

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Tony L. Hammond, Vice Chairman;
Mark Acton;
Dan G. Blair; and
Nanci E. Langley

Complaint of Lance P. McDermott

Docket No. C2010-2

ORDER GRANTING MOTION TO DISMISS

(Issued June 11, 2010)

Lance P. McDermott (McDermott) filed a complaint under 39 U.S.C. § 3662 concerning the consolidation, sale, and disposal of the Queen Anne Station post office in Seattle, Washington (Queen Anne Station).¹ The Postal Service filed a motion to dismiss,² and McDermott filed a response.³ For the reasons explained below, the Commission concludes that the Complaint should be dismissed for lack of jurisdiction. The Commission grants the Motion to Dismiss and dismisses the Complaint.

¹ Complaint of the Determination to Sell, Consolidate, and Dispose of the Facilities Located in Washington State, May 3, 2010 (Complaint).

² Motion of the United States Postal Service to Dismiss Complaint, May 20, 2010 (Motion to Dismiss).

³ Response to the Agency Motion to Dismiss, May 27, 2010 (Response).

Background. On March 5, 2010, McDermott appealed to the Commission the Postal Service's decision to sell the Queen Anne Station.⁴ The Commission responded that an appeal was premature because the Queen Anne Station was not closed. Complaint at Exhibit 11. The Commission referred McDermott's concerns to the Postal Service, who concurred with the Commission's response. *Id.* at Exhibit 12. On May 3, 2010, McDermott filed a formal complaint against the Postal Service under 39 U.S.C. § 3662. The Complaint alleges that sale of the Queen Anne Station does not comply with title 39 and various rules and regulations. *Id.* at 1-3, 12.

Related filings. On May 20, 2010, the Postal Service filed a motion to dismiss the Complaint on grounds that McDermott did not state a claim under 39 U.S.C. § 3662 and its implementing regulations under 39 CFR part 3030. Motion to Dismiss at 1. It also asserts that the Complaint is procedurally defective and premature as an appeal of a final determination to close or consolidate a post office. *Id.* at 1-2. On May 27, 2010, McDermott filed a response to the Motion to Dismiss. He contends that he did state several claims under 39 U.S.C. § 3662; he is not premature; and he followed proper procedures implemented by the Commission to file a complaint.⁵ Response at 1.

Disposition. The Complaint is dismissed for lack of jurisdiction. The Commission has jurisdiction over complaints that meet the statutory requirements of 39 U.S.C. § 3662(a). Section 3662(a) permits interested persons to file complaints if they believe "the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter [36] (or regulations promulgated under any of those provisions)...."⁶ McDermott asserts his right to file the Complaint under 39 U.S.C. § 404a and 39 CFR §§ 241.3 and 3031.10. Complaint at 12. He indirectly alleges 39 U.S.C. § 401(2) as a basis for jurisdiction, and

⁴ Appeal of Final Determination to Sell the Seattle Queen Anne Post Office Located in Washington State, March 5, 2010.

⁵ The procedural arguments are not addressed in this order because the Complaint is dismissed on substantive grounds.

⁶ 39 U.S.C. § 3662(a); see 39 CFR § 3030.2.

he also claims that the Postal Service did not comply with 39 CFR § 222.3. *Id.* at 3, 12; Response at 1. The Complaint does not lie within the Commission's jurisdiction under any of these provisions.

Without elaboration, McDermott references 39 CFR § 3031.10, which concerns rate or service inquiries, matters which generally do not require the more formalized procedures applicable to complaints. The issues raised in the Complaint should be addressed as a post office closing appeal rather than a service issue. As discussed below, an appeal does not lie within the Commission's jurisdiction because it is premature. Thus, there is no basis to consider the Complaint even if characterized as an appeal.

McDermott asserts his right to file the Complaint under 39 U.S.C. § 404a, which falls within the scope of the Commission's jurisdiction under 39 U.S.C. § 3662(a). Complaint at 12. However, 39 U.S.C. § 404a does not confer on the Commission jurisdiction over the instant Complaint. Section 404a limits the scope of complaints to those involving Postal Service rules or regulations creating unfair competition, certain actions concerning intellectual property, or the use of certain information to offer postal services. 39 U.S.C. § 404a(a). The Complaint does not address any of these matters, and thus section 404a is not a basis for jurisdiction.

McDermott indirectly alleges 39 U.S.C. § 401(2) as a basis for jurisdiction. He argues that the Postal Service did not follow its own regulations, including 39 CFR § 241.3, when deciding to sell the Queen Anne Station. Complaint at 12; Response at 1. However, 39 U.S.C. § 401(2) would apply only if the Postal Service adopted, amended, or repealed rules or regulations inconsistent with title 39. Here, McDermott objects to the Postal Service's alleged noncompliance with its own regulations, not to the regulations themselves. Thus, the Complaint does not lie within the Commission's jurisdiction under 39 U.S.C. § 401(2).

McDermott also claims that the Postal Service did not comply with 39 CFR § 222.3, a regulation promulgated under 39 U.S.C. § 401(2) that governs delegations of authority. Complaint at 3. McDermott refers to a letter from the Seattle District

Manager to the Queen Anne Station Installation Head regarding the sale of the post office, which he contends is a “USPS Final Agency Decision” to consolidate, sell, and dispose of the Queen Anne Station. *Id.* at 1–3, Exhibit 1. In general, the Postal Service Vice President, Delivery and Retail, or its designee makes final determinations to close or consolidate post offices.⁷ McDermott argues that the Vice President improperly delegated its authority under 39 CFR § 222.3 because neither the Vice President nor its designee signed the letter. *Id.* at 3. However, the letter is not a Postal Service final decision or determination to close or consolidate the Queen Anne Station.⁸ Neither the Vice President nor its designee was required to sign it. Because the Complaint does not raise any issues about improper delegation of authority, the Complaint does not lie within the Commission’s jurisdiction under 39 CFR § 222.3.

The Complaint raises other issues that may fall within the Commission’s jurisdiction over appeals of post office closings under 39 U.S.C. § 404(d), including issues relating to whether the Postal Service has complied with 39 CFR § 241.3, the regulation establishing procedures for discontinuance of post offices. However, as McDermott was informed previously, an appeal does not lie within the Commission’s jurisdiction because it is premature.

⁷ See 39 CFR § 241.3(f); Postal Operations Manual § 123.66 (Dec. 18, 2008).

⁸ See 39 U.S.C. §§ 404(d)(2) and (3) (requiring determinations to close or consolidate a post office to include findings addressing certain considerations).

It is ordered:

1. The Motion of the United States Postal Service to Dismiss Complaint, filed May 20, 2010, is granted.
2. The Complaint of Lance P. McDermott is dismissed.

By the Commission.

Shoshana M. Grove
Secretary