THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
SINON SURVEYS (PTY) LTD
(Rep herein by Mr. Joelane Sinon)

Case No: CPA.13.375

Complainant – Ms. Audrey Celestine
(Also representing Mrs. Irene Celestine)
Respondent – Sinon Surveys (Pty) Ltd

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

For the Complainant
Mr. Trevor Louise – Legal Officer (FTC)
Ms. Audrey Celestine – Complainant

For the Respondent
Mr. Joelane Sinon – Respondent

RULING

[1]The Fair Trading Commission (the Commission) established under Section 3(1) of the Fair Trading Commission Act, 2009 received a complaint via email on the 13th of November, 2013 from one Ms. Audrey Celestine, now complainant (See Exhibits 1 & 5) against Sinon Surveys (Pty) Ltd, now respondent, represented herein by Mr. Joelane Sinon (See Exhibit 2). The complaint was to the effect that the complainant's grand-mother Mrs. Irene Celestine had enlisted the services of Mr. Joelane Sinon of Sinon Surveys (Pty) Ltd in July, 2009 to subdivide land parcel number J818 which at the time had been transferred to Mrs Celestine's daughters Ms. Clyda Sheila Celestine now Besserer and Ms. Milna Kathleen Celestine (See Exhibit 3) on the 16th of November,

1989 and general power of attorney had been given to Mrs. Irene Celestine to act on the owners' behalf (See Exhibit 4). An initial payment for the said service was made on the 24th July, 2009 in the sum of SR. 3,200 (See Exhibit 7). During this process it was discovered that parcel J818 had already been sub-divided by the Government of Seychelles into three plots without the owners' permission. Parcel J818 no longer existed and in its place now were parcels J2660 (See Exhibit 8), J2661 (See Exhibit 9) and J2669 (See Exhibit 10) still in the names of Ms. Clyda Celestine and Ms. Milna Celestine. The Celestines were informed that this would therefore not hinder their requested subdivision but the said process is lengthy. Mrs. Irene Celestine made a second payment of SR. 3,200 on the 2nd of August, 2010 (See Exhibit 11) and was again informed that further processes required to be undertaken for the subdivision will be lengthy. During the elapsed time in June 2012 Parcel J2661 was transferred to Ms. Audrey Sandra Celestine (See Exhibit 12) and she hence started to deal directly with the respondent whereby on the 27th of September, 2012 she made another requested payment of SR. 3,200 to Mr. Joelane Sinon for placement of beacons (See Exhibit 13). Finally on the 4th of October, 2012 Ms. Audrey Celestine made yet another payment of SR. 2,500 which Mr. Sinon stated was additional costs for survey fees (See Exhibit 14). Since then Ms. Celestine occasionally contacted Mr. Sinon but received no concrete information on the progress of the work from the respondent. On the 22nd of April, 2013 Ms. Celestin received a letter from Mr. Sinon informing her that her request for sub-division of Parcel J2661 was in the process of being finalized (See Exhibit 15). Nothing else was heard from the respondent after that letter. On the 15th of October, 2013 the complainant contacted the office of the Land Registrar and to her dismay she was informed that no paper work had been submitted in relation to her land. She contacted Mr. Sinon that same day who stated that he was still awaiting for documents from the registrar's office. The complainant confronted him about the issue and Mr. Sinon informed her that he had not yet submitted the documents and that he would contact her afterwards regarding the matter but the respondent never did contact the complainant. Subsequently, the complainant lodged a complaint with the Commission.

[2]Upon receiving the complainant's complaint officers of the Commission advised her to complete a formal complaint form which she did (See Exhibit 6). Mr. Sinon was contacted by the Commission and documents relating to Ms. Celestine's case were requested from him (See Exhibit 18). On the 20th of February, 2014 Mr. Sinon provided a costing of the scope of works he claimed to have completed on behalf of Ms. Audrey Celestine which amounted to SR.8,200 (See Exhibits 21 & 22). Further clarification was sought by the Commission from the Land Registrar and on the 2nd of April, 2014 confirmation was received that since October 2013 no documents relating to the complainant had been submitted to the Division for processing (See Exhibit

16). Being unable to settle the case through mediation the Commission deemed it necessary for a case against Sinon Surveys (Pty) Ltd to be filed before the Board of Commissioners for the contravention of Section 40(1)(a) and (b) of the Consumer Protection Act, 2010. The same is reproduced below:-

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

[3]The Board of Commissioners convened for a formal hearing on Wednesday 27th of August, 2014 which was duly attended by all relevant parties. Mr. Trevor Louise, Legal Officer from the Commission presented the case on behalf of the complainant Ms. Audrey Celestine and Mr. Joelane Sinon represented the respondent, Sinon Surveys (Pty) Ltd. Mr. Louise went through the evidence collected by the Commission and urged the Board to find in favour of the complainant and order the respondent to refund to the complainant the sum of SR.12,100, pursuant to Section 40(2) of the Consumer Protection Act, 2010, being the amount she paid to the respondent for a service which she now has to contract another person to undertake. Further, Mr. Louise recommended that a fine be imposed on the respondent in accordance with Section 67(1) of the Consumer Protection Act, 2010 while having regards to Section 67(3) of the same Act.

[4]In his defence Mr. Sinon intimated that at no point has he refused to refund the complainant only that he had done some work for Ms. Celestine and since he had been contacted by the Commission in relation to the case no agreement was reached with regards to the amount he is to refund. Mr. Sinon was of the opinion that he had completed at least 80% of the work and felt that the refund should reflect as such. When questioned about the delay Mr. Sinon claimed that there was confusion with regards to the owners and existence of the parcel J818.

[5]The Board of Commissioners deliberated on the matter and has taken all evidence produced, both verbal and oral, into consideration. The Board was unanimous in its determination of the case. It is clear from the proceedings that the behaviour of the respondent is unacceptable. The Board finds it inexcusable that the respondent only

filed the mutation form at the Office of the Land Registrar to apply for subdivision of the complainant's land in October, 2013 when he had been contracted to provide this service since July, 2009. To worsen the situation that said mutation form was useless given the fact that the information it contained was inaccurate, namely the name of the owners of the land, when it has been made clear in evidence that there was a transfer in owner since May, 2012 and the complainant testified that the respondent was duly informed. This shows lack of professionalism on the part of the respondent and blatant disrespect to his profession. Be that as it may the Board cannot ignore that it is undisputed that the respondent undertook certain work on behalf of the complainant such as placing in the beacons on site though the Board does not agree with the opinion of the respondent with regards to the percentage of work done. Consequently, the Board of Commissioners finds the respondent, Sinon Surveys (Pty) Ltd, represented herein by Mr. Joelane Sinon to be in contravention of Section 40(1)(a) and (b) of the Consumer Protection Act, 2010 and hereby orders, pursuant to Section 40(2) of the same Act, **that the respondent refunds to the complainant 75% of the sum paid to him which will amount to SR.9,075. This payment is to be made to the offices of the Fair Trading Commission in full or in not less than two instalments not later than sixty days from the date of this ruling.**

[6]The Board shall now address the issue of possibly imposing a penalty. In doing this the Board, being guided by Section 67(3) of the Consumer Protection Act, 2010 has had regards to the behaviour of the respondent in that he has not delayed the proceedings before the Board although the Board takes recognisance that Sinon Surveys (Pty) Ltd has previously appeared before it and was found to be in contravention of this Act. In those circumstances the Board shall hereby **impose a fine in accordance with Section 67(1) of the Consumer Protection Act, 2010 in the sum of SR.3,000. Payment is to be made to the offices of the Fair Trading Commission by or before Wednesday 31st December, 2014.** We so order.

[7]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)*

Pronounced by us on this .....6th..... day of October, 2014.

Mr. Philippe Chong-Seng	**Mrs. Jenna Thelermont**	**Mr. Michael Nalletamby**
Chairperson	**Commissioner**	**Commissioner**