THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
MEGHJEE KALYANJI & CO (PTY) LTD
(Rep herein by Mr. Kirti Meghjee)

CPA.11.267

Complainant: Mr. Radley Sinon
Respondent: Meghjee Kalyanji & Co (Pty) Ltd

QUORUM:
Mr. Colin Jean-Louis – (Chairperson)
Mr. Philippe Chong-Seng – Commissioner
Mr. Michael Nalletamby – Commissioner
Mr. Victor Pool - Commissioner

For the complainant:
Ms. Aaishah Gerry – Legal Assistant (FTC)
Ms. Dolores Barrack – Enforcement Officer (FTC)
Mr. Radley Sinon – Complainant
Ms. Winnie Malbrook – Witness

For the respondent:
Mr. Kirtie Meghjee – Respondent
Mr. Chan Sing Chung - Witness

RULING

[1]The complaint registered by the Fair Trading Commission on 23rd December, 2011 from Mr. Radley Sinon, henceforth the complainant, was to the effect that he bought a sewing machine for his concubine, Ms. Winnie Malbrook, from Meghjee Kalyanji & Co (Pty) Ltd, the respondent herein, on 6th December, 2011 at the sum of SR. 2, 900/-. That upon using the machine it emitted a noise and the thread kept breaking. The complainant returned the sewing machine to the shop where he was informed that the same would be fixed. To date the machine is still in the respondent's possession. These facts are undisputed.

[2]Via several correspondences through officers of the Commission the complainant agreed to take the fixed machine but with an extended warranty period of six months. This request was refused by the respondent as he was of the view that the machine had been tampered with before it was brought back to him rendering the warranty void. An unyielding Mr. Sinon therefore demanded a full refund. This was again unacceptable to the respondent and claimed that he had fixed the machine to good working order for that reason the circumstances did not warrant a refund instead the complainant should take back the machine. Being unable to reach a consensus the Commission deemed it necessary for the case to be forwarded to the Board of Commissioners for determination.

[3]At the hearing of the matter on Wednesday 3rd July, 2013 initially the unresponsiveness of both parties was evident whereby the complainant and his concubine maintained that they would wish for a full refund given the length of time that the case has been ongoing (since December, 2011) causing them to incur losses being without a sewing machine, going back and forth to the respondent and the Commission in attempts to obtain a satisfactory resolution to the matter but in vain. Similarly the respondent sustained his previous position that he does not accept to refund given that the sewing machine was duly fixed and is now in perfect working condition therefore complainant should accept the same back.

[4]Given the straightforward crux of the matter the Board was all bent towards reaching a consented settlement in line with the law that would satisfy both sides and produce minimal loss to either party. Following widespread discussions and exploring several avenues of settling this dispute the parties reluctantly agreed that the best way forward so as to bring closure to this matter is for the respondent to fully refund the complainant subject to the later returning to the former through the Commission certain accessory components which accompanied the said machine as well as a plastic cover which the respondent claims was not returned to him. The complainant denied any such components being in his possession and stated that he returned everything to the respondent. Taking this headway in due consideration the Board directed that the complainant's concubine searches for those components and the plastic cover and informs the Commission of her findings one week from the date of the hearing, thereafter the Board shall deliberate on its ruling.

[5]At this juncture we find it necessary to note that the Commission did not receive any such information from either the complainant or his concubine. Hence the Board is basing its decision on the evidence before it.

[6]After studying the issues at hand the Board of Commissioners finds that the suitable remedy to this claim is to **order that the respondent, Meghjee Kalyanji & Co (Pty) Ltd keeps the sewing machine and refunds to the complainant, Mr. Radley Sinon, the sum of SR.2,600/-,** SR300/- less than the amount paid by the complainant for the machine which is meant to cover the cost of the two missing components and the plastic cover. **Payment is to be made to the Commission not later than thirty (30) days from the date of this ruling.** We rule accordingly.

[7]The parties have a right to appeal against this ruling *(See Section 44 of the Fair Trading Commission Act, 2009).*

Ruling pronounced by us on this 7th day of August, 2013.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner