THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
MARC ROSE

Case No: CPA.13.356

Complainant – Mr. Jean-Marc Rose
Respondent – Mr. Marc Rose

QUORUM:
Mr. Victor Pool – Chairperson
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner

For the Complainant
Ms. Emily Mousbé – Legal Officer (FTC)
Mr. Angelo Lesperance – Analyst (FTC)
Ms. Nadia Pillay – Compliance Officer (FTC)
Mr. Jean-Marc Rose – Complainant

For the Respondent
Mr. Clifford Andre – Attorney-At- Law
Mr. Marc Rose – 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 1st of October, 2013 from Mr. Jean-Marc Rose (complainant) (See Exhibit 1) against Mr. Marc Rose (respondent) represented herein by Mr. Clifford Andre, Attorney-At-Law. The complainant alleged that he paid to the respondent who is a garage owner the sum of SR.12, 000 on the 10th of June, 2013 to conduct repair works on his pickup truck (See Exhibit 4), and it was agreed by the respondent that those works would be completed in three weeks (See Exhibit 2). The respondent failed to complete those works.

[2]Recognizing a breach of Section 40(1)(a) which provides that "*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 timely notice of any unavoidable delay*", officers of the Commission contacted Mr. Marc Rose who informed the Commission that the materials provided by the complainant was not of a good quality and in fact was insufficient to complete the works. Be that as it may, the respondent used what was at hand to complete the works by the 18th of October, 2013 (See Exhibit 5). On the 9th of October, 2013 officers of the Commission conducted a visit at the respondent's garage and observed that some work had been done on the pickup especially to the cabin but more works remained to be done such as polishing, final painting of the cabin, reassembling the seats, fixing the windows of each door, fixing of the windscreen, rotten parts of the pick-up base to be re-done, rear door to be placed and patched, inter alia. (See Exhibit 6 for complete list). Photographs were taken of the progress of works and produced and marked herein as Exhibit 7. The respondent was contacted on the 18th of October, 2014 during which he informed the Commission that he needed five more days to complete the finishing works on the pickup. When he failed to do so he was invited by the Commission for meetings to resolve outstanding issues which he refused. He was summoned to attend a meeting on the 13th of November, 2013 of which he failed to attend (See Exhibits 9 & 10).

[3]Being unable to mediate the matter on the 7th of February, 2014 officers of the Commission took another set of photographs to document the progress of works done by the respondent which basically shows that more works had been done since October, 2013 but still many works remained undone (See Exhibit 11). Subsequently on the 10th of February, 2014 the complainant removed his pick up from the respondent's premises along with the materials he had provided. This was done in the presence of officers of the Commission (See Exhibit 12). The complainant intimated to the Commission that he wants a full refund of the SR.12, 000 paid to the respondent. The parties were informed through a letter dated 18th February, 2014 that a case is being prepared to be filed before the Board of Commissioners for a determination (See Exhibit 14). The respondent came to the Commission on the 14th March, 2014 whereby a meeting was scheduled for the 17th of the same month at 10am when the complainant would also be present so as to mediate the matter. On the 17th the respondent did not appear. Attempts to contact him were futile. The respondent contacted the Commission at 10:45am offering an explanation as to why he did not attend, and expressed that he would want to schedule another meeting for the following day. The complainant was informed and felt that the respondent would as previously just not show up. The case was therefore submitted to the Board of Commissioners for determination.

[4]The matter proceeded to a formal hearing on Wednesday 19th of May, 2014. All parties were present with Ms. Emily Mousbé presenting the case on behalf of the complainant Mr. Jean-Marc Rose and Mr. Clifford Andre, Attorney-At-Law representing the respondent, Mr. Marc Rose. Ms. Mousbé went through the evidence collected by the Commission and urged the Board to find in favour of the complainant and order the full refund of the SR.12, 000 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 concluded by stating that the respondent had ample time to settle this matter amicably but refused or failed to do so and therefore 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. Clifford Andre strongly rejected the argument that his client did not make efforts to settle this matter given that the respondent had intimated that he wanted to reschedule the meeting he had missed but the complainant refused and was of the opinion that the mediation process had not been fully exhausted. Moreover, it was the respondent's instruction that the complainant failed to provide all the necessary materials needed to complete the works required to be done on the pickup therefore blame for the situation cannot be attributed only to the respondent. Mr. Andre argued that given that the parties are siblings the price paid for the service was much lower than what the complainant would have been charged at another garage. That in his opinion the works done by the respondent when the pickup was taken from him was more than the SR.12, 000 he was paid for the complete service. As part of his mitigating arguments Mr. Andre urged the Board of Commissioners to take into account all the arguments he had put forward and to rule with due diligence.

[6]The Board of Commissioners has deliberated lengthily on the matter. It is not disputed that the respondent carried out some works on the complainant's vehicle. It is also not disputed that he did not complete all the works agreed between the two parties for the price of SR.12, 000. The respondent attributed this to the claim that the complainant did not provide all the necessary material which the latter denies. The Board notes that no formal valuation of the works done by the respondent was produced although the Board had some visual representation of the works done by the respondent through photographs taken of the pickup by officers of the Commission (See Exhibit 11). Taking into consideration all the evidence produced in the matter and the oral submissions from both parties during the hearing, the Board of Commissioners finds the respondent, Mr. Marc Rose to be in contravention of Section 40(1)(a) of the Consumer Protection Act, 2010 by failing to complete works on the complainant's pickup for which he was paid SR.12, 000. When considering a remedy

the Board has consulted Section 40(2) of the Consumer Protection Act, 2010 which makes provision for refund. **Accordingly it is hereby ordered that the respondent Mr. Marc Rose refunds to the complainant, Mr. Jean-Marc Rose the sum of SR.3000 for works which he failed to complete on the complainant's vehicle.** The Board is of the view that this sum is reasonable given all the circumstances of the case including the fact that it could not be ascertained for sure that the respondent received all the necessary materials to complete the works therefore both parties contributed to the breach of their agreement. **Payment is to be made to the offices of the Fair Trading Commission not later than thirty (30) days from the date of this ruling.**

[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)*

[8]We rule accordingly.

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

Mr. Victor Pool
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner