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THE BOARD OF COMMISSIONERS

29th March 2021

CPA/INS18/36

Mr Samad Suleman
Eden Island

Dear Mr Suleman,

RE: Fair Trading Commission Vs Samad Suleman (trading as Spar- Eden Island Pty LTD) – CPA/INS18/36

In accordance with Section 42(1) of the Fair-Trading Commission Act 2009, please find attached a signed copy of the ruling of the Board of Commissioners of the hearing conducted in the above-mentioned case. We trust in your expedient compliance as per the orders contained herein.

Also note that failure or refusal to comply with this ruling constitutes an offence under Section 53(1) of the Fair-Trading Act 2009. The same is reproduced below:

53 (1) A person which refuses or fails to comply with a direction or order of the commission commits and offence and is liable-

a) Where the person is an individual, to a fine not exceeding SCR 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 the individual to a fine not exceeding SCR 400,000 rupees

Moreover, you have the right to appeal against this decision. To that effect you may, **within Fourteen (14) days of this receipt of this document,** submit a Notice of Appeal setting out your grounds of appeal to:

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER OF:

THE FAIR TRADING COMMISSION
V
MR SAMAD SULEMAN
(Trading as Spar – Eden Island (Pty) Ltd)

Case No: CPA/INS18/36

Complainant – Fair Trading Commission
Respondent – Mr. Samad Suleman

QUORUM:
Mr Victor Pool (Presiding)
Mrs Jenna Thelermont-Commissioner
Mr Michael Nalletamby – Commissioner

For the Complainant
Ms Hazel Renaud – Legal Officer (FTC)

For the Respondent
Ms. Manuella Parmantier

RULING

[1] The Fair-Trading Commission (the Commission), pursuant to Section 33(1)(j) of the Fair-Trading Commission Act, 2009 which empowers the Commission to inspect goods, conducted a routine inspection on the 25th April 2018, at the business premises of Mr. Samad Suleman, trading as Spar Eden Island (Pty) Ltd situated at Eden Island, Mahe (the respondent), a business and a supplier of goods as defined by Section 2(1) of the Consumer Protection Act, 2010 (the Act). The respondent holds a retailer's license

number 162940 under the company name SPAR Eden Island (Pty) Ltd incorporated on the 20th May 2015.

[2] During the inspection, officers, Ms. Elza Robert requested to speak to the shop manager who identified himself as Mr. Michael Ferreira and she introduced herself and the officers on inspection. Ms. Robert informed him of the purpose of the inspection. During the inspection, the officers of the Commission observed several breaches of the Consumer Protection Act, 2010, being;

- 9 types of goods (17 items), tallying to SCR 2,311.08, failed to comply with the general safety requirement as they were for sale without an expiry date on display contrary to Section 50 (1) (a) read with Section 50 (2) (a).

[3] Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely: -

- Section **50(1) (a)** read with Section **50(2) (a)** which provides that "*A Person shall not, in trade or commerce-*
  - *(a) Supply any consumer goods which fail to comply with the general safety requirement;*

    (2) For the purposes of this section, consumer goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances, including; -

    (a) the manner in which, and the purposes for the which, the goods are being or would be marketed, their composition or structure, the use of any mark in relation to the goods and any instructions or warning which are given or would be given with respect to the keeping, use or consumption of the goods;"

[4] This matter was called before the Board of Commissioners on the 18th May 2020 for a mention. Ms. Hazel Renaud, Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and Ms. Manuella Parmantier appeared for the respondent.

[5] Ms. Parmantier, however informed the Board that they do not contest the contraventions and that they will be accepting the contraventions requesting to file written submissions.

[6] In her submissions Ms Renaud urged the Board to impose penalties as set out under Section 67(1) of the Consumer Protection Act, 2010 which provides that *"Where the Commission determines after a formal hearing that a person has contravened any requirement or prohibition contained in sections the Commission may order the person, in the case of an individual, to pay a penalty of a sum not exceeding SR100, 000."* She submitted that when considering a suitable penalty, the Board shall have regard to Section 67(3) (a), (e) and (f) which states that *"In determining an appropriate penalty for the purposes of this section, the Commission shall have regard to the following (a) the nature, duration, gravity and extent of the contravention; (f) the degree to which the respondent co-operated with the Commission."*

[7] Ms. Renaud first addressed the nature of the contravention.
Mr. Suleman was found to be in breach of Section 50 (1) (a) read with Section 50 (2) (a) of the CPA 2010 for offering goods for sale that failed to meet the general safety requirements. The goods that were identified consisted of food items such as cheese, margarine, ice cream, chocolates and yoghurt which however did not have an expiry date when they ordinarily come.

[8] It is submitted that an expiry date or best before date on food items are an important feature otherwise how else would a consumer know that the product is safe for consumption if there is no expiry date placed on it. An expiry date is particularly important on food items as without such, cause potential health risks. Therefore, Mr. Suleman should ensure that the goods he is supplying or offering for sale such as food items have an expiry or best before date that it.

[9] She submitted that this was not the first time that Mr. Suleman has appeared before the Board of Commissioners. There was a case on the 08th June 2016-CPA/INS16/18, whereby Mr. Suleman appeared for hearing and was fined SCR 1,000 for several contraventions of the CPA 2010.

[10] Again, on the 04th September 2018, Mr. Suleman appeared before the Board of Commissioners for a second time – CPA/INS17/67, in relation to an inspection conducted on the 02nd March 2017, this time the Boards decision pronounced on the 31st July 2019, fined Mr. Suleman a total sum of SCR 100,000 for the contravention of several sections of the CPA 2010.

[11] In addition, Ms. Renaud submitted that the nature of the two goods found to be in breach of Section 50 (1) (a) were also food items. This she argued, placed consumers in a disadvantageous position to make an informed choice with regards to the goods.

[12] Ms. Renaud submits that, the Board should note that, the inspection was conducted on the 25th April 2018, however, there had been items that had gone 4 to 5 months past their expiry dates. She submitted therefore that the respondent had ample time to remove the expired goods.

[13] In addition, she urged the Board to consider the number of goods in contravention. For e.g., for the breach of Section 50 of the CPA 2010, 9 types of products, tallying to 17 items were recorded to be on display for sale without their expiry dates.

[14] Ms Manuella Parmantiers submission stated that, not all of the items were in fact evidenced by pictures. The following items, were the only items which the Complainant took pictures of;

- Saveur des Seychelles; 2 items
- Cadbury cream egg; 1 item
- Rum and raisin ice cream; 1 item
- Cheddar flavoured full cream cheese spread; 3 items
- Full cream guava yoghurt; 1 item
- Canola margarine; 2 items
- President creamy feta plain; 1 item

[15] Annex 4; of the evidence bundle states that the following items did not have any picture evidence showing proof of the alleged breach;

- Rainbow frozen chicken (Puppy); 5 items
- Pedigree vital protection; 1 item

[16] Ms Parmantier stated that, if the complainant failed to provide any photographic evidence to prove that the two items in paragraph 10, which is stated above were in breach of Section 50 (1) (a) read together with Section 50 (2) (a) of the CPA 2010, then the respondent cannot reasonably be expected to accept liabilities for these two products, as the complainant has failed to prove their case regarding these two products.

[17] Ms Parmantier stated that this was brought to the attention of complainant during the last mention date and that the complainant indicated no objection to have these two products struck off from the complaint.. Due to the products being disregarded, it should be noted that the total worth of the products in breach amounts to SCR 1,219.65.

[18] Ms Parmantier stated that it should be noted that some items of the same products had expiry dates whilst others did not. In particular, pictured in annex 4, that 4 of the items in breach, had some products with expiry dates and some had been rubbed off partially. These items were the rum and raisin ice cream, cheddar cheese full cream cheese spread, full cream guava yoghurt and the canola margarine. It should be noted that the shop is one with a vast amount of traffic and many customers handle these products daily, therefore wear and tear of the packaging, when thrown into, in this case, freezer storage, can cause any labelling to wear off. Therefore, this breach is not one done deliberately.

[19] Ms Parmantier submits that, the initial fine that was given was done shortly after the store had been opened and at a time where they were trying to find footing in the retail world and to employ reliable staff. All staff that are in the current employment are briefed and supervised on a regular basis on how to avoid these issues.

[20] The Board took time and deliberated on the matter. The Board takes note that the respondent has admitted to the contraventions and therefore does appreciate that the evidence on record does substantiate a *prima facie* case against the respondent and therefore finds the respondent, Mr. Samad Suleman, trading as SPAR Eden Island (PTY) Ltd, to be in contravention of Section 50(1) (a) read with Section 50 (2) (a) of the Consumer Protection Act, 2010.

[21] The Board, in deciding on a suitable penalty, has considered the mitigating factors put forth by Ms. Parmantier, for the respondent. The Board also takes notice that the volume of items found in contravention of the Consumer Protection Act, 2010. Consequently, the Board shall impose a fine on the respondent in accordance with Section 67(1) of the Consumer Protection Act for the above contraventions as follows: -

- **For the contravention of Section 50(1)(a) read with Section 50(2) (a) the sum of SCR 9,000.**

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than thirty (30) calendar days from the date of receipt of this ruling.

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 30 day of March, 2021.

Mr Victor Pool
(Presiding)

Mrs Jenna Thelermont
(Commissioner)

Mr. Michael Nalletamby
(Commissioner)