THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
SINON'S BUILDING CONTRACTOR
(Rep herein by Mr. Bernard Sinon)

CPA.12.235

Complainant – Mr. Andre Chang Thiou
Respondent – Sinon's Building Contractor

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

For the Complainant
Mr. Ziggy Adam – Legal Officer (FTC)
Mr. Andre Chang-Thiou (Complainant)

For the Respondent
Mr. Bernard Sinon

RULING

[1]The Fair Trading Commission (the Commission) established under Section 3(1) of the Fair Trading Commission Act, 2009 brought a hearing before the Board of Commissioners, appointed under Section 5 of the Fair Trading Commission Act, 2009, pursuant to Section 30(1) of the same Act and Section 9(1) of the Consumer Protection Act against Sinon's Building Contractor represented herein by Mr. Bernard Sinon (the respondent) (See Annex 2 & 3) consequent to a complaint lodged with the Commission on the 21st of November, 2012 by Mr. Andre Chang-Thiou (complainant) (See Annex 4). The matter was heard on the 5th of March, 2014 regarding the alleged contravention of Section 40(1)(b)(c) of the Consumer Protection Act, 2010. The same section 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;*

(b) perform the service in a manner and of a quality that persons are generally entitled to expect;
(c) where goods are required for performance of the service, use, deliver or install such goods that are free of defects and are of a quality that persons are generally entitled to expect.

[2]The complaint was to the effect that the complainant had paid to the respondent the sum of SR. 7, 600/- for the construction and installation of burglars bar at the complainant's residence at Ile Perseverance. The respondent undertook the work but the complainant claimed that the product was substandard given that he could not open his louver blades after Mr. Sinon had installed the burglars bar. Mr. Sinon explained that he had strategically placed the burglars bar so that burglars would not use the space to force the burglars bar off the wall. The complaint did not accept this explanation and instead insisted on a full refund of SR. 7, 600/- (See also Annex 5) and the respondent takes back his burglars bar.

[3]Mr. Sinon on the other hand did not agree with this position and maintained that in his professional experience the way which he fixed in the burglars is how it is supposed to be done and how he has been doing it without any prior complaints. That he completed the works and has even gone back to conduct repairs on the same works and he believed the complainant was satisfied so does not understand why the complainant was requesting a refund. Nonetheless Mr. Sinon suggested that should he find a buyer for the burglars bars he would remove them. (See Annex 6). Mr. Sinon also pointed out that even if he was to remove the burglars bar now after it has served its purpose for over a year he is of the opinion that the complainant should pay him rent for the use of his bars or if he is to refund he should at least be granted a 20% reduction on the amount to be refunded. Mr. Chang-Thiou refused.

[4]Mr. Ziggy Adam, Legal Officer presented the case on behalf of the Commission and remained firm that the Board of Commissioners should find in favour of the complainant and order the respondent refund to the complainant the total of the sum paid to him and to consider penalties set out in Section 67(1) of the Consumer Protection Act, 2010 while having regards to Section 67(3) of the same Act and enforcing Section 68(1) where applicable.

[5]The Board of Commissioners has deliberated on the matter and has considered all the evidence submitted before it. The Board finds the respondent, Sinon's Building Contractor, represented herein by Mr. Bernard Sinon to be in contravention of Section 40(1)(b) of the Consumer Protection Act, 2010 and warrants remedies set out in Section 40(2) of the same Act and hereby order that the respondent, Sinon' Building Contractor refunds to the complainant, Mr. Andre Chang-Thiou a reasonable portion of the money paid for the rendering of the service. Taking into consideration the entire circumstances of the case the Board does find some substance in the respondent's reasoning that the burglars bars were fit for the purpose it was intended i.e. to deter burglars and therefore it cannot be said that the complainant did not benefit from the use of the burglars bar. The Board shall hence order that the respondent refunds to the complainant, Mr. Andre Chang-Thiou the sum of **SR.6,080/-, which amount the Board of Commissioners find to be a reasonable portion of the money paid to the respondent. Payment is to be made to the offices of the Fair Trading Commission by or before the 30th of April, 2014.**

[7]The Board of Commissioners also further orders that subsequent to the above payment being made the respondent removes and takes away the burglars bar installed at the complainant's premises and makes good and/or repairs any damage caused during the process. **These works are to be completed by or before the 15th of May, 2014.**

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

[9] We rule accordingly

Pronounced by us on the .....26st..... day of March, 2014.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner

Mr. Victor Pool
Commissioner