THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
ROBERT ANDRE

Case No: CPA.14.256

Complainant – Ms. Sylvie Edmond
Respondent – Mr. Robert Andre

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
Mrs. Alexia Amesbury, Attorney-At-Law

RULING

[1]The Commission registered a complaint from one Ms. Sylvie Edmond of Pointe Larue, Mahe on the 14th October, 2014 against Mr. Robert Andre of House AS211, Ile Perseverance 2, Mahe. The complaint was to the effect that the complainant had paid to the respondent, a Class IV contractor, the sum of SR.25,000 as part payment of labour cost for the completion of her two bedroom house at Pointe Larue. It is alleged that the respondent failed to complete that service. The complainant is now seeking a refund for incomplete works. The parties were unable to reach a settlement during the investigation and negotiation process therefore, the Commission filed a case before the Board of Commissioners for the contravention of Section 40(1)(a) of the Consumer

Protection Act, 2010 which states that *"Subject to this Part, where a supplier undertakes to perform any service for or on behalf of a consumer, the supplier shall perform that service in a timely manner and give to the consumer timely notice of any unavoidable delay in the performance of that 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."*

[2]The Board of Commissioners convened on two occasions to hear the matter. Mr. Ziggy Adam, Legal Officer of the Fair Trading Commission represented the complainant, Ms. Sylvie Edmond and the respondent Mr. Andre was represented by Mrs. Alexia Amesbury, Attorney-At-Law. Mr. Adam called several witnesses in support of his case. Firstly, the complainant herself who stated that she paid Mr. Andre SR.25,000 out of the SR.85,000 she had been quoted, for the completion of her dwelling house. The sum was for labour cost only as she was to provide all the materials. That the respondent requested another SR.10,000 which she refused to pay because she felt that the work he had done at that point did not amount to the SR.25,000 she had already paid him, instead she asked him to stop works and leave the site. That after failing to obtain a refund from him even through her lawyer she decided to report the matter to the Fair Trading Commission (See CE1). During her cross-examination counsel for the respondent raised issues of sabotage by the complainant's boyfriend whom Ms. Edmond had left in charge of her project. Ms. Edmond stated that she was unaware of this issue.

[3]Mr. Adam then called Ms. Naomi Louise, an analyst of the Fair Trading Commission who worked on Ms. Edmond case who said that as part of the investigation process she went on a site visit on the 5th November, 2014 following a meeting with the respondent to make a visual record of the work done on site by the respondent which she recorded in a site visit report (CE2). It came to light during her cross-examination that the respondent was not present for the said site visit. Ms. Louise was followed by Mr. Gustave Larue, a quantity surveyor of twenty-six years, who gave evidence to the effect that he was instructed by the Fair Trading Commission to produce an independent quantity surveyor's report. Mr. Larue stated that he conducted a site visit together with the complainant, her partner and officers of the Fair Trading Commission and hereafter produced his report (CE3) whereby he quoted worked done on site at SR.12,695. Similarly, in his cross-examination by respondent counsel Mr. Larue stated that the respondent was not present at the said site visit and the witness went on to add in his re-examination that his report would possibly be largely different had the respondent been there and provided his input as well.

[4]Lastly, Mr. Adam called Ms. Judith Louis, previously a Legal Officer with the Fair Trading Commission, who produced the investigation report in this case based on the documentary evidence gathered and agreed facts obtained from the parties. Ms. Louis deduced that the cost of work done by the respondent amounted to SR.12,095, hence the amount owed to the complainant to be SR12.905.

[5]Mrs. Amesbury, counsel for the respondent, called two witnesses in her defence. Firstly, Mr. Robert Andre, the respondent and secondly, Mr. Francois Anderson. During his examination Mr. Andre stated that he entered into a verbal agreement with Ms. Edmond to complete her house at Pointe Larue. That from the outset Ms. Edmond informed him that Mr. Marc Rose, her boyfriend would be supervising the project. That he worked on that project everyday save for Sundays from about one month to six weeks. That soon after work commenced he started to encounter problems with Mr. Rose in that in some instances proper materials were not provided on time, the agreement for transportation to the site was not kept and instructions for extra work was being given. Mr. Andre stated that Mr. Rose went as far as to ask him to purposefully delay the works because he does not want the house to be completed as it would mean that he would have to move in with Ms. Edmond and that would cause problem with his other relationship. That he informed Ms. Edmond of the difficulties he was having but things did not change. Mr. Andre concluded by stating that he does not owe the complainant anything considering the extra work he carried out and the fact that he had to pay his worker even on the days that they could not work because of lack of materials. Thereafter, Mr. Anderson gave evidence to the Board stating that during the day he works as a labourer for Mr. Andre and he is paid SR.300 per day. That he recalls Ms. Edmond's project at Pointe Larue and they worked there for about one month. That they could not carry out the works properly because constant interference from Mr. Marc Rose.

[6]Both parties concluded by making submissions to the Board. The complainant submitted that the Board should rely on the quantity surveyor's report, produced by a well qualified quantity surveyor with 26 years of experience, which values works done by the respondent at SR.12,095. The complainant also submitted that there is no bias in the case given that the Commission's investigation included the respondent's input and the quantity surveyor's report was based on visual observations made on site by the quantity surveyor, Mr. Larue. The complainant ended by stating the Board should find against the respondent based on the evidence provided which shows that payment given did not amount to the works done. In the contrary counsel for the respondent submitted that the complainant has failed to prove her case beyond a reasonable given that the quantity surveyor's report is biased due to the fact that it was done in the

absence of the respondent hence the report failed to take into consideration key aspects of the amount of money the respondent actually spent on the project.

[7]The Board of Commissioners has deliberated lengthily on the matter and it was unanimously agreed that the issue the before the Board is the Ms. Sylvie Edmond entered into a verbal agreement with Mr. Andre, a Class VI contractor for the completion works on her house at Pointe Larue. We have one quotation from Mr. Andre amounting to SR.85,000 which was for labour cost only and we have one quantity surveyor's report quoting works done by Mr. Andre at SR.12,095 from the total sum of SR.25,000 disbursed to the respondent. It became apparent during the course of the hearing that Ms. Sylvie Edmond introduced her partner, Mr. Marc Rose, to Mr. Andre as the supervisor of the project and that Mr. Rose had much interference in the project. The respondent submitted that there was delay in providing materials and when materials were provided some were substandard. That Mr. Rose instructed him to conduct extra works and even went as far as to ask him to purposefully delay the project. It should be noted that the Board of Commissioners was keen to hear from the said Mr. Rose in view of the claims of sabotage to get some clarity regarding this allegation but surprisingly he was not called as a witness. Also it is not disputed that the respondent came to site dutifully with his worker from Monday to Friday and sometimes Saturdays and whether they worked or not depended greatly on the availability of materials. It was also noted that the Mr. Andre's worker was paid when he got to site regardless of whether he worked or not. To that end Mr. Francois Anderson (RW2) stated that this was the agreement he has with Mr. Andre being a casual labourer he could have been working elsewhere rather than getting to a site and not having the necessary material to carry out works.

[8]The Board in deliberating on this case has taken into account the construction industry in the country as a whole. The Board firmly believes that a contractor and his labourers come to a site to carry out works as per their contract to get their day's worth unless the owner of the property tells them otherwise. Therefore, we cannot agree with the Commission's position that if they did not work they should not get paid if they had reported to the site but the necessary materials were not made available to them. The Board is also of the view that when assessing and evaluating the work done by someone that person should be present so that the person's input is taken into consideration so as to produce an accurate report. Hence, the Board agrees with counsel for the respondent when she submitted that the quantity surveyor's report was biased because it is one-sided because the Commission did not ensure that Mr. Andre was present at the time the surveying was done and the Board takes notice that no proof was produced to show that it was put to Mr. Andre to be there and

more importantly the testimony of the quantity surveyor, Mr. Larue, who said that his report would have been significantly different either in the positive or the negative had the respondent been there. The Board therefore finds it difficult to rely on the quantity surveyor's report alone like the complainant is praying. Similarly, the site visit conducted on the 5th of November, 2014 was done in the absence of the respondent and this is reflected in the site visit report (CE2). In this regard the Board feels that the Commission is to ensure that when such reports are to be relied heavily upon at the minimum the respondent should be made aware of the visit and put on notice to be present for said visit to ensure fairness and transparency in its investigative process.

[9]Upon examination of all the evidence placed before it the Board of Commissioners takes premise that the respondent and his worker worked on the site for approximately thirty week days in approximately six weeks minus Sundays and not taking into account delays on days that materials were not provided. Based on the evidence then Mr. Anderson would have been paid SR.9,000 at a rate of SR.300 per day. In making calculations the Board is mindful of the normal commercial rate for labour in the construction industry. If the Board is to make a reasonable and conservative estimate for the rate of labour for a licensed Class VI contractor it shall assume the bare minimum rate of SR.500 per day then Mr. Andre is due SR15,000 for thirty days when you do not take into account the Saturdays which he went on site. This brings the cost to about SR24,000. That, coupled with the claim that the complainant and her partner contributed greatly to the delays by failing to produce the necessary materials the Board of Commissioners finds no merit in ordering a refund. The complaint is hereby dismissed.

[10]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).*

[11]We rule accordingly.

Pronounced by us on this 23rd day of June, 2017.

Mr. Victor Pool
Presiding Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner