THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
REHOBOTH BUILDERS (PTY) LTD
(Rep herein by Mr. Mark Agrippine)

CPA.12.100

Complainant: Mr. Jules Desir

Respondent: Rehoboth Builders (Pty) Ltd
(Rep herein by Mr. Mark Agrippine)

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

For the Complainant
Mr. Georges Tirant – Director for Consumer Protection Affairs (FTC)
Mr. Angello Lesperance – Enforcement Officer (FTC)

For the Respondent
Mr. Mark Agrippine

Case presented on behalf of the complainants by Mr. Georges Tirant, Director for Consumer Protection Affairs (FTC).

RULING

[1]The complaint herein was lodged on the 25th June, 2012 by Mr. Jules Desir (the complainant) (See Annex 1)against one Rehoboth Builders (Pty) Ltd (the respondent), a registered business originally incorporated as Forest Builders (Pty) Ltd on 17th May, 1999 (See Annex 2a & 2b). The respondent is represented here by

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its director Mr. Mark Agrippine (See Annex 2c). The complaint was to the effect that Mr. Desir had contracted Rehoboth Builders (Pty) Ltd to complete the construction of his house at La Gogue to be undertaken over a period of six months commencing from February, 2012. Till the date of the filing of the complaint the respondent had failed to complete those works (See Annex 5). The complainant signed an agreement with the respondent for the project to construct a concrete floor slab, suspended floor slab, ground floor and first floor walling for a grand total of SR.170, 000/- which was to cover the cost of labour only as the complainant would provide all the material (See Annex 3). Out of the total sum only SR.85, 000/- was paid to the respondent by the complainant, SR.80, 000/- on the 20th February, 2012 and SR.5, 000/- on 7th March of the same year (See Annex 7). The complainant had alleged that the respondent only applied the concrete slab and started to mount the house, therefore, officers of the Commission conducted a site visit on 23rd July, 2012 and took photographs to substantiate the allegation (See Annex 8). As part of its investigation the Commission contacted the respondent who submitted a letter stating that the agreed price for the slabs and walling was SR95, 000/- which he had been paid only SR.85, 000/-, that the amount of work left undone was worth less than SR.10, 000/- so he does not owe the complainant anything (See Annex 10). The Commission informed the complainant of this position taken by the respondent and was advised to acquire an evaluation report to illustrate the works that remained but through a letter dated 29th August, 2012 Mr. Desir provided his own assessment and estimated that the respondent owed him approximately SR.25, 000/- (See Annex 11) being the extra cost he incurred to have done the works the respondent had left incomplete and thus requesting a refund of that amount. Based on their findings the Commission concluded that the respondent had contravened Section 40(1)(a)(b) and 40(2) by not performing works required and not giving the complainant notice of any avoidable delay. Being unable to come to a settlement the Commission deemed it necessary for the case against Rehoboth Builders (Pty) Ltd to be heard by the Board of Commissioners.

[2]The hearing proceeded on Wednesday 24th October, 2012 duly attended by all parties. Mr. Georges Tirant, Director for Consumer Protection Affairs (FTC), presented their findings to the Board on behalf of the complainant and prayed that the Commissioners ruled in favour of their case and recommended that the respondent be penalized under Section 67(1) of the Consumer Protection Act, 2010. The respondent, Mr. Agrippine, maintained that the work he had done was

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for the value of the amount of money he had been paid thus he owed the complainant nothing. He also opposed other claims of the complainant by stating that he did inform him verbally of inevitable delays since he was encountering difficulties with his labour force and also added that on numerous occasions he was ready to work but the complainant failed to provide building materials on time which also contributed to the delays. This was denied by the complainant. The respondent concluded by disagreeing with the requested amount for refund and reiterated that the works that remained was valued at less than SR.10, 000/-. The complainant, Mr. Desir, would not be moved from his position. The Board noticed his apparent discontent with the situation. He testified that he tried to contact the respondent on numerous occasions and several times the respondent did not take his calls, the times that he did he promised to finish the job but he never did. The complainant claimed that on one occasion the respondent even said that he did not know who he was. Moreover that he had to pay another mason to complete the works that the respondent had left undone which included part of the lintel and stairs leading to the house although no direct evidence was submitted on the day of the hearing. Subsequently, following the Board's request, the complainant arranged for the mason he hired to submit an official statement at the Commission's office to substantiate his claim.

[3]We have carefully studied this case and all the evidence produced including the official statement of one Mr. Claude Cadeau, a mason, submitted on the 2nd November, 2012 outlining the works he did for the complainant and have given it due consideration. We have noted discrepancies in the contract but we shall not make any pronouncement on that issue as it is not within the scope of our mandate. Be that as it may we feel is necessary to advise the respondent that for future transactions better care should be taken while drafting contracts to ensure that simple items like the date appear on the document.

[4]On to the matter at hand we find that the respondent has not completed the works contracted to him due to his labour force problems. We find that the respondent has contravened Section 40(1)(a)(b) of the Consumer Protection Act, 2010 and rule that in accordance with Section 40(2)(b) of the Act the respondent, Rehoboth Builders, **shall refund to the complainant, Mr. Jules Desir, the sum of SR.15,000/-** being the sum the complainant had to pay to complete the works left undone by the respondent. This is subject to the complainant properly

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substantiating this amount. With regards to stairs it is unclear whether this was included in the contract sum so we shall therefore make no orders to that effect. **Furthermore, pursuant to Section 67(1) of the same Act, the Board shall impose a fine on Rehoboth Builders in the sum equalling 2.5% of the contract sum as penalty for the said contraventions. Both sums are to be paid thirty (30) days from the date of this ruling.** We so order.

[5]The parties are 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