

AFFIDAVIT OF HARVEY ALTERGOTT

Exhibit 1
Postal Regulatory Commission
Submitted 5/20/2008 11:09:59 AM
Filing ID: 59946
Accepted 5/20/2008

I, Harvey Altergott, being duly deposed, do hereby state as follows :

1. From 1972 to 1985, I was employed by the United States Postal Service ("USPS"). From 1979-1985, I was GENERAL MANAGER, Domestic Mail Classification Division, U.S. Postal Service Headquarters, Washington, DC. The attached document, Attachment A, is a true and correct copy of my resume.

2. As General Manager, I was responsible for writing and administering virtually all regulations that govern mailing of material in the domestic mails. This responsibility included the administration of postal regulations dealing with Special Third-Class postage rates. This included:

A. Developing regulations relating to Special Third-Class postage rate.

B. Training field personnel in the Mail Classification Centers who processed applications for Special Third-Class mail privileges to ensure consistency in the manner in which those privileges were granted.

C. Providing guidance for field personnel to assist them in evaluating whether mailers and mailings qualify for special rates. The guidelines now contained in U.S.P.S. Publication 417 were originally developed under my direction.

D. Acted as the highest level of administrative appeal for mailers denied authorization to mail at Special Third-Class rates.

3. I have testified in one court case regarding the Cooperative Mailing rules within the past four years.

1997 American Heart Disease Prevention Foundation v. Watson & Hughey Co., etc. U.S. District Court for the District of Columbia; Case Number 94-4154-SAC

4. I have reviewed the Petition for Summary Enforcement of Inspector General Subpoenas and the Memorandum of the United States in Support thereof in the case United States of America v. American Target Advertising, Inc. et al., Civil Action No. 99-56-MC in the United States District Court for the Eastern District of Virginia. I have also reviewed the attached letters of United Seniors Association, Inc. and The 60/Plus Association. I am familiar with 29 U.S.C. section 3626 (which is the statutory basis of the Cooperative Mailing rule}, Domestic Mail Manual sections that address Cooperative Mailings (which constitute the official regulations), and U.S.P.S. Publication 417 which is intended as a guide as to who and what is eligible for Special Third-Class mail rates.

5. The Special Third-Class postage rates are rates subsidized by Congress and intended for the use by a limited number of specific types of not for profit organizations. One of my responsibilities as General Manager was to prevent ineligible organizations from taking advantage of these subsidized rates. The purpose of the Cooperative Mailing regulations is to prevent the Special rates of postage from being used for mailings of persons not eligible for mailing at those rates.

6. In the past, there have been many instances in which organizations authorized to mail at the Special rates would "rent" or "loan" the use of their permit indicia to others, enabling ineligible profit making companies to mail at the special rates. The following are a few examples of the many forms this abuse took.

A publisher might make an arrangement with a church to print and pay the postage (at Special rates) for the church bulletin if the bulletin was allowed to carry advertisements sold by and for the benefit of the publisher.

A travel agency might pay a non-profit organization a percentage of the profits for a mailing selling tickets for a trip contracted for, and for the benefit of, the travel agency.

In some cases, a number of non-profit organizations would make such mailings which were identical except for the name and permit numbers of the non-profit organizations that appeared on the mail.

A chair manufacturer might pay a university a commission on each sale of chairs bearing the Alumni seal if the university would let advertisements be mailed to alumni using the university's postage. Often the manufacturer would pay the postage and generally the university did not have any obligation to stock chairs or make any payment for chairs not sold.

Controlling such abuses was difficult because of the many forms the abuses took. It was further complicated by the fact that application of postal regulations is done in the field, at thousands of local post offices.

7. It was apparent that our field offices needed some form of instructions as to how to detect such abuses. Previous practices of accepting, at face value, the return address or the mailing statement as sufficient evidence that a mailing qualified was obviously ineffective. It was also apparent that the clues that would reveal such abuse would differ widely, and "smart" mailers could avoid detection of abuses if we limited ourselves to examining only one or two bits of information. I concluded that the Postal Service should not so limit itself, but should consider a variety of information when investigating suspicious mailings. My staff and I established a list of some (but not all) factors to be considered in determining if a mailing qualifies. Included in that list was the element of risk. It was I who thought of and included this factor on the list. We promulgated that list in memos to the field, at training conferences, and in U.S.P.S. Publication 417.

8. It must be recognized that the “factors” were just a listing of some of the things that a postal employee should consider in determining if a mailing qualifies for the Special rates. It is not a listing of requirements that must, or must not, be met in order to qualify. A mailing may miss on several of the factors and still qualify or may “pass” on all but be disqualified on the basis of some other information discovered. As an example, a church may make a mailing that obviously only benefits the church but may have been printed free by a parishioner who also gave the church money to cover the cost of the postage. Such a mailing would have been considered to qualify.

9. The list of “factors” that my staff and I developed was developed in an effort to control the unauthorized usage of Special Third-Class rates for the sale of goods and services by someone other than qualified not for profit organization authorized to mail at those rates. The factors, including the risk factor, were not intended to regulate or limit the amount of money that could be spent by a non-profit organization for the development and distribution of its mail. This is because the purpose and objectives of an organization are determinants as to whether an organization qualifies for the Special rates. The Postal Service is not charged with determining how effective an organization is achieving its objectives. My office did not try to determine if a mailer paid too high a price for printing or brochure design, nor were we concerned about whether a mailing was successful in raising contributions. Simply put, Postal regulations are intended to limit use of the Special rates to qualified, authorized not for profit organizations and the “factors” were developed and applied to limit those rates for the selling a product or service by others. Cooperative mailing rules and guidelines were not developed to limit mailings that did not promote products, services, or objectives of those not eligible for the Special rates.

10. The Cooperative Mailing rules are not violated simply on the basis that a fund raising campaign is unsuccessful and all proceeds are expended in the campaign

planning, development, printing, and mailing. It is assumed that all persons contracted to do these things will do so to make a profit. Whether such contracts are “good” or even “fair” for the mailer is not a factor in determining eligibility. My office was not concerned with the various means by which a campaign manager might guarantee performance such as “you’ll never have to pay me more than the amount of contributions collected”. The overriding consideration is whether the mailing was done to carry out the purpose and objectives of the permit holder.

11. It should be noted that when my office developed the “factors”, it was envisioned that they would be used when the outward appearance and content of a piece of mail would raise a question as to whether the piece qualified.

12. The Postal Service distributes copies of “rulings” that have been made as to how the regulations contained in the Domestic Mail Manual (DMM) are being interpreted and applied. I subscribe to these rulings. I have examined my copies of such rulings and have visited the Postal Service’s “Postal Explorer” web site at which one can view all such rulings that are current. I have found five such rulings which deal with cooperative mailings, PS-190, PS-209, PS-233, and PS-257, and PS-120, copies of which are attached as attachments B, C, D, E, and F.

PS-190 deals with a church bulletin in which a third party pays all costs in preparing and mailing the bulletin and keeps all revenues for advertising contained in it. This was ruled to be a cooperative mailing.

PS-209 discusses the factors that may be considered in determining whether a mailing is cooperative. One example is a mailing which promoted credit cards in which the non-profit organization gets a percentage of the credit card sales. The example is a college mailing a brochure prepared by a book company in which the college gets a kick back “commission” on each book sold. Both examples dealt with situations promoting a service or product of a third party.

PS-233 discusses mailings that are announcements of events sponsored by a profit making organization. The ruling specifies that the same rules and criteria must be used in evaluating eligibility for Special rates as are used for other potential mailings.

PS-257 discusses the admissibility of mail which contains an article detailing benefits that would accrue to the nonprofit organization or its members if they use a specific credit card.

PS-120 discusses the admissibility of mail which has been provided to a local congregation by the national or regional body of the church.

None of the five Customer Support Rulings dealt with the question of how much or in what manner, the non-profit organization paid its fund raising consultant. They provide no indication that there has been a change in Postal Service Policy since I was General Manager of the Domestic Mail Classification Division. The five rulings are, in fact, updates of rulings made when I was General Manager.

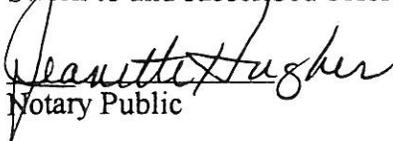
13. The letters attached as Exhibits 1,2,3,4, to this affidavit do not promote the sale of a third party product or service and appear to be of the type that would support the nonprofit purposes of an organization qualified for the Special Rates. They contain no indication that they violate the Cooperative Mailing rule.

I solemnly swear that the contents of this affidavit are true and correct to the best of my knowledge, information and belief.


Harvey K. Altergott

Date: 7/27/99

Sworn to and subscribed before me on this the 27th day of July, 1999.


Notary Public

My commission expires: 11/2001