

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF RAMON LOPEZ

Docket No. C2011-5

**MOTION OF THE UNITED STATES POSTAL SERVICE
TO DISMISS COMPLAINT OF RAMON LOPEZ WITH PREJUDICE**
(April 13, 2012)

On February 21, 2012, the Postal Regulatory Commission issued Order No. 1242, which provided the Postal Service the opportunity to consider and respond to a letter, dated September 1, 2011, from Mr. Ramon Lopez (“Mr. Lopez”) to the Postal Service regarding his underlying Complaint, as well as to any additional comments filed by Mr. Lopez by March 27, 2012. The Postal Service’s response was due on April 13, 2012. Mr. Lopez filed supplemental comments on March 30, and April 4, 2012. The Postal Service hereby replies and submits its motion to dismiss the Complaint with prejudice.

On July 12, 2011, Mr. Lopez filed his Complaint, pursuant to 39 U.S.C. § 3662. The Complaint alleged that the Postal Service refused to deliver mail to Mr. Lopez’s residence and sought declaratory, injunctive, and compensatory relief. The Complaint and Mr. Lopez’s supplemental comments, however, failed to allege specific violations of provisions of title 39 listed in section 3662 that give rise to jurisdiction under section 3662 (39 U.S.C. §§ 101(d), 401(2), 403(c), 404a, 601, or Chapter 36), and under the Commission’s Complaint procedures (39 C.F.R. §§ 3030.10, et seq.). The Complaint

also failed to allege specific violations of Postal Service regulations, as required by Commission rules (39 C.F.R. § 3030.10(a)(2)).

After initially dismissing the Complaint, as a result of subsequent consideration by the Postal Service, the Commission, in effect, reinstated the Complaint in Order No. 1242. However, the Commission initially determined that the Complaint should be treated as a service inquiry, since it alleges an isolated incident affecting Mr. Lopez only.¹ As such, the service inquiry procedures set forth in 39 CFR 3031.11 should apply and the Complaint should be dismissed, since it fails to raise material issues of fact and law, and specific statutory and regulatory violations, over which the Commission has jurisdiction, pursuant to section 3662.

Alternatively, recent developments have rendered the Complaint moot. Upon consideration of Mr. Lopez's supplemental comments, the Postal Service has resumed delivery of Mr. Lopez's mail to the residence at 29800 SW 183 Ct, Homestead, Florida 33030. This decision was made in light of information contained in affidavits that Mr. Lopez submitted stating he has retained Tomas Cabellero to retrieve his mail on a regular basis, and that the property is no longer vacant.²

Regarding the Complaint's request for compensatory relief, the Postal Service submits that Mr. Lopez is not entitled to damages for his alleged harm. Section 2680(b) of title 28, United States Code, exempts the Postal Service from paying damages for claims arising out of failure to deliver mail. Nor has the Complaint alleged specific violations of Postal Service regulations that might, arguably, give rise to a basis for any relief, as required under section 3662 and the Commission's rules.

¹ See 39 CFR 3030.13(b).

² See Attachment to Motion.

Accordingly, Mr. Lopez's Complaint should be dismissed with prejudice for failing to meet the statutory requirements of a complaint raised under 39 U.S.C §3662, or, alternatively, for mootness.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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April 13, 2012

Homestead, FL Post Office



April 12, 2012

Ramon Lopez
FCC – USP 1
P.O. Box 1033-42004004
Coleman, FL 33521-1033

Dear Mr. Lopez,

This concerns Postal Regulatory Commission Order No. 1242 in Docket No. C2011-5, which gave the Postal Service the opportunity to consider and respond to your September 1, 2011, letter to the Postal Service, as well as any supplemental comments you might file. On March 30, and April 4, 2012, you submitted supplemental comments.

Your original complaint, filed on July 12, 2011, concerned cessation of mail delivery to the address 29800 SW 183 Ct, Homestead, Florida 33030. It was forwarded to the Consumer Affairs Office at Postal Service Headquarters, which concluded, on July 25, 2011, that the residence at that address was vacant, and that the letter carrier on that route took the appropriate action by holding your mail and submitting the (3575-Z) indicating your mail was not claimed.

In light of the supplemental comments you filed with the Postal Regulatory Commission on April 9, 2012, which state that Tomas Caballero is the caretaker of the property and will be responsible for picking up the mail on a regular basis, the Postal Service will resume delivery to 29800 SW 183 Ct, Homestead, Florida 33030, effective immediately.

The Postal Service will continue to deliver mail to that address indefinitely. If mail begins to accumulate, as a result of the property becoming vacant, the carrier will hold the mail for up to 10 days, pending receipt of a change of address order, pursuant to Regulation Handbook, M-41, City Delivery Carriers Duties and Responsibilities, section 241.15. If a change of address is not received after 10 days, the carrier will complete a Form 3575-Z to indicate that you have moved and left no forwarding address. The held mail will be bundled with the Form 3575-Z and placed in the Change of Address mail entry slot.

Should you encounter any future Postal Service issues, please feel free to contact the Office of Consumer & Industry Contact at 2200 NW 72 Ave #225, Miami FL 33152. The phone number for that office is (954) 436-4405.

Sincerely,

A handwritten signature in cursive script that reads "Violetta Carroll".

Violetta Carroll
Postmaster