THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
VS.
i. ABRAHAM FANCHETTE
ii. TERRENCE FANCHETTE

CPA.12.136

Complainant – Ms. Susan Mousbé
Respondent – i. Mr. Abraham Fanchette
ii. Mr. Terrence Fanchette

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

For the Complainant
Mr. Ziggy Adam – Legal Officer (FTC)

Respondents – In person

RULING

[1]The Fair Trading Commission registered a complaint from Ms. Susan Mousbé (complainant), of La Louise, Mahe, on the 14th of August, 2012 against one Mr. Abraham Fanchette, now the 1st respondent and Mr. Terrence Fanchette, now the 2nd respondent, both of Union Vale, Mahe. The complainant alleged that she paid to the respondents on the 30th of July, 2012 a total sum of SR. 8, 300/- to build five pieces of furniture which included two tables, one big cabinet and office shelves to be completed by the 8th of August, 2012. That following a visit to the respondents'

workshop on the 14th of August, 2012 she found the materials in the same state and no work had been done which prompted her to instruct the respondents to stop work and requested a refund (See Exhibit 1). The Commission contacted the respondents during the investigation of the complaint and was informed by the 2nd respondent that he had started to mount some of the furniture thus he would refund only SR. 6, 800/-. The complainant agreed. On the 7th of December, 2012 the respondents entered into an Undertaking with the Commission to the effect that they would refund to the complainant the sum of SR. 6, 800/- in one instalment of SR. 3, 000/- to be paid by 31st December, 2012 and one SR. 3, 800/- to be paid at the end of January, 2013 (See Exhibit 2). To date no payment has been made towards the said refund. The Commission therefore deemed it necessary for the case to be brought before the Board of Commissioners.

[2]The matter came up for hearing before the Board of Commissioners on Wednesday 27th November, 2013. Both parties were duly represented. Mr. Ziggy Adam, the Legal Officer of the Fair Trading Commission presented the complainant's case and outlined that the respondents had contravened Section 70 of the Consumer Protection Act, 2010 by failing to comply with an Undertaking of the Commission. He urged the Board to consider penalties as set out in Section 67(1) of the Act while having regards to Section 67(3) of the same Act.

[3]The respondents admitted to the allegations made by the complainant. The 2nd respondent confirmed that he indeed took the money from the complainant and signed the Undertaking to refund but that he simply forgot about the payments. He explained that injuring his right arm has prevented him from working as he had expected and this has set him back financially so would only be able to refund the SR.6,800/- at the end of January and February, 2014. The complainant refused stating that she has been patient enough and would wish for a full refund at least by December, 2013. After further negotiations it was agreed by both parties that the 2nd respondent would make a payment of SR. 2, 000/- by the 15th of December, 2013 and the outstanding balance to be settled thereafter in January and February, 2014.

[4]The Board of Commissioners has deliberated on this matter and has taken into account the testimonies of all parties as well as all the documentary evidence produced. Taking into consideration the mutual agreement between the two parties the Board of Commissioners hereby rules that the **2nd respondent, Mr. Terrence Fanchette shall refund to the complainant, Ms. Susan Mousbé the sum of SR. 6, 800/-** in three instalments to be paid in the following manner:

- **1st instalment in the sum of SR. 2, 000/- on or before the 15th of December, 2013;**
- **2nd instalment in the sum of SR. 2, 400/- on or before the 31st of January, 2014;**
- **3rd instalment in the sum of SR. 2, 400/- on or before the 28th of February, 2014;**

All payments are to be made to the offices of the Fair Trading Commission.

[5]To conclude the Board of Commissioners takes notice that Mr. Terrence Fanchette appeared before the Board in case number CPA.12.253 involving a similar conduct. Be that as it may having regards to Section 67(3) of the Consumer Protection Act, 2010 the Board will not impose any financial penalty on the respondent but instead shall issue out a strong warning to the 2nd respondent to immediately cease such unlawful practice and to remind Mr. Terrence Fanchette that an individual who fails to comply with an order of the Commission commits an offence and is liable to a fine not exceeding SR. 100, 000/- or to imprisonment not exceeding a term of two years or to both such fine and imprisonment (See Section 53(1) of the Fair Trading Commission Act, 2009).

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

Pronounced by us on the ....6th..... day of December, 2013.

Mr. Colin Jean-Louis
Chairperson

Mr. Philippe Chong-Seng
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner