainants. Mr. Guilbert Madeleine from the Seychelles Bureau of Standard, Mr. Joel Philo and Mr. Franky Lespoire from the Seychelles Planning Authority, Mr. David Port-Louis of DDP Engineering and Mr. Gustave Larue were also present and they confirmed the contents of their respective reports supporting the complainants' case that the work done by the respondent was sub-standard, unfit and incomplete.

[10]On his part the respondent accepted full responsibility for the sub-standard and incomplete works from the outset. He expressed that he had been facing some health difficulties which contributed to the situation. He went on to explain that he had had a pick-up accident and his injuries prevented him for working for several months hence he could not supervise the site as he should have. In addition he was forbidden to use the mobile phone so communicating with him also became a quandary. Moreover, the respondent agreed to refund the complainants the full amount of SR 186, 107. 50/- and to demolish the building as had been originally agreed between the parties on the advice of their legal counsel. To enable this solution the respondent requested for a delay of two months to be able him to raise the funds. The complainants accepted the refund but in turn made their own request, namely that the structure not be demolished on the basis that rebuilding will cost more now than the SR186.107. 50/- it did in 2010 due to rise in material costs. Instead he will opt for the remedial works as proposed by Mr. David Port-Louis of DDP Engineering Consultancy (See Annex 33) and approved by the Seychelles Planning Authority (See Annex 32). Having had sight of the invoice from

Donald Building & Contractors Pty Ltd to undertake such works the proposed amount of SR 185, 000/- falls within the amount that has been agreed to be refunded.

[11]The Board has heard all the evidence as put forward by the respective parties and we have gone through the documents adduced in support of this case. We find that the respondent should have taken his responsibilities seriously as a Class II contractor and should have immediately advised the complainants of his inability to produce the service as required and agreed on rather than producing sub-standard work and causing inconvenience to the complainants through delayed performance and protracted negotiations.

[12]The Board rules that the respondent, KAF Builders, has contravened Section 40(1)(a)(b) of the Consumer Protection Act, 2010 and order that the respondent refunds the complainant for failure to provide a service in accordance with Section 40(2)(b). **Given the circumstances of the case the respondent shall refund the full amount of SR.186, 107. 50/- as agreed, to be paid by Friday 30th November, 2012.** With regards to the existing structure the Board is allowing the complainants the option of undertaking remedial works as proposed. It shall therefore not be demolished.

[13]It is further ordered that the respondent refunds the complainants for cost incurred through engaging professionals to examine his house, namely Mr. David Port-Louis of DDP Engineering Consultancy and Mr. Gustave Larue, a Quantity Surveyor. To this end the complainants are to provide to the Commission with the receipts for those transactions for purposes of confirmation. The Board also takes note of the fact that the respondent was co-operative during this process which will be regarded as an element of munity for his actions. In the same vein the Board cannot ignore the fact that he failed in his responsibilities as a Class II contractor and this must be penalized. Therefore, as per the provisions of Section 67(1) 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 the Commission may order the person –(a) in the case of an individual, to pay a penalty of a sum not exceeding SR100,000; or (b) in the case of a person other than an individual, to pay a penalty of a sum not exceeding SR400,000"*, and **impose a penalty amounting to 5% of the full contract value of SR 485, 980/- to be paid also by Friday 30th November, 2012.**

[14]To conclude we shall offer a piece of advice to the complainants. The chain of events which occurred in this case has led to a very unfortunate situation. Furthermore the complainants are opting to undertake remedial works to substandard construction on substandard foundations. Such works should be carried out with care and under professional supervision to avoid further complications and disputes arising.

[15]The respondent is free to appeal against this ruling.

Ruling pronounced by us on this 14th day of September, 2012

Mrs. Dolly Tirant **Commissioner** **(Chairperson)**	**Mr. Philippe Chong-Seng** **Commissioner**	**Mrs. Jenna Thelermont** **Commissioner**