

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

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POSTAL REGULATORY  
COMMISSION

Complaint of: ARMANDO MIRARCHI PONS

Administrator  
ARCADIA GALLERY CORPORATION  
(WEST CHAPTER)

Docket No. C2011-4

COMPLAINT REGARDING OBSTRUCTION, DELAY, DESTRUCTION  
AND THEFT OF MAIL MATTER BY OFFICER OR EMPLOYEE OF  
U.S. POSTAL SERVICE-TEXTILE FINANCE at 100 W Olympic Blvd,  
Los Angeles, CA 90015

May 17, 2011

ARMANDO MIRARCHI PONS  
3A Rustic Circle, Montvale, NJ 07645  
Tel. # 302-339-7401  
[ponsmirarchi@gmail.com](mailto:ponsmirarchi@gmail.com)

- i. On or about the 26<sup>th</sup> day of April, 2011, complainant tried to pick up the mail from a rented Post Office Box # 79202, situated at the U.S. Postal Service Textile Finance, 100 W. Olympic Blvd., Los Angeles, CA 90015. When the box was opened, a yellow Post-it Note was seen hanging and blocking its opening. Upon inquiry, the Supervisor, Diane Holmes, showed the yellow post-it-note with a handwriting that says: "Hold mail for Arcadia Gallery West Chapter Plan Administrator" – Dept of Treasury Refund Check". She said that she doesn't know why it is written and who wrote the note, and advised that it is better to call or come the next day to talk to the postal employee named Irene Cervantes, the person in charge of handling and placing mails in different post office boxes in that location. The next day, April 27, 2011, before 12:00 noon, Irene Cervantes was at her post and upon inquiry about the note and other mail deliveries that includes important IRS communications and refund check from the Department of Treasury, she said that she does not have yet such mails and/or communications and that she only placed that post-it-note as a secret reminder to herself. She gave an assurance that as long as she receives the Treasury Check and other communications from the IRS, she will just place them inside the mailbox. On April 28, 2011, upon further inquiry,

Irene Cervantes confirmed that there was a Treasury Check for Arcadia Gallery West Chapter Plan Administrator that was received earlier in the morning. However, when asked where it is and why it is not yet delivered and placed in the Post Office Box No. 79202 of the complainant, she said that: "I took it!" "I did not put it in your mailbox. I cannot give it to you now, because instead of putting it there, I preferred to send it back. If you insist to get it from me, I will not be able to give it to you. It cannot be retrieved anymore as they have already left". When asked to show any written or verbal authority for the taking, possession, non-delivery and return of the mail, she was not able to show any documentation, but reasoned out that she did it because she liked to do it, although she doesn't have any authorization to hold or return any mails for P.O. Box 79202. Her supervisor Diane Holmes defended her by saying that if you have any complaint with what was done, "Call the Postmaster! "We cannot give any of your mails, especially your refund check! We cannot do anything! Then she violently banged and abruptly closed the window with absolute disregard and disrespect, leaving the complainant in the lowest ebb, with a feeling that all hope is gone, absolutely shocked, surprised, embarrassed, humiliated and extremely disappointed about the unexpected attitude, suspicious behavior and untoward actions of Irene Cervantes and Diane Holmes.

**Defendants Irene Cervantes and Diane Holmes of the United States Postal Service violated:**

**1. U.S. Code Title 18, Chapter 83:**

**Sections: 1701 - Obstruction of mails generally  
1702 – Obstruction of correspondence  
1703 - Delay or destruction of mail or newspapers  
1709 – Theft of mail matter by officer or employee**

**2. California Penal Code Section 530.5 (e) – Mail theft as a public offense**

**II. Specific identification and explanation of Postal Service action or inaction which violates the above provisions of law:**

**A. 18 U.S.C. § 1701. Obstruction of mails generally:**

**Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined under this title or imprisoned not more than six months, or both.**

Irene Cervantes knew that the refund check was coming as evidenced by a post-it-note pasted on the opening door of P.O. Box 79202 with a handwritten statement saying: "Hold mail for Arcadia Gallery West Chapter Plan Administrator – Dept. of the Treasury Refund Check". When she received it early in the morning of April 28, 2011, she willfully obstructed or retarded the passage of the mail by taking and possessing it instead of placing it immediately inside the post office box. She should be fined under this title or imprisoned for not more than six months, or both.

**B. 18 U.S.C. § 1702. Obstruction of correspondence:**

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined under this title or imprisoned not more than five years, or both.

Irene Cervantes in connivance with her Supervisor Diane Holmes and unidentified postal employees, who took the mailed check or communications from the Department of Treasury out of the United States Postal Service Office-Textile Finance, Los Angeles, CA or from the authorized depository for mail matter of the complainant, P.O. Box 79202, and who alleged that the Treasury Check they received early in the morning of April 28, 2011 was sent back before it has been delivered to the complainant, the Plan Administrator of Arcadia Gallery West Chapter, to whom it was directed, with design to obstruct such correspondence, or to pry into the business or secrets of Arcadia Gallery, or open, secrete, embezzle the refund check or destroy the same, should be fined under this title or imprisoned not more than five years, or both.

**C. 18 U.S.C. § 1703. Delay or destruction of mail or newspapers:**

a) Whoever, being a Postal Service officer or employee, unlawfully secretes, destroys, detains, delays, or opens any letter, postal card, package, bag, or mail entrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by

authority of the Postmaster General or the Postal Service shall be fined under this title or imprisoned not more than five years, or both.

Irene Cervantes, being a postal employee, who unlawfully secreted by operating in a hidden or confidential manner, as evidenced by her response to the inquiry as to why she posted a post-it note to hold complainant's Treasury Check, she answered that it is only for her as a secret reminder. Upon receipt of the check by mail on April 28, 2011, she detained it by keeping it in her possession, delayed its delivery to the complainant's mailbox by not placing it there immediately and/or opened such mail from the Department of Treasury which came into her possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier or other employee of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or the Postal Service, shall be fined under this title or imprisoned not more than five years, or both.

- b) Whoever, being a Postal service officer or employee, improperly detains, delays, or destroys any newspaper, or permits any other person to detain, delay, or destroy the same, or opens, or permits any other person to open, any mail or package of newspapers not directed to the office where he is employed; or

Whoever, without authority, opens, or destroys any mail or package of newspapers not directed to him, shall be fined under this title or imprisoned not more than one year, or both.

Irene Cervantes, being a postal service employee who is in charge of post office box mails, improperly detained and delayed valuable mail supposed to be delivered and placed inside the post office box of the complainant on the same day that she received it by keeping the check in her possession and denying delivery of the same by saying that she returned it. Her statement that she returned it immediately upon receipt thereof and that she cannot retrieve it anymore for the delivery truck was already gone emits doubts and suspicion, considering the interest she showed in waiting for the refund check as evidenced by her post-it-note that blocked the opening of the Post Office Box No. 79202 that was discovered by the complainant when he tried to see and pick-up any mails that may have been delivered to that P.O. Box on April 26, 2011.

**Diane Holmes, her supervisor, being a Postal service officer, permitted Irene Cervantes, a postal employee to detain the mail of the complainant or destroy the same on April 28, 2011 when she defended her allegation that the check is no longer retrievable and that she cannot give, issue or deliver anymore such refund check, that she cannot do anything and that she showed a violent attitude by harshly banging the window to end up the inquiry.**

**Both Irene Cervantes and Diane Holmes, without any evidence of written authority to hold, confiscate, sequester or return the complainant's mail not directed to them, opened and/or destroyed such mail matter, falsely stated that it was returned on the same date and time of receipt and further alleged that they cannot retrieve, release and deliver the mail anymore as it is gone. Therefore, they should be fined under this title or imprisoned not more than one year, or both.**

**D. 18 U.S.C. § 1709. Theft of mail matter by officer or employee:**

**Whoever, being a Postal Service officer or employee, embezzles any letter, postal card, package, bag, or mail, or any article or thing contained therein entrusted to him or which comes into his possession intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or of the Postal Service; or steals, abstracts, or removes from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined under this title or imprisoned not more than five years, or both.**

**Irene Cervantes, a postal employee and Diane Holmes, her supervisor, having connived with one another to embezzle the letter or mail from the Department of Treasury, or the refund check contained therein which came into their possession and intended to be conveyed by mail, or carried or delivered to the Post Office Box of the complainant by any carrier, messenger, agent or other person employed in any department of the Postal Service, having stolen, abstracted or removed from such letter, the refund check contained therein, should be fined under this title or imprisoned not more than five years, or both.**

**E. California Penal Code Section 530.5 (e) – Mail theft as a public offense:**

Every person who commits mail theft, as defined in Section 1708 of Title 18 of the United States Code, is guilty of a public offense, and upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. Prosecution under this subdivision shall not limit or preclude prosecution under any other provision of law, including, but not limited to, subdivisions (a) to (c), inclusive of this section.

Irene Cervantes and Diane Holmes who committed mail theft, as defined in Section 1708 of Title 18 of the United States Code, are guilty of a public offense, and upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment.

**III. OTHER ISSUES PRESENTED BY THE POSTAL SERVICE'S ACTION OR INACTION AS THEY ARE RELATED TO THE COMPLAINANT:**

- A. WHETHER OR NOT THE PLACING ON HOLD AND ALLEGED RETURNING OF THE TREASURY CHECK BY IRENE CERVANTES and DIANE HOLMES, SUPERVISOR OF USPS-TEXTILE FINANCE, Los Angeles, CA violate due process and constitute unlawful search and seizure in violation of the constitutional rights of the complainant.**
- B. WHETHER OR NOT THE SYSTEM USED BY DIANE HOLMES IN SUPERVISING HER POSTAL EMPLOYEE, IRENE CERVANTES, AND HANDLING CUSTOMER INQUIRIES VIOLATES THE CODE OF ETHICS FOR GOVERNMENT SERVICE.**
- C. WHETHER OR NOT THE UNITED STATES POSTAL SERVICE-TEXTILE FINANCE THRU ITS EMPLOYEE IRENE CERVANTES, WHO MAINTAINED A SECRET SYSTEM OF RECORDS BY HANGING A POST-IT-NOTE TO HOLD MAIL, COMPLIES WITH ITS LEGAL AND ETHICAL OBLIGATION TO HOLD IN CONFIDENCE THE IDENTIFIABLE INFORMATION ABOUT ITS CUSTOMERS, EMPLOYEES AND OTHER INDIVIDUALS.**

- IV. Immediately after the above-stated occurrences on the 26<sup>th</sup>, 27<sup>th</sup> and 28<sup>th</sup> days of April, 2011, complainant exerted time and efforts to seek the**

help of the United States Postal Service customer services, both online and by phone. Time and efforts exerted in filing the case, making follow-up calls, and waiting for favorable responses but they only proved to be futile and in vain, as these case numbers were closed, one after the other, without any actions and positive results:

- A. CA 10504454
- B. HQ 105058545
- C. CA 105213268

V. **SPECIFIC RELIEF OR REMEDY REQUESTED AND THE BASIS THEREOF:**

A. **39 U.S. Section 2604. Delivery of stolen money to owner:**

When the Postal Service is satisfied that money or property in the possession of the Postal Service represents money or property stolen from the mails, or the proceeds thereof, it may deliver it to the person it finds to be the rightful owner.

It is respectfully requested that an order be issued to the United States Postal Service and its chain of command, directing them to recover and retrieve money or property stolen from the mails by Irene Cervantes and Diane Holmes, more particularly those communications from the Internal Revenue Service and the Department of Treasury Refund Check issued to the rightful owner, Arcadia Gallery West Chapter Plan Administrator, due to be delivered to P.O. Box No. 79202, 100 Olympic Blvd, Los Angeles, CA 90015.

B. **39 C.F.R. Section 268.2 © Consequences of Non-Compliance:**

In addition to the criminal sanctions, any employee violating any provisions of these rules of conduct is subject to disciplinary action which may result in dismissal from the Postal Service.

Due to the willful violations by Irene Cervantes and Diane Holmes, as evidenced by facts and citations mentioned above, plus their violations of the provisions of the rules of conduct, it is requested that they be subjected to disciplinary action resulting in

dismissal from the Postal Service, in addition to the criminal sanctions that shall be imposed upon them.

**C. AWARD OF DAMAGES:**

On the basis of the facts aforementioned, as well as the laws violated by Irene Cervantes and Diane Holmes that resulted in deprivation of the rights of the complainant from receiving the valuable mails and communications, more especially the refund check that has long been awaited for, damages that triggered irreparable economic and financial losses, aggravated stress and prejudice, extreme and undue financial hardship, it is most respectfully prayed that if the refund check will not be retrieved, recovered or delivered, the actual damages equivalent to the value of the check be remunerated and awarded, plus other reliefs and remedies equitable under the premises.

VI.

**CERTIFICATION**

ARMANDO MIRARCHI PONS, the undersigned complainant, hereby certifies that prior to the filing of this complaint, attempts were made to meet or confer with the Postal Service's General Counsel, thru channel, but such attempts to resolve the matter proved to be futile and in vain. As phone calls, follow-ups and communications about the matter were ignored, the herein complainant is optimistic and believes that the filing of this case before the Postal Regulatory Commission will bear favorable, just and equitable results.

VII.

**CERTIFICATE OF SERVICE**

IT IS FURTHER CERTIFIED by the undersigned complainant that this complaint has been served on the United States Postal Service by e-mailing it to PRCCOMPLAINTS@usps.gov.

RESPECTFULLY SUBMITTED BY:

ARMANDO MIRARCHI PONS  
Complainant