January 5, 2006

In the Matter of the Petition by

RONALD K. MARIA

P.O. Box 2868

Waianae, HI 96792-8868

Determination to Terminate Post

Office Box Service for

P.O. Box 2868

Waianae, HI 96792-8868

P.S. Docket No.  POB 05-195

APPEARANCE FOR PETITIONER:

Ronald K. Maria

APPEARANCE FOR RESPONDENT:

Catherine A. Green, Esq.

**INITIAL DECISION**

            This proceeding arises from a Petition filed by Mr. Maria after John Galera, the Waianae, Hawaii Postmaster, informed him that post office box service was being terminated based on information from the Postal Inspection Service that Petitioner was using his post office box in furtherance of a fraudulent scheme.

            On November 18, 2005, Respondent, the United States Postal Service, filed an Answer to the Petition, along with a Motion for Summary Judgment, arguing that there were no material facts in dispute and that Respondent was entitled to judgment as a matter of law.  Attached to the motion was a sworn declaration from Postal Inspector Roberto Hernandez and some supporting documents.  Petitioner was given an opportunity to reply to the motion and he did so.  The following findings of fact are based on all the material submitted by the parties.

FINDINGS OF FACT

            1.  P.O. Box 2868 at the Waianae Post Office was rented to Petitioner on January 24, 2002.  Petitioner indicated on the application form that he would be using the box for business purposes and that one of the business names was Unified Customer.com.  (Hernandez Declaration, ¶5).

            2.  In January 2005, the U.S. Postal Inspection Service in Hawaii, as well as the Hawaii Better Business Bureau and the Hawaii Consumer Protection Office, began receiving complaints from customers about mail received from Unified Customers, Inc., P.O. Box 2868, Waianae, HI 96792.  Since that time, the Inspection Service, in conjunction with the Hawaii Attorney General’s Office, has conducted an investigation.  (Hernandez Declaration, ¶¶2, 4, 8).

            3.  The investigation disclosed that many people received various enticements through the mail suggesting to them that they would receive large sums of money from the “trust fund” of a “billionaire,” if they would send certain fees to Unified Customers, Inc., at P.O. Box 2868.  Some of the post cards and other documents sent to potential customers contained Petitioner’s name, identifying him as the “founder,” and a “Billionaire since 1993.”  (Hernandez Declaration, ¶¶2, 4; Exs. 1-8).

            4.  Inspector Henrandez’ Declaration identifies seven specific customers who complained that they had sent money to Unified Customers, Inc., and received nothing in return.  (Hernandez Declaration, ¶¶9-15).

            5.  During surveillance of Petitioner conducted by the Inspection Service on July 28 and 29, 2005, Petitioner was observed removing mail addressed to Unified Customers, Inc., from P.O. Box 2868 and then traveling to his residence.  (Hernandez Declaration, ¶16).

6.  Section 508.4.4.5 of the Domestic Mail Manual (DMM300) states that, “A post office box may not be used for, or in connection with, a scheme or enterprise that violates any federal, state, or local law; . . ..”  39 U.S.C. §3005(a) makes it unlawful to conduct “a scheme or device for obtaining money or property through the mail by means of false representations, . . ..”

            7.  Section 508.4.9.2 of the Domestic Mail Manual gives a postmaster authority to terminate post office box service for various reasons, including “if the box customer or its representative . . .; uses it for any unlawful activity as described in 4.4.5.”

DECISION

            A grant of summary judgment is proper when there are no issues of material fact in dispute and when, as a matter of law, the moving party is entitled to judgment.  Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).  The moving party has the burden of establishing the absence of a genuine issue of fact and, if that burden is met, the opposing party must counter with something more than “mere denials or conclusory statements.”  Mingus Contractors, Inc. v. United States, 812 F.2d 1387, 1390 (Fed. Cir. 1987); see also Adickes v. S.H. Kress Co., 398 U.S. 144, 157-59 (1970); Fed. R. Civ. P. 56(e).

            The sworn declaration of Inspector Hernandez, along with the copies of various solicitations attached, is sufficient to establish the absence of any genuine issue of fact.

In his reply to the Motion for Summary Judgment, Petitioner submitted nothing but a “mere denial.”  He states, “I deny any wrongdoing,” and points out that there have been no “charges, arrests, or convictions.”  He does not, however, address any of the specifics of Inspector Hernandez’ Declaration concerning the false representation scheme that Inspector Hernandez describes.  The only part of Inspector Hernandez’ Declaration that Petitioner takes specific issue with is a statement that postal inspectors did not participate in a search of Petitioner’s home.[1]  As no part of Respondent’s argument for summary judgment is based on anything discovered during a search of Petitioner’s home, that is not a relevant issue in this case.

Respondent’s evidence, uncontradicted by Petitioner in any significant way, is also sufficient to establish that P.O. Box 2868 is being used in violation of 39 U.S.C. §3005(a).

Respondent's Motion for Summary Judgment is granted, and the determination to terminate post office box service to Petitioner at P.O. Box 2868, based on Sections 508.4.4.5 and 508.4.9.2 of the Domestic Mail Manual, is sustained.

Bruce R. Houston

Chief Administrative Law Judge

[1] Petitioner submitted some DVD discs that he claims show that postal inspectors did search his home.  Whether they did or did not is not a matter that needs to be decided here.  Therefore, the DVDs have not been considered.