THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
NORBERT ZELIA

CPA.11.243.99

Complainant: Ms. Judy Poiret
Respondent: Mr. Norbert Zelia

QUORUM:
Mrs. Vijaykumari (Dolly) Tirant – Commissioner
Mr. Philippe Chong-Seng – Commissioner
Mrs. Jenna Thelermont – Commissioner
Mrs. Annie Vidot - Commissioner

For the Complainant
Ms. Aaishah Gerry – Assistant Legal Officer (FTC)
Ms. Nanet Bristol – Enforcement Officer (FTC)

Respondent – Absent

Case presented on behalf of the complainants by Ms. Nanet Bristol, Enforcement Officer (FTC).

RULING

[1]This matter is one relating to the contravention of Sections 36, 40 and 49 of the Consumer Protection Act, 2010. Ms. Judy Poiret (the complainant) filed a complaint on 13th October, 2011 against Mr. Norbert Zelia (respondent) the former alleging that subsequently to contracting the latter for the construction of a bedroom and veranda, an extension to her existing house, she paid the latter the sum of SR.3, 000/- on Sunday 2nd of October, 2011 intended to buy building

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materials to commence the project the following day (See Exhibit 2). This did not materialize. All attempts of the complainant to contact the respondent were futile. Similarly during the investigation process the continued efforts of the Commission secure the attendance of the respondent for meetings to discuss the matter were in vain (See Exhibits 7 – 11 as well as Exhibits 14 – 20). Receiving no co-operation from the respondent the Commission deemed it fit for the case to be heard by the Board of Commissioners for determinations into the contravention of Section 36 which states that *"A person shall not, in trade or commerce, accept payment ... for services where at the time of the acceptance the person does not intend to supply the ... services"*, Section 40(1)(a) which provides that *"...where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall perform and complete that services in a timely manner and give to the consumer notice of any unavoidable delay..."*.

[2]The case was fixed for hearing on Wednesday 7th March 2012 and again endeavours of the officers of the Commission to serve the respondent with summons were fruitless (See Exhibits 22 & 23). Consequently the respondent was absent and unrepresented at the hearing which subsequently proceeded *exparte* after an application was made under Rule 12 of the Fair Trading (Procedure for Conduct of Hearings) Rules, 2011 by Ms. Nanet Bristol an Enforcement Officer of the Fair Trading Commission who was presenting the case on behalf of the complainant. As per the findings of the Commission the respondent was indeed approached to undertake such construction works and he provided a quotation to that effect (See Exhibit 3). It is contended that the respondent also provided a list of materials needed for the works as well although that list was not signed (See Exhibit 4). Mrs. Poiret through her oral testimony expressed that he would want a full refund of the SR.3, 000/- she paid to the respondent since he never delivered the service he was paid for and she had to find a contractor to do the work. Ms. Bristol concluded the case of the complainant by recommending that the respondent be required to provide a refund as per Section 40(2) of the Consume Protection Act, 2010 and penalized under Section 49 of the Fair Trading Act, 2009 which allows for a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding two (2) years or to both such fine or imprisonment to be imposed on any person who, in any manner, impedes, prevents or obstruct any investigation by the Commission or any authorised officer in the execution of an inquiry.

[3]After hearing all the evidence presented on behalf of the Complainant, the Board of Commissioners noted that the Fair Trading Commission (the Commission) has taken reasonable steps to deliver the summons to the Respondent. The Board therefore concludes that the Respondent was given sufficient notice to attend the hearing which he failed to do so without any reasonable explanation. That the Commission has attempted various means of mediation with the Respondent prior to resorting to the hearing but these were to no avail as the Respondent failed and/or refused to turn up for the meetings. By failing to attend the meetings organised by the Commission, the Respondent has caused obstruction to the Commission's investigations as well as unnecessary and extra administrative works and loss of productive time. Nevertheless, the Respondent never denied, during several telephone conversations with officers of the Commission, receiving the money from the Complainant which money he has kept without delivering the promised works despite being repeatedly chased by the Complainant and the Commission for several months. Instead he claimed that he used all the money Mrs. Poiret had given him to for transactions necessary for the construction works like the preparation of the quotation and so on. Moreover that the Complainant took a loan to carry out the extension works on her house, of which she paid the Respondent the SR.3, 000/- in good faith without asking for a receipt in return.

[4]In the light of the above the Board of Commissioners finds that the Respondent, Mr. Norbert Zelia is in contravention of Sections 36 and 40(1) of the Consumer Protection Act, 2010 and has decided on the following action;

- **The Respondent, Mr. Norbert Zelia, refunds the Complainant, Mrs. Judy Poiret, the sum of SR.3, 000/- in full and the respondent pays a penalty of SR.2, 000/- in accordance with Section 67 (1) of the Consumer Protection Act 2010 for above the contraventions.**

[5]Further, the Board of Commissioners finds that through his behaviour the respondent has committed an offence pursuant to Section 49 of the Fair Trading Act, 2009 by failing and/or refusing to co-operate with the Commission which prevented the latter from correctly executing an inquiry into the complaint lodged against him. **In that regards we shall impose a fine in the sum of SR.2,000/-.**

[6]**All fines and penalties are to be paid thirty (30) days from the date of this ruling. We rule accordingly.**

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

Pronounced by us on this 12th day of December, 2012.

Mrs. Vijaykumari (Dolly) Tirant
Commissioner
(Chairperson)

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mrs. Annie Vidot
Commissioner