THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
LEBON AND SINON SURVEYS
(Rep herein by Mr. Joelane Sinon)

Case No: CPA.12.144

Complainant – Ms. Marie Agricole
Respondent – Lebon and Sinon Surveys

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

For the Complainant
Ms. Emily Mousbé – Legal Officer (FTC)
Ms. Marie Agricole – Complainant

For the Respondent
Mr. Joelane Sinon – Respondent

RULING

[1]The Fair Trading Commission (the Commission) established under Section 3(1) of the Fair Trading Commission Act, 2009 registered a complaint on the 20th of August, 2012 from Ms. Marie Agricole (complainant) (See Exhibit 1) against Lebon and Sinon Surveys (respondent) represented herein by Mr. Joelane Sinon (See Exhibit 2). The complaint was to the effect that the complainant and her mother Mrs. Renette Agricole had enlisted the services of Lebon and Sinon Surveys in September, 2011 to subdivide land parcel number V3403 (See Exhibits 4 & 5). After being given a proforma invoice containing the broken down fees for the service (Exhibit 7) the complainant paid to the respondent two instalments of SR.3,000 in September, 2011

and December, 2011 respectively as part payment (See Exhibit 8). It was only subsequent to this that the respondent informed the complainant that she would have to wait for her mother to pass away for the subdivision to occur. To the date of the filing of the complaint no subdivision work had been undertaken by the respondent on behalf of the complainant.

[2]Upon registering the complaint officers of the Commission contacted the respondent and scheduled meetings for the 3rd and 12th September, 2012 which the respondent failed to attend (See Exhibits 9 & 10). Mr. Sinon finally appeared before the Commission on the 14th of the same month and explained that parcel V3403 was less than 400m^2 and hence could not be subdivided. Ms. Agricole requested for a refund.

[3]Through the mediation process an agreement was reached between the parties in October, 2012 that the respondent would refund SR. 5000 of the SR.6,000 paid to him. On the 12th of December, 2012 the respondent made a first payment of SR.2,000 towards the agreed sum which was refunded to Ms. Agricole (See Exhibit 12). No further payments were made by Mr. Sinon. The Commission therefore deemed it necessary to file a case against the respondent before the Board of Commissioners for contravention of Section 40(1)(a) and Section 40(1)(b) of the Consumer Protection Act, 2010. The same is reproduced below:-

> *"**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 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."*

[4]A formal hearing was held on Wednesday 19th of March, 2014 attended by all relevant parties. Ms. Emily Mousbé presented the case on behalf of the complainant Ms. Marie Agricole and Mr. Joelane Sinon represented Lebon and Sinon Surveys now called Sinon Surveys (Pty) Ltd (See Exhibit 3). Ms. Mousbé went through the evidence collected by the Commission and urged the Board to find in favour of the complainant and order the respondent to pay the remaining balance of SR.3,000 which the complainant paid to the respondent in accordance with Section 40(2) of the Consumer Protection Act, 2010 for the contravention of Section 40(1)(a) of the same Act. Ms. Mousbé also recommended that a fine be imposed on the respondent pursuant to

Section 67(1) of the Consumer Protection Act, 2010 while having regards to Section 67(3) of the same Act.

[5]In his defence Mr. Sinon intimated that he had done some field work for this case, hence the agreement to refund only SR.5,000 out of the SR.6,000 originally paid to him. He reiterated his willingness to pay the remaining balance of SR.3,000 and apologized for the omission on his part to have not done so earlier. Mr. Sinon gave a formal Undertaking to the Board of Commissioners that he would pay the said sum by the 2nd of April, 2014. The complainant had no objections. Accordingly the Board of Commissioners found the respondent Lebon and Sinon Surveys to be in contravention of Section 40(1)(a) and Section 40(1)(b) of the Consumer Protection Act, 2010. Consequently, the Board accepted and endorsed the verbal Undertaking given by the respondent to refund the outstanding balance of SR.3,000 by the 2nd of April, 2014 failing which penalties shall be imposed in accordance with Section 70 of the Act. The hearing was adjourned for deliberations on the issue of imposing penalties for the above contravention as provided by Section 67(1) of the Consumer Protection Act, 2010.

[6]During the deliberation process it was brought to the attention of the Board that the respondent, Lebon and Sinon Surveys represented herein by Mr. Joelane Sinon complied with the above Undertaking (confirmation of receipt attached herewith) and the complainant has now received the full refund as agreed. Consequently, taking in consideration all the consequences of the case including the fact that the respondent is a first offender before the Board and has promptly complied with the Undertaking of the Board no penalty will be imposed on the respondent. The matter stands closed. We so order.

[7]The parties are free to appeal against this ruling *(See Section 44 of the Fair Trading Commission Act, 2009 and Section 77(1) of the Consumer Protection Act, 2010)*

Pronounced by us on this 6th day of August, 2014.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Victor Pool
Commissioner