THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Consumer Protection Act, 2010)

IN THE MATTER OF:

VERONICA SIMEON
V
JOSIE CHETTY
(Trading as Halle's Kindergarten)

Case No: CPA.17.150

Complainant – Veronica Simeon
Respondent – Josie Chetty

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

For the Complainant
Veronica Simeon represented
Ms. Sophie Vel.– Legal Officer (FTC)

For the Respondent
Josie Chetty – Day Care Owner
Represented by Legal Counsel Mr. France Bonte

RULING

[1] The Fair-Trading Commission registered a complaint from Ms. Veronica Simeon (the complainant) (CE1, CE2) of Pointe Larue, Mahe on the 19th May 2017 against one Ms. Josie Chetty, trading as Halle's Kindergarden located at Au Cap, Mahe, (the respondent), a business and a supplier of services as defined by Section 2(1) of the Consumer Protection Act, 2010 (the Act). The respondent is a supplier of

services defined by Section 2 (1) (b) of the Act as she had a registered Day Care Business- a business for which a license is not required. Ms. Josie Chetty's business name was registered on the 07th July 2015 (A2, CE6).

[2] The case was heard before the Board of Commissioners on the 12th January 2019, Ms. Sophie Vel Legal Officer of the FTC stood in for the complainant Ms. Veronica Simeon and Legal Counsel Mr. France Bonte appeared on behalf of Ms. Josie Chetty.

[3] The gist if the complaint lodged by the complainant is to the effect that Ms. Simeon contracted for the services of the respondent's day-care for her daughter starting on May 2017 (CE5).

[4] A registration fee of SCR 2,000 was paid by the compliant on the 24th April and a monthly fee of SCR 2,500 which was paid on the 27th April 2017. The respondent received a receipt on the 27th of April to the amount of SCR 4,500 being the total amount paid by her (CE3).

[5] The complainants daughter started attending the day-care on the 2nd May, on the 3rd of May she was asked to come pick her daughter who was ill and, on the 4th, May she be again called to come pick her daughter again as she was ill (CE4). On the 4th of May the complainant informed the respondent that she has decided to stop sending her daughter at the day-care and asked for a refund of the day-care fees.

[6] From the evidence adduced at first, the respondent seemed to have agreed for a refund but later on changed her mind and given that the parties could not come to an agreement the complainant lodged a complaint with the FTC for the refund of the SCR 2,500 being the monthly fee and not the registration fee which as argued was a non-refundable fee as per the term of the registration document.

[7] During the course of the proceedings before the Board, the respondent argued that she does not agree to refund the fee as it was the normal practice that such fee be non-refundable and she further argued in support of her argument that she had blocked the cot that was available for that daughter in question and thus had refused other prospective clients for the month.

[8] In response Ms. Vel for the FTC argued that paragraph 1(i) of the Schedule to the Consumer Protection Act, 2010 provides that -

"any contract term which has the object or effect of irrevocably binding the consumer to terms which the consumer has no real opportunity of becoming acquainted to before the conclusion of the contract is unfair if not individually negotiated".

[9] Ms. Vel further argued that section 11 of the Act defines contract terms as not individually negotiated if –

"for the purpose of this Part, if an assessment of the contract overall shows that the contract is a pre-formulated standard contract."

Ms. Vel in this regard argued that the monthly fee was not disclosed as being non-refundable and such that amount should be refunded to the complainant.

[10] Legal counsel for the respondent in his intervention stated and advised his client before the Board that she should refund the monthly fee.

[11] The Board after hearing both parties agree with the arguments of Ms. Vel and legal counsel Mr. Bonte that the monthly fee should be refunded as this term was not brought to the attention of the complaint prior to the conclusion of the contract.

[12] Based on the above arguments, the Board orders that the respondent Ms. Josie Chetty to refund to the complainant the sum of SCR 2,500. Being the monthly fee paid for the services of the respondent.

[13] The Board was asked to consider on a penalty to be imposed on the respondent pursuant to Section 67(1)(a) of the Consumer Protection Act which allows for a maximum penalty of SCR 100,000. Based on the representation of legal counsel for the respondent the Board will not impose any such fines.

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than Fourteen (14) 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 ..... day of April, 2021.

Mr. Victor Pool
(Presiding Commissioner)

Mrs Jenna Thelermont
(Commissioner)

Mr. Michael Nalletamby
(Commissioner)