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THE BOARD OF COMMISSIONERS

22nd March 2021

CPA.16.328

Solar Plant Sale & Installation
Room 24
Alpha Centre
Providence
Mahe

ATTN: Mrs Maria Ausilia Invernizzi

Dear Mrs. Invernizzi,

RE: Terry Adeline Vs Sey Solar Green Energy (PTY) LTD (represented by Mrs Maria Ausilia Invernizzi) - CPA.16.328

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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THE BOARD OF COMMISSIONERS

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: Chairperson
Board of Commissioners
Fair Trading Commission

Terry Adeline
Anse Kerlan
Praslin

VISION2033
Towards a Sustainable and Inclusive Future

THE FAIR TRADING COMMISSION

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

IN THE MATTER OF:

TERRY ADELINE

V

SEY SOLAR GREEN ENERGY (PTY) LTD
(Rep herein by Mrs. Maria Ausilia Internizzi)

Case No: CPA.16.328

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

For the Complainant
Ms. Salina Sinon– Legal Officer (FTC)

For the Respondent
Mr. Brian Julie – Attorney-At-Law

RULING

[1]The Fair Trading Commission registered a complaint from one Mr. Terry Adeline of Anse Kerlan, Praslin, Seychelles on the 12th December 2016, identified to be a consumer as defined by Section 2(1) of the Consumer Protection Act, 2010, to the effect that he purchased a 9KWp Solar Photovoltaic system from Sey Solar Green Energy (Pty) Ltd, identified to be supplier of goods as defined by Section 2(1)(a) of the Consumer Protection Act, 2010, at the cost of €20,900 at the exchange rate of SR.16.5 per Euro equalling to a total sum of SR.344, 850. Additionally, he paid SR.40, 500 to Mr. Percy Pool for the installation of the Solar Photovoltaic System

and it was noticed from the outset that only two out of the three inverters were working and subsequently only one was working. The complainant agreed to have the respondent repair the equipment but this failed. The respondent then suggested replacing the Solar Photovoltaic System from a 9KWp to a 10KWp one but the complainant refused based on the amount of time he would have to wait for the replacement hence wished to have a full refund of the amount paid to the respondent and the cost of installation.

[2] The Commission investigated the complaint and based on evidence gathered determined that the Solar Photovoltaic System was not performing to capacity hence was less useful than persons would generally be entitled to expect thus establishing that the equipment was 'defective' as provided by Section 39(1)(b) of the Consumer Protection Act, 2010, thus the complainant was entitled to a repair, replacement or refund under the Act as per the complainant's direction.

[3] The respondent offered to replace the Solar Photovoltaic System but due to the delay of time he would have to wait the complainant refused and instead insisted on a refund which the respondent refused. Consequently, being unable to settle the matter the Commission filed a case before the Board of Commissioners for the contravention of Section 40(1)(c) read with Section 42(1)(c) and 39(1)(b) 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—*
>
> *(c)where a consumer acquires any goods, otherwise than by way of sale by auction, which are not of good quality, in good working order or are defective —*
>
> *the consumer may, within six months after delivery of the goods, return the goods to the supplier, without penalty and at the supplier's risk and expense, and the supplier shall refund to the consumer any costs associated with the use, installation or delivery of the goods, and at the direction of the consumer –*
>
> *(i) unless the goods are not reasonably fit for the purpose referred to in paragraph (a) or (b), repair the goods within 60 days of the return of the goods to the supplier;*
> *(ii) replace the goods within 7 days of the return of the goods to the supplier or such longer period as agreed by the parties;*

(iii) refund to the consumer the price paid for the goods within 24 hours of the return of the goods to the supplier.

39(1)(b) *'Defect' in relation to any goods or a service means – any characteristic of the goods or components thereof that renders the goods or components less useful, practicable, or safe than persons would generally be entitled to expect in the circumstances; and 'defective' is construed accordingly."*

[4] The parties appeared before the Board of Commissioners for the hearing of the matter in August and September 2018. Ms. Salina Sinon, Legal Officer of the Fair-Trading Commission appeared on behalf of the complainant Mr. Adeline and Mr. Brian Julie, Attorney-At-Law, appeared on behalf of the respondent, Sey Solar Green Energy (Pty) Ltd represented herein by Ms. Maria Invernizzi. Ms. Sinon called four witnesses in support of the complainant's case.

[5] Firstly, Mr. Adeline (complainant) (CE1) gave sworn evidence before the Board that he paid a total sum of SR.344, 850 to the respondent for the purchase of the Solar Photovoltaic system (CE3) and SR.40, 500 for the installation of the system (CE4). That from the outset after the connection of the Solar Photovoltaic System one out of three inverters of the system was not working. Subsequently a second inverter stopped working hence to date only one inverter is working as he has been informed by the relevant experts that the system is producing well below its capacity. That he contacted the respondent immediately to inform her of this issue and at first, she requested to repair the system and after that failed, she requested to replace the system but given the amount of time he would have to wait he preferred a full refund which the respondent refused hence his prayer to the Board.

[6] Ms. Sinon then called Mrs. Frederika Confait-Poussou who testified under oath that she is employed at the Fair-Trading Commission as a Senior Analyst in the Market Surveillance Department of the Fair-Trading Commission and that she was assigned this case for investigation and at the time she was an analyst. Mrs. Confait-Poussou stated that as part of the investigation she requested for the registration and license documents of the respondent (CE9 and CE10). That after notifying the respondent of the complaint (CE11) she proceeded to conduct a site visit at the premises of the complainant's guesthouse where the Solar Photovoltaic System had been installed accompanied by an officer of the Seychelles Energy Commission who suggested that a troubleshoot needed to be conducted on the system to locate the problem.

[7]A second visit was conducted for this purpose accompanied also by one Mr. Percy Pool, whereby he was to thoroughly diagnose the system as it would make more sense for Seysolar to have first troubleshoot the complete installation, that is the solar panel connections, inverters configuration before simply replacing the 3-single phase 3kW with a 10kW inverter phase 3. To start this off, Mr Pool provided us with an explanation on how the PV panels have been wired. Each of these three inverters were fed from 12 Solar PV panels. But Mr Pool did not troubleshoot the entire system including the solar panels claiming that he did not have the proper tools. Although the complainant offered to purchase any necessary tool for the troubleshooting Mr. Pool without providing any reason refused to do it hence it could not be determined what was wrong with the system.

[8] Mrs. Confait-Poussou explained that on the day of the visit Mr. Ralph Vel, officer of the Seychelles Energy Commission stated that there was a test to measure the voltage coming from the panels at the input of each inverter, this measured value was approximately 200Vdc at each of the inputs of the three inverters. It is to be noted that, only one of those inverters were dissipating heat and had a buzzing sound, which is completely normal when an inverter is functioning. The remaining two inverters despite all the status lights indicating normal operation showed no sign of functioning (CE12). That she met with the respondent in an attempt to settle the matter (CE14 and CE15) but no settlement was forthcoming as the parties did not agree on the method of remedy to be provided. She therefore, drafted the investigation report and recommended that the matter be filed before the Board of Commissioners (CE16).

[9] Ms. Sinon proceeded to call Mr. Said Afif of the Public Utilities Corporation (PUC) as a witness. Mr. Afif testified that he works for PUC as the Planning and Research Manager for the past 13 years and holds an electrical engineering degree from the University of Manchester. The Board takes note that his qualifications were not objected to.

[10] Mr. Afif stated that PUC received an application for the commissioning of the Photovoltaic system from Mrs. Maria Invernizzi of Seysolar Green Energy on behalf of Cap Jean Marie Villa (Anse Kerlan, Praslin). Mr. Afif went on to describe to the Board the timeline of the process which occurred in light of this application as per Exhibit CE17. Mr. Afif stated that he received a phone call from a representative of Mr. Adeline stating that they felt that one of their inverters were not working properly and sought his assistance. Mr. Afif gave a response in an email dated 13th April, 2016, produced and marked as CE18 in which he explained the units produced

for PUC and those for the PV, that electricity production would depend on how the panels were installed and the amount of sunlight. The email went on to state that as per information provided by Seysolar Green Energy only one of the three inverters installed were working and went on to explain the expected output. The email concluded by stating that there was something wrong based on the PUC unit output and the PV unit output. It was enquired from the witness in cross-examination by counsel for the respondent whether the PUC had faced similar problems with these photovoltaic systems and how the issues were resolved. The witness stated that they should replace the malfunctioning component.

[11] Following the above witness Ms. Sinon called Mr. Ralph Vel of the Seychelles Energy Commission to give evidence. Mr. Vel gave evidence to the effect that he has been working for the Seychelles Energy Commission since 2012 while holding a Masters in Electricity Engineering from the University of Strathglyde, Glasgow. Mr. Vel testified that Mr. Adeline filed a complaint with the Seychelles Energy Commission and he was part of inspection process team. Mr. Vel produced his inspection report and went through it with the Board which was produced and marked exhibit CE19. The report was to the effect that as per the complaint the PV System installed at Cap Jean Marie Villa had been underperforming since commencing. It was observed that the three single phased that had been installed in a well-ventilated location. Mr. Vel recommended that Seysolar Green Energy Ltd troubleshoots the complete installation before replacing the three Single-Phase 3kW inverter with a 10kW three phase inverter.

[12] Mr. Vel testified that he produced a second inspection report for the authorities. Mr. Vel observed that one Mr. Percy Pool provided an explanation as to how the PV panels have been wired and that each of the three inverters are fed from12 Solar PV panels. It was also noted that only one inverter was dissipating heat and had a buzzing noise which was normal when an inverter is functioning. The remaining two inverters despite all the status lights indicating normal operation showed no signs of working functionality. It was recommended that Seysolar Green Energy Ltd be allowed to replace the three Single-Phase inverters with a 10kWp three inverter. In cross-examination the witness stated that it could not be said exactly was wrong with the PV system as Mr. Pool, despite his request, refused to conduct the necessary test to diagnose the issue.

[13] At that juncture Mr. Brian Julie, counsel for the respondent informed the Board that he would be filing an application of no case to answer before the Board and should the Board rule against him he would be calling one witness in his defence.

Seeing that no such application was forthcoming from counsel of the respondent the date set for continuation of hearing was kept and the matter proceeded with counsel calling only Mrs. Maria Invernizzi to give her evidence in her defence.

[14] Mrs. Invernizzi testified that she is a business woman of Italian origin and she had been operating her business in Seychelles since 2013 when her company was registered in the Seychelles. That in all her years of business she had never encountered issues with her products as she is encountering with Mr. Adeline. That she met Mr. Adeline in April or May 2015 when he approached her for the installation of her Photovoltaic Solar Panels. That the installation was approved by PUC and was carried out by a licensed contractor. That a few months after installing the three single-phase inverters she was informed by her technicians that there were over voltage issues with the one of the inverters which is causing it to go into protection mode hence decreasing its production of electricity and all three 3kw inverters needed to be changed to a bigger one as these three 3kw were too small.

[15] Mrs. Invernizzi testified that to date she is ready and willing to change the 9kw three single phase inverter to a 10kw free of charge as it was still under a five-year guarantee and this will fix all issues being encountered by the complainant. That this is also the recommendation of PUC and the Seychelles Energy Commission. That this has been her desire since 2016 even before this case came to FTC. She testified that to date the complainant has refused this offer even after writing him two letters which he never responded to and insists on a refund which she does not agree to since there is guarantee.

[16] In cross-examination it was put to her that as per the Consumer Protection Act, 2010 it is at the discretion of the consumer what remedy the consumer desires but the respondent maintained she is willing to replace the 9kw inverters with a 10kw one free of charge all she needs is the required time which she estimated to be about four and a half months. It was also put to her that it was her responsibility to recommend which inverter would be better suited for Mr. Adeline's premises so she should have recommended the 10kw in the first place to which the respondent stated that she gives the initial recommendation as to what equipment is to be installed but it is PUC who gives the final approval which she cannot go against and PUC gave authorisation for the three 3kw ones. Mrs. Invernizzi maintained her position throughout her evidence.

[17] At the close of the hearing it was agreed that both parties would file written submissions. To date the submissions of the respondent has not been forthcoming

from counsel Brian Julie. Ms. Sinon, Legal Officer from Fair Trading Commission, submitted on behalf of the complainant, Mr. Adeline that the Board should take into account the applicable law in this case which is Section 42(1)(c) read with Section 39 of the same Act and order that the respondent refunds to the complainant the sum of SCR.385, 350 representing the price paid for the goods and the cost of installation. It was not contended that the system was defective but the point of disagreement is which of the three statutory remedies is to be provided whereby the complainant wishes a refund and the respondent wishes to replace.

[18] Ms. Sinon submitted that the law clearly states that the remedy is at the direction of the consumer, therefore, the complainant has a statutory right once a breach of Section 42(1)(c) had been established to elect one of the remedies to be provided to him. Ms. Sinon added that Section 42 provides a statutory right to be provided with goods without defect, and if this is not the case, as it is in this matter, they have the right to return the goods to the supplier within 6 months and direct them to provide one of the three remedies provided by this section, which the complainant has done in this matter.

[19] Finally Ms. Sinon stated that a repair is to be provided within 60 days but the complainant had waited over six months, a replacement should take 7 days but the respondent wants to impose that the complainant waits four months, the complainant requested for a refund but the supplier refused. Ms. Sinon submitted that this showed a consistent breach of Section 42(1)(c) of the Consumer Protection Act, 2010 and humbly submitted that the Board of Commissioners finds the same and orders the refund as well as to order that the respondent pays a fine not exceeding SCR.400, 000 as per Section 67(1)(b) of the Act.

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

[21] Mr. Percy Pool, at paragraph 7 but his evidence has no findings as he did not diagnose the system as he did not have the proper tools.

[22] Mr. Ralph Vel from the Energy Commission also did not troubleshoot the system but made some observation on the installation. He stated (at para 11) that the system should be troubleshoot before any replacement be done.

[23] Finally we have Mr. Said Afif from the PUC who stated that the readings of the inputs and outputs from the system showed that it was under performing but he did not state as to which components was not working properly.

[24] Based on the above we deduce that the evidence of Mr. Vel and Mr. Afif failed to tell us what was wrong with the system but both deduced that the system was not performing to even half of its capacity.

[25] This by itself suffice as prima facie evidence to hold that the system was defective as per section ***39(1)(b)*** and therefore amount to a breach of section **42(1)(c)**.

[26] The Board now addresses the issue of remedy as per section 42 of the CPA. It is on record and uncontested by the parties that the respondent was ready to repair or replace the defective parts but the complainant refused those remedy stating the delay for such repair was too long and was past the statutory time for both a repair or a replacement as per section 42(1)(i) and (ii). The complainant now wants a refund.

[27] The Board has considered the positions of the parties and the relevant statutory provisions. The Board also takes cognisance of the fact that this case has been registered since 2016 and that by now the solar voltaic system up to date is still in the possession of the complainant and that the parties have fallen out and no amicable resolution has thus far been possible.

[28] Based on the above the Board feels that the best remedies to this matter would be to provide for a full refund to restore the parties to their original position. This would entail the return of the system installed at the complaints place back to the respondent. The removal would have to be done so that no further damage is done to the property of the complainant and also to the photovoltaic system to be returned.

Based on the preceding paragraph the Board therefore orders as follows:

That at a time agreed to by the parties, in the presence of an officer of the FTC and a relevant officer of the PUC, a contractor agreed to, by the parties who shall be responsible for the removal of the system from the property of the complainant, Mr Terry Adeline. The payment for the works of the contractor shall be paid by the respondent.

That Sixty (60) calendar days after the removal, the respondent shall refund the complainant the sum of SCR 385,350.

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 22nd day of March 2021

Ms. Karen Domingue
Chairperson

Mrs. Jenna Thelermont
Commissioner

Mr. Victor Pool
Commissioner

Mr. Michael Nalletamby
Commissioner