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THE BOARD OF COMMISSIONERS

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

The Chairperson of the Appeal Tribunal
C/O Fair Trading Commission
3rd Floor, Block B
Unity House, Victoria

Yours sincerely,

Lalande

Laura Lalande (Miss)
Registration Officer
For: Chairperson
Board of Commissioners
Fair Trading Commission

Cc: CEO-FTC

Sesel
Mon Pei Beni

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THE BOARD OF COMMISSIONERS

Thursday 29th November, 2018

Sumathi Rajendran
(trading as N.O Chetty)
Belonie
Mahe

Dear Mr. Rajendran,

RE: FTC v Sumathi Rajendran (trading as N.O Chetty) (CPA/INS18/11) – RULING

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 Commission 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 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 individual, to a fine not exceeding 400, 000 rupees.

Sesel
Mon Pei Beni

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

IN THE MATTER of the Consumer Protection Act, 2010;

THE FAIR TRADING COMMISSION
V
SUMATHI RAJENDRAN
(Trading as N.O Chetty)

Case No: CPA/INS18/11

Complainant – Fair Trading Commission
Respondent – Mr. Sumathi Rajendran

QUORUM:
Ms. Karen Domingue – Chairperson
Mrs. Jenna Thelermont – Commissioner
Mr. Michael Nalletamby – Commissioner
Mr. Victor Pool – Commissioner

For the Complainant
Ms. Priyanka Ramruchaya – Legal Officer (FTC)

Respondent – In person

RULING

[1]The Fair Trading Commission (the Commission) conducted a routine inspection pursuant to Section 33(1)(j) of the Consumer Protection Act, 2010 (the Act) on the 1st February, 2018, at the business premises of Sumathi Rajendran trading as N.O Chetty at Belonie, Mahe (the respondent), a registered and licensed business and a supplier of goods as defined by Section 2(1)(a)(i) of the Act. During the inspection officers of the Commission observed 4 products (31 items) on display and being offered for sale which had labels which contained information which were not in plain language contrary to Section 19(1)(b) of the Consumer Protection Act, 2010 and 57 products (1000 items) being offered for sale without their prices being displayed contrary to Section 20(1) of the same Act. Further, upon inspecting the receipts being provided to consumers by the respondent it was observed that the receipts did not contain the address of the premises at which, or from which the

goods were supplied, the date which the transaction occurred and the unit price of goods supplied contrary to Section 25(2)(b),(c) and (e) of the Act. Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely: -

- Section **19(1)** read with Section **19(2)(a)** which provides that "*Where a person is required in terms of this Act or any other written law to produce, provide or display a notice, document or other visual representation to a consumer, that person shall produce, provide or display such notice, document or visual representation (a) in the form prescribed by this Act or any other written law; or (b) in plain language, if no form has been prescribed.*" ***[19(2)(a)*** *For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of a class of persons to whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to the context, comprehensiveness and consistency of the notice, document or visual representation.**]***

- Section **20(1)** read with **subsection (3)(a)** which provides that "*Subject to this subsection (2), a retailer shall not display any goods for sale without displaying to the consumer a price in relation to those goods.*" ***[20(3)(a)*** *A price is adequately displayed to a consumer if, in relation to any goods or services, a written indication of the price expressed in the currency of the Republic is annexed or affixed to, written, printed, stamped or located on, or otherwise applied to the goods or to, any band, ticket, covering, label, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale.**]***

- Section **25(1)** read with Section **25(2)(b),(c) and (e)** with provides that *"A supplier of goods and services shall a written record of each transaction to the consumer to whom any goods or services are supplied."* ***[25(2)(b)*** *A record under subsection (1) shall include the address of the premises at which, or from which, the goods or services were supplied;* ***(c)*** *the date which the transaction occurred;* ***(e)*** *the unit price of any particular goods or services supplied.**]***

[2]This case was mentioned before the Board of Commissioners on Tuesday 18th September, 2018 and both parties duly appeared. Ms. Priyanka Ramruchaya, Legal Officer, represented the Commission and the respondent, Mr. Sumathi Rajendran was present in person. The Board went on to ascertain Mr. Rajendran's position on the matter whereby the respondent went on to accept all the breaches that had been brought against him. He informed the Board that this incident happened because

his workers were lazy and did not check the products properly but he has since the inspection remedied all the issues that had been observed by the officers of the Commission. The respondent confirmed that he understood the consequences of accepting the charges and prayed for leniency. Ms. Ramruchaya moved as per the contraventions in the notice of complaint and requested the opportunity to file written submissions on penalties.

[3]Ms. Ramruchaya urged the Board to impose penalties as set out under Section 67(1)(a) 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) 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; and (f) the degree to which the respondent co-operated with the Commission."* Ms. Ramruchaya submitted that the nature and the high amount of the items found to be in contravention of the law increases the gravity of the breach which is why the Commission felt that a compliance notice would not suffice in addressing the issues and instead directly filed a case to the Board of Commissioners. She also submitted that although the respondent co-operated with the Commission and accepted all the breaches hence not wasting the Board's time this does not change the fact that the respondent engaged in several prohibited conducts. Ms. Ramruchaya took a similar stance in relation to the mitigating factors put forth by the respondent, namely that the workers did not check properly and that the respondent had remedied the issues. She concluded her submissions by cited similar cases that the Board has decided upon such as FTC v Ramesh Pillay (trading as Baie Lazare Supermarket) (CPA/INS16/70) and FTC v G. Asokkumar Chetty (trading as Sri Durga General Merchants) (CPA/INS16/7), to assist the Board in deciding a penalty.

[4]Based on the evidence before it and the respondent's admission the Board of Commissioners hereby finds the respondent, Mr. Sumathi Rajendran, trading as N.O Chetty, to be in contravention of Section 19(1)(b) read with Section 19(2)(a), Section 20(1) read with Section 20(3) and Section 25(1) read with Section 25(2)(b), (c) and (e) of the Consumer Protection Act, 2010. The Board has considered the mitigating factors put forth by the respondent as well as the submissions of Ms. Ramruchaya. The Board will agree with Ms. Ramruchaya's statement that passing the blame onto his workers does not absolve the respondent's liability and responsibilities towards the law. Furthermore, the Board takes notice that the respondent is a first-time offender and has accepted the breaches thus not wasting the Board's time.

Consequently, the Board shall impose a fine on the respondent, in accordance with Section 67(1) of the Act for the above contraventions in the following manner: -

- **For the contravention of Section 19(1)(b) read with Section 19(2)(a) the sum of SR.4,000;**

- **For the contravention of Section 20(1) read with Section 20(3) the sum of SR.20,000;**

- **For the contravention of Section 25(1) read with Section 25(2)(b), (c) and (e) the sum of SR.6,000.**

All payments are to be made by the respondent, Mr. Sumathi Rajendran, to the offices of the Fair Trading Commission not later than sixty (60) calendar days from the date of this ruling.

[5]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 27th day of November, 2018.

Ms. Karen Domingue
Chairperson

Mr. Victor Pool
Commissioner

Mrs. Jenna Thelermont
Commissioner

Mr. Michael Nalletamby
Commissioner