THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
SEKAAR'S SHOPPING CENTRE

CPA.INS13.004

Complainant: The Fair Trading Commission

Respondent: Sekaar's Shopping Centre
(Rep herein by Mr. Somu Sekaar Pillay)

QUORUM:
Mr. Colin Jean-Louis – Chairperson
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner
Mr. Victor Pool – Commissioner

For the Complainant
Mrs. Aaishah Molle – Assistant Legal Officer (FTC)

For the Respondent
Mr. Sekaar Kumar Pillay
Mr. Mohamed Syed Malimary

Case presented on behalf of the complainant by Mrs. Aaishah Molle , Assistant Legal Officer (FTC).

RULING

[1]Pursuant to Section 4(3)(a) of the Fair Trading Commission Act, 2009 the Fair Trading Commission is empowered to keep under review commercial activities to ensure that practices that may adversely or unfairly affect the interests of consumers are prevented or terminated. Accordingly, in accordance with Section

33(1)(j) inspections of goods were carried out on 25th February, 2013 by the Fair Trading Commission (the complainant) at the business premises of Sekaar's Shopping Centre of Les Canelles, Mahe (the respondent). Officers of the Commission recorded their findings and concluded that the respondent was in contravention of the Consumer Protection Act, 2010. The Commission deemed it necessary for a case against the respondent to be compiled and presented to the Board of Commissioners.

[2]Being duly represented by Mr. Sekaar Kumar Pillay, the Managing Partner of Sekaar's Shopping Centre as well as Mr. Mohamed Malimary, a formal case proceeded for hearing on Wednesday 8th May, 2013 against the respondent. Mrs. Aaishah Molle, the Assistant Legal Officer appeared on behalf of the complainant. Although originally a total four offences was brought before the Board only three were presented before the Board of Commissioners after the complainant decided to withdraw count 3 of their statement of offence. One out of the remaining three counts was contested by the respondent. Those three counts are outlined below.

[3]Count 1 of the statement of offence alleges that the respondent displayed for sale fourteen (14) different products without displaying to consumers a price in relation to those goods contrary to Section 20(1) of the Consumer Protection Act, 2010 which provides that *"... a retailer shall not display any goods for sale without displaying to the consumer a price in relation to those goods."* The respondent admitted those facts.

[4]Count 2 was to the effect that the respondent required customers to pay a higher price for goods than the displayed price contrary to Section 21 which clearly states that *"... a person shall not, in trade or commerce, as a supplier, require a customer to pay a price for any goods and services – (a) higher than the displayed price in respect of those goods or services ..."*. This was contested by the respondent with Mr. Pillay arguing that at the time of the inspection they were in the process of installing a new point of sale system to include the new Value Added Tax which had been introduced in January. That the reason there was the difference in price of the two products officers of the Commission checked was because they were still inputting the commodities in the new system shelf by shelf. Mr. Pillay assured the Board that while this was going on they were not using new point of sale system instead customers were being served at one till which had a manual cash register, therefore, the customers were being charged in the displayed price and not the price that was on the new point of sale system. He remained adamant *vis a vis* this position.

[5]Section 24 provides that *"A person shall not offer to supply, display or supply any particular goods at a later date other than the expiry date of the goods"*. As per count 4 the inspection revealed that the respondent, Sekaar's Shopping Centre, on the 25th February offered to supply and displayed twenty-four (24) items at a date later than its expiry date which would have accumulated a combined retail price of SR.4, 705. 78/-. The respondent again admitted those facts.

[6]With no further evidence to place before the Board the complainant concluded by requesting remedies and penalties set out under Section 67(1) of the Consumer Protection Act, 2010 be enforced while having regards to provisions set out under Section 67(3). Mrs. Molle, on behalf of the complainant, also requested that the Board of Commissioners enforces Section 68 of the Consumer Protection Act, 2010 and Section 54 of the Fair Trading Commission Act, 2009, where applicable.

[7]The Board has deliberated on the evidence adduced before it. The Board is of the view that the complainant has submitted sufficient evidence to support Count 1 and Count 4 relating to affixed prices and expiry goods respectively, coupled with the respondent admitting the facts as per the finding of the complainant. The Board therefore rules that Sekaar's Shopping Centre is in contravention of Section 20(1) and Section 24 of the Consumer Protection Act, 2010 and shall penalize the respondent accordingly while having regards of the provisions of Section 67(3) thus noting that the respondent herein has previously been found in contravention of the Consumer Protection Act, 2010;

- **For the contravention of Section 20(1) – SR. 3, 000/-;**
- **For the contravention of Section 24(1) – SR.20, 000/-;**

All fines are to be paid to the Commission not later than thirty (30) days from the date of this ruling.

[8]When it comes to Count 2 relating to the contravention of Section 21(1)(a) of the Consumer Protection Act, 2010 the Board of Commissioners is opined that although there is some indication of a contravention the evidence produced before the Board is lacking in support to this allegation and taking into account the argument of the respondent the Commissioners are not convinced beyond a reasonable doubt of the said contravention. Therefore Count 2 of the complaint is not allowed. Nevertheless the Board would wish at this juncture to issue a strong

warning to the respondent to ensure compliance with all relevant laws governing enterprises such as the respondent.

[9]The parties are free to appeal against this ruling (See Section 44 of the Fair Trading Act, 2009).

[10]We so order.

Pronounced by us on this 4th day of July, 2013

Mr. Colin Jean-Louis
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner