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Fair Trading Commission
Seychelles

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THE BOARD OF COMMISSIONERS

16th March 2021

CPA.18.083

Mr. Franky Cedras
C/O Christine Cedras
Mont Buxton
Mahe

ATTN: Mr. Cedras

Dear Mr. Cedras,

RE: Terra Rosalie & Yanick Rosalie Vs Franky Cedras (trading FRNC Building Construction)- CPA.18.083

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

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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:

Chairperson for the Appeal Tribunal
P O Box 216,
Allied Building
Francis Rachel Street,
Mahe, Seychelles
Telephone: (248)4224881 /
Facsimile: (248)4225044
Email: john.renaud@renaudchambers.sc

Yours Sincerely,

FAIR TRADING COMMISSION BOARD OF COMMISSIONERS

Ms. Chrystal Loizeau
Assistant Registration Officer

For: Chair Person
Board of Commissioners
Fair Trading Commission

Terra Rosalie & Yanick Rosalie
Belvedere

VISION2033
Towards a Sustainable and Inclusive Future

THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS
(Consumer Protection Act, 2010)

IN THE MATTER OF:

TERRA ROSALIE and YANICK ROSALIE

VS

FRANKY CEDRAS
(Trading as FRNC Building Construction)

Case No: CPA.18.083

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

For the Complainant
Mrs. Catherine Ayoma Ombima – Senior Legal Officer (FTC)

For the Respondent
Mr. Franky Cedras

RULING

[1]The Fair Trading Commission(hereinafter referred to as the Commission) registered a complaint from Ms. Terra Rosalie and Mr. Yanick Rosalie (hereinafter referred to as the complainants) on the 07th May 2018 , identified to be a consumer as defined by Section 2(1) of the Consumer Protection Act, 2010, to the effect that they contracted the services of the respondent in 2015, to carry out a vertical extension for an existing house at Belvedere and for re-roofing and other renovations on the same house for a total sum of SR1,374,600. Out of which a total sum of SR 470,000 has been paid. There were no written contracts signed

between the two parties but that the complainants had been issued with a quotation dated 23rd September 2015, which outlined the prices for materials, transportation and labour for each stage of the construction works. The agreed time frame was for two years.

[2] As per the complainants, the agreed price for excavation works, foundation and floor slab, including block works and lintel was SCR 444,600 (CE5), and by the respondents own admission he had received a total sum of SCR 490,000. The respondent however commenced the works and thereafter had stopped coming on site demanding more money, which is what prompted the complainants to lodge their complaint. The respondent was aware that a complaint was made (CE 12).

[3] The matter was investigated by the Commission and an investigation report was compiled by one Ms. Ketlynn Marie. The recommendation of the report was that the complainant, a service provider failed to provide a service contrary to section 40(1)(b) thus the matter was recommended to be forwarded for a hearing before the Board of Commissioners (hereinafter referred to as the Board).
Attempts by Fair trading commission to amicably resolve the matter failed and to date the complainants have not been given any remedy.

[4] Given the Commission could not resolve the dispute, the case was forwarded before the Board of Commissioners for a hearing for the contravention of Section 40 (1) (b) and Section 40 (2) (b) of the Consumer Protection Act 2010, which states 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—*

(b)perform the service in a manner and of a quality that persons are generally entitled to expect;

*"**40**(2) Subject to this Part, where a supplier fails to perform service to the standards specified in subsection (1), the supplier shall at the direction of the consumer—*

(b) refund to the consumer a reasonable portion of the price paid for the service performed, having regards to the extent of failure."

[5] The matter was called before the Board on the 28th January 2020and the complainant was represented by Mrs Ayoma Ombima Officer of the Commission. The respondent decided to conduct his own defence.

[6] Mrs Ayoma Ombima for the complainant opened her case by calling her first witness Ms Terra Rosalie who testified under oath that they had entered into an agreement with the respondent for the renovation and extension of their house at Belvedere. That there was an oral agreement and not a written contract, but that they were provided with a quotation in 2015, therefore that oral agreements are legal and enforceable under the law. We had given Mr Cedras the total of SCR 490,000 and we had agreed upon 2 years to complete this project. After he had started the project Mr Cedras was demanding more money from us and stopped coming to our site.

[7] The second witness was Mr Ryan Telemaque, a development control officer from the Planning Authority, who testified under oath that, they had conducted a site visit and revealed the construction works had started for the proposed project. All the works had been according to the approved plans except for some minor changes done to the upper floor. The bathroom of which joined with bedroom number 1, had been reduced and would not be able to cater a door of 900 mm which led to bedroom number 1. We also observed that Mr Cedras had been using untreated timber props to support the form works. Mr Cedras also failed to submit a reinforcement notice to the Planning Authority (CE8).

[8] Mr Telemaque states that, all the findings had been communicated to Mr Cedras (CE9), but he did not do as he was required therefore a reminder had been sent through (CE10)

[9] The third witness for the complainant was Mr Allain Jean, an independent Quantity Surveyor, who testified under oath that, he was sent to the complainant's site to evaluate the works done by the respondent. He submitted his report (CE 17), and stated that as per his evaluation he came to a conclusion that SCR 181, 898 was due back to the complainant. In his report he had observed that Mr Cedras had done excavation works, foundation and floor slab. This involved excavation for the column bases, the casting of concrete bases and square columns. He stated that he had observed that concrete slabs and beams had been casted over the columns, however the shuttering used was still in place and needed to be removed.

[10] Mr Jean stated that only 8% of the block work and lintel had been done and this was valued at SCR 11,088 against the quoted sum of SCR 138,600.

[11] Mr Franky Cedras, the respondent took the stand and testified under the oath that he had done extra works which the complainants did not acknowledge and that the Quantity surveyor did not take into account. He states that he had brought materials on site for the complainants from South Africa.

[12] During cross examination Mr Cedras was questioned as to where the receipts were for the purchases done from South Africa, as per RE1 these purchases where done in bulk and the complainants had not received the said materials.

[13] Mr Cedras stated that he had sold the said materials in order to pay his workers.

[14] The Board took time to consider the evidence adduced in this matter. The Board has heard the evidence of three experts namely:

- Mr. Yanick Rosalie – Complainant
- Mr. Ryan Telemaque- Planning Authority
- Finally, we have Mr. Allain Jean - Quantity Surveyor

[15] Based on the above the Board finds that the evidence adduced in this case matter the Board finds that Mr. Cedras had failed to perform and complete the service in a manner and of a quality that persons are generally entitled to expect contrary to Section 40 (1) (b) of the CPA 2010.

[16] The Board now address the issue of remedy. The complainant is asking for a refund of SCR 181,898.

[17] The Board has considered the positions of the parties and the relevant statutory provisions.

[18] Based on the preceding paragraph the Board therefore orders as follows

That Mr. Franky Cedras, refunds the respondents Mr. Yanick Rosalie and Mrs. Terra Rosalie, the sum of SCR 181,898.

Given the conduct of Mr. Cedras, in this matter the Board considers a penalty under section 67 (1)(a) read with subsection (3) (c)and (f) of the Consumer Protection Act to an amount of SCR 8,000.

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's 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 ..16th.. day of March 2021

Ms. Karen Domingue
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Victor Pool
Commissioner

Mr. Michael Nalletamby
Commissioner