# THE FAIR TRADING COMMISSION

## BEFORE THE BOARD OF COMMISSIONERS

**IN THE MATTER of the Consumer Protection Act, 2010;**

**THE FAIR TRADING COMMISSION**
**VS.**
**STEP MAINTENANCE**
(Rep herein by Mr. Angelin Labiche)

**Case No**: CPA.13.112

**Complainant** – Mr. Anwar Moosa Umarji
**Respondent** – Mr. Angelin Labiche

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

**For the Complainant**
Ms. Emily Mousbé – Legal Officer (FTC)

**For the Respondent**
Mr. Angelin Labiche – Respondent

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## RULING

[1]The Fair Trading Commission (the Commission) received a complaint on the 22nd of February, 2013 from one Mr. Anwar Moosa Umarji (the complainant) represented herein by Mr. Majeed Umarji of Francis Rachel Street (See CE1 & CE2) against Step Maintenance (the respondent) represented herein by Mr. Angeline Labiche. The complaint was to the effect that the complainant had paid to the respondent on the 9th of January, 2013 the sum of SR.15, 000 as advance payment for landscaping works to be conducted on the complainant's premises (See CE3 & 4). According to the complainant the agreement was that all concrete works would be completed in four weeks but after three weeks there was not much progress on the site. The complainant attempted to contact the respondent but received no response. The

complainant sought advice from the National Consumers Forum (NATCOF) who in turn referred his complainant to the Commission on the 20th of February, 2013 (See CE5). The complainant is now praying for a partial refund due to the poor quality of service received from the respondent.

[2]Upon receiving the complaint officers of the Commission investigated the matter. On the 28th of February, 2013 the respondent was contacted and he the Commission that he was aware of the matter and he was willing to refund the complainant but he would need time as he had been hospitalised following an accident. Mr. Labiche was instructed to provide an assessment of the work done and materials purchased. The respondent did not comply immediately. After several correspondences with the Commission the respondent finally sent a letter to the Commission received on 3rd June, 2013 whereby he proposed to refund the complainant the sum of SR. 9,000 in three instalments starting from end of June, 2013, retaining the SR. 6,000 for works done (See CE6, CE7 & CE8). The complainant agreed (See CE9 & 10). The respondent did not adhere to the agreement (See CE12). All attempts to have the respondent comply with the agreement failed. The Commission therefore deemed it necessary to file a case before the Board of Commissioners for the contravention of Section 40(1)(a) of the Consumer Protection Act, 2010 which provides that;

> *"**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 compete that service in a timely manner and give to the consumer timely notice of any unavoidable delay in the performance of the service."*

[3]The Board of Commissioners convened for a formal hearing of the case on Wednesday 15th October, 2014. Ms. Emily Mousbé, Legal Officer from the Commission appeared on behalf of the complainant and presented the Commission's findings to the Board. She urged the Commissioners to find in favour of the complainant case and given the respondent's unfavourable behaviour order that the respondent refunds to Mr. Umarji the entire sum paid to him being SR. 15,000. Ms. Mousbé though did inform the Board that on the 5th of March, 2014 the respondent made partial payment of the refund in the sum of SR. 5,000 (See CE13) which was collected by the complainant on the 28th of March, 2014 (See CE14 & 15), who by then had expressed his wish to receive a full refund of SR. 15,000 from the respondent instead of the SR. 9,000 he had agreed to due to the length of time the respondent was taking to make payment. Ms. Mousbé concluded by recommending that the Board of Commissioners considers penalties set out in Section 67(1) of the Consumer

Protection Act, 2010 while having regard to Section 67(3) of the same Act especially the fact that the respondent has been very uncooperative with the Commission.

[4]Mr. Labiche defended his case by intimating that he does not accept responsibility for the situation given that the complainant was unreasonable in his conclusion that he had failed to provide the service he had been paid for stating that he had only been delayed due to bad weather conditions at the time. That the complainant refused to understand this uncontrollable factor and demanded that he be reimbursed. Furthermore, he only agreed for a refund to bring finality to this matter but unfortunately it has been difficult to secure the said funds due to his ill health explaining that he has undergone surgery in his leg and to date still needs post operation care. Mr. Labiche maintained that he is prepared to refund only SR. 9,000 out of the SR. 15,000 given that he had already placed in the bricks needed for the landscaping and had already prepared the site to put in concrete which he could not complete because of the rain. He therefore urged the Board to take into consideration labour and material cost when making its decision as well as the cost of maintaining his health.

[5]The Board of Commissioners has deliberated on the matter and has taken all evidence adduced into consideration. The Board of Commissioners finds the respondent, Step Maintenance, represented herein by Mr. Angelin Labiche to be in contravention of Section 40(1)(a) of the Consumer Protection Act, 2010 by failing to complete the landscaping work he had been contracted for by the complainant. In accordance with Section 40(2)(b) of the same Act the Board of Commissioners orders the respondent to **pay to the complainant the sum of SR. 9,000 being the partial refund originally agreed by both parties taking into account the work done by the respondent. In view that a repayment of SR. 5,000 has previously been made and collected by the complainant, the respondent is hereby ordered to pay the remaining sum of SR. 4,000 to the offices of the Fair Trading Commission in full not later than thirty (30) days from the date of this ruling.**

[6]The Board shall impose no penalty but shall warn the respondent that failure to comply with an order of the Commission is an offence which carries monetary fines and/or imprisonment. Section 70 of the Consumer Protection Act, 2010 and Section 53 of the Fair Trading Commission Act, 2009 are of relevance. They state the following respectively;

*(CPA, 2010) "**70.** A person who fails or refuses to comply with an order, direction or undertaking of the Commission or order or*

*direction of the Tribunal, commits an offence and is liable on conviction –*

*(a) Where the person is an individual, to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment;*
*(b) Where the person is a person other than an individual to a fine not exceeding 400, 000."*

*(FTC Act, 2009) "**53.** A person who fails or refuses to comply with a direction or order of the Commission commits an offence and is liable –*

*(a) Where the person is an individual, to a fine not exceeding 100, 000 rupees or to imprisonment for a term not exceeding 2 years or to both.*

*(b) Where the person is a person other than an individual, to a fine not exceeding 400, 000 rupees.*

[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)*. We rule accordingly.

Pronounced by us on this 23rd day of January, 2015.

**Mr. Philippe Chong-Seng**
**Chairperson**

**Mrs. Jenna Thelermont**
**Commissioner**

**Mr. Michael Nalletamby**
**Commissioner**