

IN THE APPEAL TRIBUNAL OF SEYCHELLES

BARBORA PANOVSKA

Appellant

versus

FAIR TRADING COMMISSION

Respondent

Heard: 23rd February 2018

Delivered:

Case No. CPA.16.313

AT/3 /2017

RULING

[1] The Appellant, being aggrieved by the decision of the Fair Trading Commission (hereinafter referred to as 'FTC'), the Respondent herein, to discontinue their investigation into the Appellant's complaint dated 20th November 2016 that Carana Hilltop Villas (owned by Ethel Eileen Michaud) had infringed the provisions of the Consumer Protection Act (CAP 257) (hereinafter referred to as the 'Act'), lodged an appeal to this Tribunal on 10 May 2017.

[2] Both parties were present at the hearing of this matter.

[3] After hearing the cogent evidence of the Appellant, the Respondent agreed that it should reopen its investigation into the complaint.

[4] The Tribunal hereby remits the case back to FTC to continue the investigation.

Signed, dated and delivered at Victoria on 2nd March 2018.

Mr. Kieran Shah (Chairman)

Kieran A Shah

Mr. Ashik Hassan

Ashik Hassan

Mr. Gerard Adonis

Gerard Adonis

Miss Diana Quatre

Diana Quatre

IN THE APPEAL TRIBUNAL OF SEYCHELLES

THE DIAMOND WORKS

Appellant

versus

FAIR TRADING COMMISSION

Respondent

Delivered:

Case No. CPA.16.008

AT/01/2017

RULING

- [1] The Appellant, herein represented by Aimee Lentz, Brand/Operations Manager of The Diamond Works, being aggrieved by the decision of the Fair Trading Commission (hereinafter referred to as 'FTC'), the Respondent herein, to issue a compliance notice in accordance with section 72 (1) of the Consumer Protection Act (CAP 257) (hereinafter referred to as the 'Act') to the Appellant dated 25 January 2017, lodged an undated appeal to this Tribunal, which was received by FTC on 7 March 2017.
- [2] Representatives of both parties were present at the Tribunal on 26 January 2018 when the matter was called. The representative for the Appellant informed the Tribunal that it had ceased to trade in Seychelles and hence there would be no need for FTC to carry out an inspection as to whether or not it was complying with the provisions of sections 20 (1) and (3) of the Act.
- [3] The Tribunal later received an undated letter on 26 February 2018 from the Appellant signed by Aimee Lentz, formally reporting that they wish to withdraw their appeal before the Appeal Tribunal.
- [4] The Appeal therefore stands withdrawn, and is so ordered.

Signed, dated and delivered at Victoria on 2nd March 2018.

Mr. Kieran Shah (Chairman) Kieran A. Shah.

Mr. Gerard Adonis

G. Adonis

Miss Diana Quatre

D. Quatre

IN THE APPEAL TRIBUNAL OF SEYCHELLES

JOURDAN FONTAINE

Appellant

versus

FAIR TRADING COMMISSION

Respondent

Heard: 9 February 2018

Delivered: 2 March 2018

Case No. CPA.17. 064

AT/ 5 /2017

RULING

- [1] The Appellant, Mr. Jourdan Fontaine, being aggrieved by the decision of the Fair Trading Commission (hereinafter referred to as 'FTC'), the Respondent herein, to discontinue their investigation into the Appellant's complaint dated 20th February 2017 that LaserPro (Pty) Ltd had infringed the provisions of the Consumer Protection Act (CAP 257)(hereinafter referred to as the 'Act'), lodged an appeal to this Tribunal on 1st August 2017.
- [2] Both parties were present at the hearing of this matter. The Appellant chose to conduct his own case without the assistance of a legal counsel. Neither party objected to the Tribunal's reliance on the case file, nor to the contents thereof.
- [3] The Appellant had placed an order with LaserPro (Pty) Ltd for 52 key rings to be printed with the Appellant's car hire contact details thereon for the sum of SR3900 on 10th February 2017. The order was placed by the Appellant's brother, Mr. James Fontaine, who discovered an error in one of the telephone numbers printed on the key rings at the time of collection; one digit in the telephone number was incorrect. Mr. James Fontaine asked how the error could be rectified and LaserPro

(Pty) Ltd provided the customer with the option of placing a printed corrective sticker over the mistake.

- [4] It is evident that Mr. James Fontaine agreed with this solution as he approved a sample which was produced for his consideration. It is further evident that Mr. James Fontaine requested that the same solution be applied for the rest of the key rings, which was then carried out by LaserPro (Pty) Ltd.
- [5] The Appellant later telephoned LaserPro (Pty) Ltd to reject the key rings as amended (see statement of Kathleen Louise, Office Manager of LaserPro (Pty) Ltd dated 16 March 2017).
- [6] In his notice of appeal, the Appellant sought to rely on the grounds that LaserPro (Pty) Ltd did not follow their proper procedure of accepting orders via email, that the job card was not signed by the representative of the Appellant who placed the order, and that there was no evidence that the Appellant's representative had given the incorrect phone number to LaserPro (Pty) Ltd. He sought to have the decision of the FTC overturned.
- [7] The Appellant submitted that LaserPro (Pty) Ltd should not have accepted a verbal order; instead, they should have accepted a written order from his representative, given that their normal practice required orders to be made via email. Further, he submitted that there was no signature from his representative on the job card, indicating that Mr. James Fontaine did not give his approval on the correctness of the information contained therein. The Appellant further submitted that he and his brother had been in the business for many years and would not have made such an error in their phone number.
- [8] The Respondent submitted that there is no obligation for LaserPro (Pty) Ltd to accept orders solely via email; the company has a discretion to accept an order in any form they deem fit. Moreover, the Act does not make provision for any legally binding format, nor is there a requirement for a signature. Furthermore, the Respondent submitted that the Appellant's representative agreed to place the order by way of job card. The Respondent also submitted that there is no evidence to show whether or not the Appellant's representative gave the correct number to LaserPro (Pty) Ltd, and maintained that there is no evidence to sustain a breach of section 40 (1) (b) of the Act. The investigation into the complaint was accordingly discontinued by FTC on this basis.
- [9] There is no way to ascertain whether LaserPro (Pty) Ltd or the Appellant's representative, Mr. James Fontaine, is responsible for the error in the telephone number, which was then printed on 52 key rings. Nevertheless, what is evident from the facts is that the Appellant's representative was offered a solution to rectify the error, which he accepted. Mr. James Fontaine was at liberty to refuse the offer and demand a replacement or a refund. However, there is no evidence that this was done at the material time.

[10] In accepting that a sticker be placed over the incorrect phone number, Mr. James Fontaine had waived his right to require LaserPro (Pty) Ltd to reprint the key rings, assuming that the error was caused by LaserPro (Pty) Ltd.

[11] For this reason, it is the unanimous view of the Tribunal that the Respondent did not err in discontinuing their investigation into the Appellant's complaint. The appeal is therefore dismissed.

[12] The Appellant has 14 days from the date of this ruling in which to appeal this decision to the Supreme Court.

Signed, dated and delivered at Victoria on 2nd March 2018

Mr. Kieran Shah (Chairman) Kieran Shah

Mr. Ashik Hassan Ashik Hassan

Mr. Gerard Adonis Gerard Adonis

Miss Diana Quatre Diana Quatre

IN THE APPEAL TRIBUNAL OF SEYCHELLES

XAVIER EULENTIN

Appellant

versus

FAIR TRADING COMMISSION

Respondent

Heard: 13 April 2018

Delivered: 13 July 2018

Case No. CPA.17. 029

RULING

- [1] The Appellant, Mr. Xavier Eulentin, being aggrieved by the decision of the Fair Trading Commission (hereinafter referred to as 'FTC'), the Respondent herein, to discontinue their investigation into the Appellant's complaint dated 23rd January 2017, lodged an appeal to this Tribunal on 4 September 2017.
- [2] Both parties were present at the hearing of this matter. The Appellant chose to conduct his own case without the assistance of a legal counsel. Neither party objected to the Tribunal's reliance on the case file, which was also served on all parties.
- [3] The Appellant in August 2016 purchased a 32-inch flat screen television, make Nikura, at OJ Shopping Centre, Providence, Mahe, for the sum of SR 3880.00. It is not in dispute that the television was in good, working condition once it was installed in the Appellant's household, and that it was free of any cracks. It is also not disputed that the television falls within the 6-month warranty period as provided for by the warranty terms and conditions of Providence Supplies (Pty) Ltd.
- [4] Approximately five months from the date of purchase, on 12 January 2017, the Appellant noticed a small crack on the television screen while he was cleaning the screen with a cloth. He explained that he was using gentle pressure and that he

used gentle force on the screen, no evidence has been led to prove a manufacturing defect in the television set. In the absence of any evidence to the contrary, the Tribunal is satisfied that the Fair Trading Commission was correct in its decision to discontinue the investigation.

[10] For this reason, it is the unanimous view of the Tribunal that this appeal be dismissed and it is dismissed accordingly.

[11] The Appellant has 14 days from the date of this ruling in which to appeal this decision to the Supreme Court.

[12] Copy of ruling served on all parties on the date of delivery, and a copy of the same is today published on the notice board at the Fair Trading Commission, Unity House, Victoria.

Signed, dated and delivered at Victoria on 13 July 2018.

Mr. Kieran Shah (Chairman) Kieran A. Shah

Mr. Ashik Hassan (about but agrees with the decision as confirmed in his email dated 13 July 2018) Kieran A. Shah

Mr. Gerard Adonis G. Adonis

Miss Diana Quatre D. Quatre