THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
METALUCO (SEYCHELLES) (PTY) LIMITED
(Rep herein by Mr. Charles Loizeau)

Case No: CPA.14.265

Complainant – Ms. Marie-Therese Denis
Respondent – Metaluco (Seychelles) (Pty) Limited

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

For the Complainant
Ms. Karine Dick –Legal Officer (FTC)

For the Respondent
Mr. Frank Elizabeth, Attorney-At-Law

RULING

[1]The Commission registered a complaint from one Ms. Marie-Therese Denis, of Mont-Buxton (CE5) on the 27th October, 2014 against Metaluco (Seychelles) (Pty) Ltd of Avenue D'Arhoa, Providence Industrial Estate (CE6). The complaint was to the effect that the complainant had paid to the respondent the sum of SR.28,000 as part payment for the supply of roofing sheets and panel doors. The respondent failed to provide said service. The complainant sought redress in the form of a refund of the amount paid. Being unable to reach a settlement between the parties the Commission filed a case for the contravention of Section 40(1)(a), Section 30(1) and Section 36(a) of the Consumer Protection Act, 2010.

[2]The case proceeded to be heard before the Board of Commissioners in the presence of all required parties. Ms. Karine Dick, Legal Officer of the Fair Trading Commission, representing the complainant, Ms. Denis, presented the Commission's findings to the Board. Ms. Dick called several witnesses in support of her case. In the first instance representatives from the Registration Division and the Seychelles Licensing Authority produced copies of the respondent's certificate of incorporation and license respectively (See CE1 and CE2). Mrs. Natalie Edmond, Principal Analyst from the Competition and Market Surveillance Department of the Fair Trading Commission also called to give her testimony about the investigation conducted and to produce relevant documentary evidence gathered during the investigation process which included the Gainful Occupation Permit one Mr. Raffaele Lucchetta(CE3) who was an employee of Metaluco (Seychelles) (Pty) Limited and a letter to the Department of Immigration and Civil Status from the Managing Director Metaluco (Seychelles) (Pty) Limited, Mr. Charles Loizeau, cancelling said GOP (CE4). Ms. Dick then proceeded to call the complainant, Ms. Denis who testified that she went to the company's business premises at Providence to order corrugated iron sheets for her house. That she spoke to Mr. Charles Loizeau and Mr. Raffaele Lucchetta and agreed on the type and price of the corrugated iron sheets she wanted (CE7). That she paid to Mr. Charles Loizeau the sum of SR.28,000 as a deposit for the service to be provided (CE8) but she never received anything from the company. The complainant concluded her testimony by requesting for a refund of the SR.28,000 she paid to Metaluco (Seychelles) (Pty) Limited.

[3]The respondent presented his defence to the Board of Commissioners through his own testimony during the hearing and also by a written statement of defence filed by his counsel Mr. Frank Elizabeth dated 9th February, 2017 which stated that the respondent was not under any legal obligation to pay the complainant any money given that the complainant paid the money to Mr Raffaele Lucchetta and not Metaluco (Seychelles) (Pty) Limited hence the complaint should have been brought against Mr. Lucchetta. Mr. Loizeau reiterated in his testimony that he only accepted the money from Ms. Denis on behalf of Mr. Lucchetta and he did not benefit at all from this money and neither did his company and therefore does not agree to refund the complainant anything. Mr. Loizeau produced several documents to the effect that the complaint was initially brought against Mr. Raffaele Lucchetta (See CE4 to CE7 + CE9 to CE11). Counsel for the respondent concluded the respondent's case by submitting that all the evidence submitted by the respondent shows that the transaction was between Ms. Denis and Mr. Lucchetta and that Mr. Loizeau was just acting as a facilitator to the transaction. That at all times it was Mr. Lucchetta giving undertakings to the Fair Trading Commission to the effect that he was going to

honour the agreement he had with Ms. Denis which means that this had nothing to do with Mr. Loizeau or Metaluco (Seychelles) (Pty) Limited. That the most important piece of evidence that has been produced before the Board was the letter which Ms. Denis instructed Mrs. Alexia Amesbury, Attorney-At-Law, to write to the Immigration Department in which she clearly admitted that it was Mr. Lucchetta who owed her money (See DE4).

[4]In turn Ms. Dick concluded the complainant's case by submitting that the Commission has produced sufficient evidence to show that Metaluco (Seychelles) (Pty) Limited received and accepted the sum of SR.28,000 from Ms. Marie-Therese Denis on the 12th of April, 2013 as part payment for the supply of corrugated iron sheets and panel doors (See CE8). That whether or not the Commission made the error of stating Mr. Raffaele Lucchetta in its correspondences during the investigation stage it does not change the fact that it was Mr. Loizeau who received and accepted the payment and he signed the receipt which he gave to the complainant hence the Commission corrected its error and filed a case against the right respondent before the Board of Commissioners which is Metaluco (Seychelles) (Pty) Limited represented herein by Mr. Charles Loizeau. Ms. Dick urged the Board to rule in favour of the complainant and ordering the respondent to refund the complainant the sum of SR.28,000 in accordance with Section 40(2) of the Consumer Protection Act, 2010 hence, finding that through his actions the respondent was in contravention of Section 30(1) which states that *"A person shall not, in trade or commerce in connection with the supply or possible supply of goods or the supply or use of goods or services, engage in conduct that is, or likely to be misleading or deceptive"* and Section 36(a) of the Consumer Protection Act, 2010 which provides that "*A person shall not, in trade or commerce, as a supplier, accept payment or other consideration for goods or services where at the time of the acceptance the person does not intend to supply the goods or service"*. In addition, that the respondent be found in contravention of Section 40(1)(a) of the same Act which states *"where a supplier undertakes to perform any service on behalf of the consumer, the supplier shall perform and complete that service in a timely manner and give to the consumer timely notice of any unavoidable delay in the performance of the service having regard to the circumstances of the supply and any specific criteria or condition agreed between the supplier and the consumer before or during the performance of the service."* Moreover, Ms. Dick urged the Board to have regards to Section 67(1) of Consumer Protection Act, 2010 which makes provision for penalties as well as Section 39(2) of the Companies Act which states that *"A person who deals with another person or who is represented by the director of a proprietary company, or by a managing director of any company, as having authority to act on the company's behalf in connection with any transaction, may treat the company as bound by the acts of that*

person done within his apparent authority, even though he has not been authorised by the company to do those acts on its behalf."

[5]The Board of Commissioners has deliberated on the matter and has given due consideration to the evidence adduced before it. It is clear to the Board that Mr. Raffaele Lucchetta was at all times the employee of Metaluco (Seychelles) (Pty) Limited. Also clear is the fact that both the receipt and quotation was produced by Metaluco (Seychelles) (Pty) Limited, bearing the company's letterhead and signature of its Managing Director, Mr. Charles Loizeau. Even in his testimony before the Board the respondent himself said that he received the money and issued out the receipt although he claims that it was on behalf of Mr. Raffaele Lucchetta. Similarly counsel for the respondent argued copiously on the fact that even if the receipt was from Metaluco (Seychelles) (Pty) Limited the respondent was at no time entering into a contract with the complainant rather he was merely facilitating the transaction between the complainant and Mr. Raffaele Lucchetta. Be that as it may, this whole transaction falls under the ambit of the Consumer Protection Act and the Board is viewing Metaluco (Seychelles) (Pty) Limited, represented herein by its Managing Director Mr. Charles Loizeau as the supplier and Ms. Marie-Therese Denis as the consumer. Consequently, Mr. Loizeau is not absolved from liability given that Mr. Raffaele Lucchetta was working for his company under his Gainful Occupation Permit. The Board of Commissioners therefore finds the respondent in contravention of Section 40(1)(a) of the Consumer Protection Act, 2010 **and hereby orders the respondent to refund to the complainant, Ms. Marie-Therese Denis, the sum of SR.28,000 in accordance with Section 40(2) of the same Act to be paid to the office of the Fair Trading Commission not later than sixty (60)days from the date of this ruling.** To the contrary the Board is of the view that the Commission has not produced sufficient evidence to prove the contravention of Sections 30(1) and 36(a) of the Consumer Protection Act, 2010.

[6]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).*

[7]We rule accordingly.

Pronounced by us on this 6th day of April, 2017.

Mr. Victor Pool	**Mr. Philippe Chong-Seng**	**Mrs. Jenna Thelermont**
Presiding Chairperson	**Commissioner**	**Commissioner**