THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
PARKASH CHANDER

Case No: CPA.15.263

Complainant – Ms. Edwina Athanase
Respondent – Mr. Parkash Chander

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

For the Complainant
Mr. Ziggy Adam –Legal Officer (FTC)

For the Respondent
Mr. Guy Ferley, Attorney-At-Law

RULING

[1]The Commission registered a complaint lodged by one Ms. Edwina Athanase of Union Vale, Mahe on the 27th October, 2015 against Mr. Parkash Chander of Nouvelle Vallee, Beau-Vallon, Mahe. The complainant alleged that she paid to the respondent, a Class III contractor, the sum of SR.200,000 as payment for the construction of a master bedroom extension to her existing dwelling house at Union Vale. The complainant claimed that works carried out by the respondent was unsatisfactory and moreover the project was incomplete. Ms. Athanase now seeks a refund for works that were not completed.

[2]During the investigation process the Commission met with both parties. The respondent confirmed that the sum of SR.200,000 was paid to him. There was some level of agreement as to the amount of work done but despite the negotiation process no consensus was reached with regards to the sum of refund. Therefore being unable to reach a satisfactory settlement, the Commission filed a case before the Board of Commissioners for the contravention of Section 40(1)(a)and (b) of the Consumer Protection Act, 2010 which states as follows:-

> *"**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 that service in a timely manner and give to the consumer timely 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;*
>
> *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."*

[3]The Board of Commissioners convened on two sittings to hear the matter. Mr. Ziggy Adam, Legal Officer of the Fair Trading Commission represented the complainant, Ms. Edwina Athanase and the respondent Mr. Chander was represented by Mr. Guy Ferley, Attorney-At-Law. Mr. Adam called several witnesses in support of his case. Firstly, the complainant herself who stated that she paid Mr. Chander the sum of SR.200,000 she had been quoted for the construction of her master bedroom in two instalments of SR.100,000 (See CE1). The quote was for materials and labour cost as well. That she was not satisfied with the workmanship of the respondent as the work was substandard. For instance, the doors were not properly fixed in, there were spaces between the wall the door frames and the locks were not working properly, the walls had not been painted properly, some tiles had not been fixed in and so on (See CE6). Furthermore, she claimed that the respondent left the site at one point and she was not informed when he would be coming back and that she lost faith in the respondent and asked him not to return on site again. The complainant concluded that she had to enlist the services of a Quantity Surveyor who quoted works done at the sum of SR.160,100 hence works to be completed at SR.39,900 which is the sum that she should be refunded.

[4]Mr. Adam called Mr. Gustave Larue the quantity surveyor retained by Ms. Athanase to assess the work done by the respondent. Mr. Larue adduced to the Board the report he made on the 22nd of December, 2015 after visiting the site on the 15th of December, 2015 (CE3) in which he gave details about the scope of works carried out and valued the work done at SR.160,100 and the outstanding amount to completion as SR.39,900. It also came out in his evidence that the respondent was not present when he conducted the site visit so his report did not take into account any input from Mr. Parkash. He stated that he used the quotation and plan provided by the complainant and applied his own calculations to arrive at the evaluations present in his report.

[5]Lastly, Mr. Adam called Ms. Dolores Barrack, an analyst of the Fair Trading Commission who was assigned this case. Ms. Barrack submitted that as part of the investigation she visited the site together with another officer of the Commission and two officers of the Seychelles Planning Authority. She produced her findings in a site visit report accompanied with photographs taken which she produced to the Board (See CE5). She stated that there were issues observed with the windows waste water pipe, as well as splashes of cement on the wall and windows which had not been cleaned by the respondent. It was also noted that the complainant had carried out the cleaning of external surrounding herself. It also came to light during her testimony through cross-examination by the respondent that during the investigation period the respondent was willing to rectify certain issues on site but the complainant did not agree claiming that she had lost faith in his workmanship.

[6]Mr. Parkash Chander was the only witness to give evidence in his defence. When examined by his counsel, Mr. Guy Ferley, Mr. Parkash stated that he was a contractor of 16 years experience and had constructed several office buildings and dwelling houses as well. That indeed he was paid the sum of SR.200,000 by Ms. Edwina Athanase for the construction of an extended master bedroom to her dwelling house at Union Vale. That he had completed all works that he and the complainant had agreed that he would do save for some finishing works and site clearing. He maintained his disagreement to refund the complainant SR.39,900 as per the quantity surveyor's report claiming that he was not consulted when said report was made which does not take into account the extra work he did, mentioning tiles he had put on the pillars, and the fact that the complainant chose to get certain bathroom fixtures and tiles that cost more than what he had quoted. That he had always been willing to complete the remaining works had he been given opportunity but said he was denied access. That the works left would have been completed in two days or so costing SR.2500 at the most.

[7]The case was concluded with both parties making written submissions to the Board. Mr. Ziggy Adam submitted to the Board on behalf of the complainant and stated that the Board should rely on the quantity surveyor's report, produced by a well qualified quantity surveyor with 26 years of experience and whose evidence have been accepted before courts of law who valued the outstanding works at SR.39,900 (CE3). That the observations made by Ms. Barrack were well documented and proved that works done by the respondent were both substandard and incomplete (CE4, CE5, CE6). The complainant also denied the statement made by the respondent that the door he used to gain access to the place was locked hence preventing him to complete the work given that the locks had been improperly installed hence the doors were never locked and in addition there was another access point to the place. That the Board, based on the evidence produced, should find the respondent in contravention of Section 40(1)(a) and (b) of the Consumer Protection Act, 2010 and order Mr. Chander to refund to the complainant sum of SR.39,900 pursuant to Section 40(2) of the same Act.

[8]Counsel for the respondent submitted that the complainant was not truthful given that she claimed that she had to pay another contractor a further SR.200,000 to complete the project which the quantity surveyor she consulted to assess the work valued outstanding works at SR.39,900 and hence the Board should treat her evidence lightly. That only finishing works remained to be completed and had he been given the opportunity he would have completed said works at minimal cost. That the quantity surveyor could not properly justify the basis of the figures in his report and the investigating officer failed to include the respondent's extra expenditures on the project. That the sum being claimed is un-substantiated and has not been proven.

[9]The Board of Commissioners deliberated on the matter. Upon examining the evidence produced it is established that the respondent received SR.200,000 from the complainant for the construction of a master bedroom which was to be an extension to her existing house. That said master bedroom was constructed partly by the respondent. It is clear that the works were incomplete and the respondent himself admitted to this (See CE3, CE5, CE6). The Board therefore finds the respondent, Mr. Parkash Chander, to be in contravention of Section 40(1)(a) and (b) of the Consumer Protection Act, 2010.

[10]At this juncture Section 40(2)(b) of the Consumer Protection Act, 2010 provides that *where a supplier fails to perform a service to the standards specified in subsection (1) the supplier shall at the direction of the consumer refund to the consumer a reasonable portion of the price paid for the service performed and goods supplied, having regard to*

the extent of the failure. In deciding so, the Board is mindful of all circumstances of the case. It is also clear to the Board that the respondent was always willing to complete the work but the complainant refused given that she was not satisfied with the work the respondent had done thus whether or not the respondent had access to the place is immaterial. The respondent stated that the complainant caused overpricing due to her choice of bathroom fixtures and tiles. The complainant did not deny this and instead submitted that she had the right to chose therefore the Board is inclined to believe this statement. The respondent is also vehemently denying the sum of SR39,900 evaluated for outstanding work claiming that the visit which consequently led to the production of the report was done in his absence hence the quantity surveyor did not take into account his input. The Board of Commissioners agrees with the respondent's position on this matter and reiterates that whenever assessing and evaluating works done by someone that person should be present to ensure that the evaluation reflects the true state of affairs. The Board has not had sight of any proof to show that Mr. Chander was informed to be there. The Board therefore finds it difficult to rely fully on the quantity surveyor's report due to the absence of the respondent but at the same time cannot ignore its contents. **Taking all the circumstances mentioned into consideration the Board hereby orders the respondent to refund to the complainant the sum of SR.19,950 to be paid to the offices of the Fair Trading Commission not later than thirty (30) days from the date of this ruling.**

[11]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).*

[12]We rule accordingly.

Pronounced by us on this 8th day of September, 2017.

Mr. Victor Pool
Presiding Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner