

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

COMPLAINT OF THE CENTER FOR ART AND
MINDFULNESS, INC. AND NORTON HAZEL

Docket No. C2015-1

UNITED STATES POSTAL SERVICE MOTION TO DISMISS
THE COMPLAINT OF THE CENTER FOR ART AND MINDFULNESS, INC.
AND NORTON HAZEL

(January 20, 2015)

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INTRODUCTION

On December 29, 2014, the Center for Art and Mindfulness, Inc. (CAM) and Norton Hazel (collectively “Complainants”) filed a five count complaint with the Postal Regulatory Commission (Commission),¹ alleging various statutory, regulatory, and common law violations. Four of the five counts relate to the sale of real property located at 421 Atlantic Street, more commonly known as the Atlantic Street Station, from the United States Postal Service (Postal Service) to Louis R. Cappelli Family Limited Partnership III (Cappelli). First, Complainants allege that the Postal Service unduly or unreasonably discriminated against CAM, in violation of 39 U.S.C. § 403(c), when it signed and executed a purchase and sale agreement with Cappelli for a lower purchase price and under different terms than offered by CAM. Second, Complainants allege that David Rouse, a Postal Service Real Estate Specialist who worked on the sale of real property located at 421 Atlantic Street, failed to disclose a material conflict of interest in violation of federal ethics rules and that this failure voided the sale to Cappelli. Third, Complainants allege that the Postal Service breached its earlier purchase and sale agreement with CAM when it signed and executed a purchase and sale agreement with Cappelli for the same property. Fourth, Complainants allege that the Postal Service violated its own real estate rules when it signed a purchase and sale agreement to sell the real property to Cappelli at a lower price than offered by CAM. Finally, Complainants allege that the current emergency suspension of retail operations at the Atlantic Street Station amounts to a de facto discontinuance in violation of 39 U.S.C. § 404(d).

¹ Complaint of Center for Art and Mindfulness, Inc. and Norton Hazel, Docket No. C2015-1, (Dec. 29, 2014) (Complaint).

Pursuant to 39 C.F.R. § 3030.12(b),² the Postal Service hereby moves to dismiss the Complaint with prejudice. As described in detail below, multiple grounds for dismissal exist, including lack of subject-matter jurisdiction, failure to state a claim upon which relief may be granted, claim and issue preclusion, mootness, and failure to comply with procedural, regulatory requirements. Accordingly, the Postal Service respectfully requests that the Commission dismiss this Complaint.

FACTUAL BACKGROUND

Sale of 421 Atlantic Street, Stamford, Connecticut

In 2012, the Postal Service retained Cushman & Wakefield (C&W), as broker, to market and sell the real property located at 421 Atlantic Street.³ C&W solicited bids from February 2, 2012, to March 16, 2012.⁴ Five offers for the property were submitted and C&W recommended that three offers, including bids from CAM and Cappelli, receive further consideration.⁵ On May 15, 2012, C&W sent identical cover letters and information packages to CAM, Cappelli, and the third bidder. These packages informed the three bidders that their offers were being considered for further evaluation and invited them to submit second-round bids by May 31, 2012.⁶ CAM's \$5.5 million bid in the second round was the highest offer, and in early June 2012, CAM and the Postal Service entered into negotiations for the sale of 421 Atlantic Street.⁷

² Pursuant to this rule, the Postal Service's Answer is deferred. If the Commission denies the Postal Service's motion or postpones disposition, the Postal Service's answer is due within 10 days of the Commission's action.

³ *National Post Office Collaborate (NPOC) v. Donahoe*, No. 3:13-cv-1406, 2013 WL 5818889, at *3 (D. Conn. Oct. 28, 2013).

⁴ *Id.*

⁵ *Id.* At the time, CAM was known as Lower Fairfield Art Center.

⁶ *Id.* See also, Affidavit of James Fagan at ¶ 8, *NPOC v. Donahoe*, 2014 WL 668691 (D. Conn.) (No. 3:13-cv-1406) (Fagan Aff.).

⁷ *Id.*

On June 22, 2012, the Postal Service submitted a letter to Debra Sherwood, Executive Director of CAM, and Drew Backstrand, Secretary of CAM, setting forth the agreed terms of sale.⁸ A month later, on July 27, 2012, CAM submitted to the Postal Service a signed Purchase and Sale Agreement (July 2012 PSA), a lease agreement so that the Postal Service could continue to occupy the Atlantic Street Station, and an escrow agreement. Four days after submitting the July 2012 PSA, CAM sought to amend its terms to permit more time to raise development money and to reduce the purchase price.⁹ On August 2, 2012, CAM submitted a third offer, in which it greatly reduced the purchase price.¹⁰

Due to the significant adjustments requested by CAM and doubts whether CAM possessed the financial means to complete the transaction, the Postal Service and C&W considered whether to commence negotiations with the next highest bidder, Cappelli.¹¹ In hopes of concluding the sale quickly, and as the result of pressure from a third-party landlord for a potential alternate quarter location, the Postal Service decided to resume negotiations because CAM was fully engaged in the process.¹² On September 4, 2012, CAM submitted a second Purchase and Sale Agreement (September 2012 PSA) in which CAM reduced its offer price to \$5 million. As part of the September 2012 PSA, the Postal Service required and CAM agreed to make a

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Fagan Aff. at ¶ 17.

¹² *Id.* at ¶ 18. At this time, the Postal Service was negotiating with a third-party landlord for potential alternate quarters within the Stamford community to which it could relocate retail operations from the Atlantic Street Station. This lease negotiation was contingent on having a fully executed and fulfilled purchase and sale agreement for the disposal of 421 Atlantic Street. Furthermore, the costs of the buildout for the potential alternate quarters and associated relocation costs would exceed \$1 million, and the deposit from the sale of the property would be required to fund the cost of relocating retail operations. Fagan Aff. at ¶¶ 18 and 19.

deposit of \$500,000 with the submission of the offer.¹³ CAM, however, did not make the required deposit.¹⁴ Rather, on September 13, 2012, CAM informed C&W that it needed until noon on September 18, 2012, to submit the deposit (two weeks after the CAM signed the September 2012 PSA and when the deposit was due).¹⁵ By noon on September 18, 2012, CAM again failed to furnish the required deposit.¹⁶ In fact, CAM never made any payment to C&W or to the Postal Service.

After CAM's repeated failure to submit the required deposit, the Postal Service and C&W no longer deemed CAM as a viable purchasing entity and entered into negotiations with the second highest bidder, Cappelli.¹⁷ On December 21, 2012, Cappelli submitted a signed Purchase and Sale Agreement (Cappelli PSA) for the Atlantic Street Station, in which the parties agreed to a purchase price of \$4.3 million, and submitted the \$100,000 deposit, as specified in the Cappelli PSA.¹⁸ The Postal Service accepted the lower \$100,000 deposit based on Cappelli's stronger financial condition, Cappelli's greater ability to close the transaction, and the elimination of pressure from the third-party landlord to complete the relocation of the Atlantic Street Station. The Postal Service accepted the Cappelli PSA and deposit on December 27, 2012.¹⁹

The Postal Service and Cappelli planned to close the sale in September 2013. As September 2013 drew closer, and despite its efforts, the Postal Service, having lost

¹³ *NPOC v. Donahoe*, 2013 WL 5818889, at *3; Complaint at ¶ 14.

¹⁴ *Id.*

¹⁵ *Id.* at *3 and *4.

¹⁶ *Id.* at *4. CAM itself acknowledged its understanding that the Postal Service would need to enter "negotiations with another party" after CAM failed to submit the required deposit. Fagan Aff. ¶ 23.

¹⁷ *Id.* See Fagan Aff. ¶ 30.

¹⁸ *NPOC v. Donahoe*, 2013 WL 5818889, at *4

¹⁹ *Id.*

the potential alternate quarters location it had in September 2013, had yet to secure suitable alternate quarters in downtown Stamford. To provide uninterrupted retail service to its customers, the Postal Service negotiated a 30 month lease agreement with Cappelli for the Atlantic Street Station so that the Postal Service could continue retail operations after the sale.²⁰

Emergency Suspension of Retail Operations at the Atlantic Street Station

On September 4, 2013, the Postal Service conducted a safety inspection of the Atlantic Street Station. The inspection revealed many potential risks to the safety and health of the employees such as peeling lead paint, plaster falling off the wall, and no running water. After the safety inspection, District officials coordinated to reassign employees and suspend operations on an emergency basis effective September 20, 2013. On September 18, 2013, the Postal Service distributed a letter to Post Office Box customers of the Atlantic Street Station informing them of the facility's impending emergency suspension. Also on September 18, 2013, a notice was posted at the Atlantic Street Station advising Post Office Box customers that they may retrieve their mail at the West Avenue Station, located approximately 1.3 miles away. On October 11, 2013, the Postal Service reposted the emergency suspension notice to clarify that the Atlantic Street Station was suspended due to employee and customer safety concerns.²¹

Before the emergency suspension, the Atlantic Street Station provided service to 634 Post Office Box customers. At present, retail operations remain suspended at the

²⁰ United States Postal Service Answer in Opposition to Petitioner's Application for Suspension and Motion to Dismiss Proceedings, Docket No. A2014-1, at 3 (Oct. 28, 2013) (A2014-1 MTD)

²¹ A2014-1 MTD, Exhibit 1, October 18, 2013 Customer Suspension Letter;²¹ see also A2014-1 MTD, Exhibit 2, September 25, 2013 Suspension Notice.

Atlantic Street Station and Post Office Box service continues to be available at the West Avenue Station. All Post Office Boxes have been transferred from the Atlantic Street Station to the West Avenue Station, allowing customers to retain their existing Post Office Box number and address. Both Post Office Box customers and those with delivery service that had originated from the Atlantic Street Station retain the use of “Stamford, CT 06901” as their last line of their addresses. Retail services also are available to customers at the West Avenue Station; the Camp Avenue Post Office, approximately 3.7 miles away; the Bulls Head Station, approximately 2.0 miles away; or the Glenbrook Station, approximately 1.9 miles away. In addition to these four Postal Service-operated retail facilities, customers have access to six additional Postal Service-operated retail facilities and thirty-eight alternate access locations within a five mile radius of the Atlantic Street Station.²²

When emergency suspension of retail operations became necessary, the Postal Service quickly instituted means whereby customers retain regular and effective access to delivery and retail services, with disruption minimized to the extent possible. The Postal Service continues to follow procedures specified in Handbook PO-101, section 61.²³

National Post Office Collaborate v. Donahoe

On September 25, 2013, before the Postal Service and Cappelli could close on the sale of 421 Atlantic Street, CAM, the National Post Office Collaborate, and Mr. Kaysay Abrha (Plaintiffs) filed a Complaint and Motion for Temporary Restraining Order and Preliminary Injunction in the District Court for the District of Connecticut, seeking to

²²A2014-1 MTD, Exhibit 3, printout from www.usps.com.

²³A2014-1 MTD, Exhibit 4.

prevent the Postal Service from selling the Atlantic Street Station.²⁴ Plaintiffs argued that the sale of the building to Cappelli violated sections of the National Environmental Protection Act (NEPA), the National Historic Preservation Act (NHPA), the public trust doctrine, and section 403 of title 39. On September 26, 2013, the District Court granted Plaintiffs' motion for temporary restraining order on the grounds that Counts One (NEPA) and Two (NHPA) raised colorable federal question claims, and ordered Plaintiffs to post \$4.5 million security bond.²⁵ Plaintiffs were required to post the \$4.5 million security bond by October 3, 2013. On October 2, 2013, Plaintiffs informed the District Court that they were unable to secure the necessary funds to post the bond, and on October 3, 2013, the temporary restraining order expired by its own terms.²⁶

On September 25, 2013, Plaintiffs also filed a notice of *lis pendens* against 421 Atlantic Street.²⁷ A notice of *lis pendens* serves to warn all persons that the instant property is the "subject matter of litigation and that any interests acquired during the pendency of the suit are subject to its outcome."²⁸ Pursuant to Connecticut General Statutes § 52-325, in any action in a court of Connecticut or in a court of the United States, a plaintiff or his attorney may file a notice of *lis pendens* with the town clerk's office.²⁹

²⁴ Complaint for Declaratory and Injunctive Relief, *NPOC v. Donahoe*, 2014 WL 6686691 (D. Conn.) (No. 3:13-cv-1406).

²⁵ *NPOC v. Donahoe*, No. 3:13-cv-1406 (D. Conn. Sept. 26, 2013) (order granting Plaintiffs' applications temporary restraining order) at 4.

²⁶ *NPOC v. Donahoe*, No. 3:13-cv-1406, 2013 WL 5818889 at *6 (D. Conn. Oct. 28, 2013).

²⁷ Plaintiffs' Notice of *Lis Pendens*, *NPOC v. Donahoe*, (D. Conn. 2013) (No. 3:13-cv-1406).

²⁸ Black's Law Dictionary 942 (7th ed. 1999).

²⁹ Connecticut General Statutes § 52-325(a).

On September 27, 2013, the Postal Service requested the District Court to discharge the notice of *lis pendens*.³⁰ The sole claim which could arguably implicate the real property interests in 421 Atlantic Street was Count Four, the alleged discrimination in violation of 39 U.S.C. § 403(c). The Postal Service argued, and the District Court agreed, that Congress did not intend to create a private right of action for service complaints pursuant to section 3662 before federal district courts, thus the District Court lacked jurisdiction over the alleged section 403(c) violation.³¹

Because Plaintiffs did not assert any other basis for the District Court to rescind the sale, on October 28, 2013, the District Court ordered Plaintiff to discharge the notice of *lis pendens*.³² Also, on October 28, 2013, the District Court concluded that the Plaintiffs would likely succeed in its claim that the Postal Service was not in compliance with its NEPA obligations and granted Plaintiffs' motion for preliminary injunction to enjoin the Postal Service from selling or otherwise disposing its real property located at 421 Atlantic Street.³³

On November 21, 2013, the Plaintiffs filed a Second Amended Complaint in which they asserted four causes of action.³⁴ First, Plaintiffs alleged that the Postal Service failed to conduct an Environmental Assessment or to prepare an Environmental Impact Statement as required by NEPA. Second, the Postal Service failed to consider the effects of the sale of the Atlantic Street Station on the historic building in violation of NHPA. Third, under the public trust doctrine, the Postal Service should not be allowed

³⁰ Defendants' Application for Discharge of Notice of *Lis Pendens*, *NPOC v. Donahoe*, 2013 WL 5818901 (D. Conn. 2013) (No. 3:13-cv-1406).

³¹ *NPOC v. Donahoe*, No. 3:13-cv-1406, 2013 WL 5818901, at *3 (D. Conn. Oct. 28, 2013).

³² *Id.* at *4.

³³ *NPOC v. Donahoe*, No. 3:13-cv-1406, 2013 WL 5818889, at *15 (D. Conn. Oct. 28, 2013).

³⁴ Plaintiffs' Second Amended Complaint for Injunctive Relief, *NPOC v. Donahoe*, 2014 WL 6686691 (D. Conn. 2014) (No. 3:13-cv-1406).

to transfer or alienate 421 Atlantic Street without preserving and protecting the public's interest in it. Last, they alleged that the Postal Service violated the prohibition in 39 U.S.C. § 403(c) against undue or unreasonable discrimination in the provision of services or establishment of rates or mail classifications when it agreed to sell 421 Atlantic Street to Cappelli. With respect to the Count Four, Plaintiffs stated that, on November 13, 2013, they filed a complaint before the Commission. By letter dated November 22, 2013, the Commission declined to docket the complaint for procedural defects. The Commission stated that they failed to certify that they conferred with the Postal Service General Counsel before filing the complaint and failed to certify that the complaint had been served on the Postal Service.³⁵

On December 3, 2013, the Postal Service moved to dismiss Counts Three and Four of Plaintiffs' Second Amended Complaint. Specifically, regarding Count Four, the Postal Service argued that the claim suffered from three fatal flaws.³⁶ First, the District Court lacked jurisdiction over alleged violations of section 403(c). Second, Plaintiffs lacked a private right of action to allege violations of section 403(c) before the District Court. Third, even if the District Court had subject matter jurisdiction to consider violations of section 403(c), that section does not encompass the sale of real property.

On April 22 and April 28, 2014, National Post Office Collaborate and CAM, separately moved to amend the Second Amended Complaint. CAM sought to amend the complaint to reflect an additional cause of action which alleged that when the Postal

³⁵ Plaintiff CAM's Opposition to Defendants' Motion to Dismiss Counts Three and Four in Plaintiffs' Second Amended Complaint, at 14, *NPOC v. Donahoe*, 2014 WL 4544094 (D. Conn. 2014) (No. 3:13-cv-1406).

³⁶ Defendants' Memorandum in Support of Motion to Dismiss Counts Three and Four in Plaintiffs' Second Amended Complaint, at 7-16, *NPOC v. Donahoe*, 2014 WL 4544094 (D. Conn. 2014) (No. 3:13-cv-1406).

Service signed and executed the Cappelli PSA, the Postal Service breached its September 2012 PSA with CAM.³⁷

On June 2, 2014, Plaintiffs moved for summary judgment on Counts One and Two of the Second Amended Complaint. On July 9, 2014, the Postal Service opposed Plaintiffs' motion for summary judgment and crossed moved for summary judgment on Counts One and Two.

On September 12, 2014, the District Court granted the Postal Service's motion to dismiss Counts Three and Four and denied Plaintiffs' motions to amend the Second Amended Complaint. When dismissing Count Four, the District Court again noted that the court does not have subject matter jurisdiction to consider allegations of section 403(c) violations.³⁸ Furthermore, the District Court concluded that even if it did have subject matter jurisdiction to consider allegations of section 403(c), that section did not encompass the sale of real property as the sale of real property is not a service provided by the Postal Service.³⁹ In denying CAM's motion to amend the Second Complaint to include a breach of contract claim, the District Court concluded that CAM provided no justification for its delay in seeking to amend the complaint.⁴⁰ Because the District Court just dismissed Counts Three and Four and motions and cross-motions for summary judgment for Counts One and Two were pending, allowing another amendment to the complaint would require additional discovery and rounds of dispositive briefing that would necessarily result from the new complaint would have

³⁷ Plaintiff CAM's Memorandum of Law in Support of Its Motion for Leave to File an Amended Complaint, *NPOC v. Donahoe*, 2014 WL 4544094 (D. Conn. 2014) (No. 3:13-cv-1406). See CAM's proposed Fourth Amended Complaint For Injunctive Relief, *NPOC v. Donahoe*, 2014 WL 4544094 (D. Conn. 2014) (No. 3:13-cv-1406).

³⁸ *NPOC v. Donahoe*, No. 3:13-cv-1406, 2014 WL 4544094, at *4 (D. Conn. Sept. 12, 2014).

³⁹ *Id.*

⁴⁰ *Id.* at *6.

been unfair and unreasonable.⁴¹ Moreover, the District Court concluded CAM's proposed amendments would be futile because even if the September 2012 PSA was enforceable, the relief requested was not available to CAM as the sale agreement stated that it would not be entitled to specific performance and CAM failed to cite any authority that the District Court had to rescind the Cappelli PSA.⁴²

On November 26, 2014, the District Court granted the Postal Service's cross-motion for summary judgment on Counts One and Two.⁴³ In granting the Postal Service's cross-motion, the District Court also lifted the preliminary injunction which prevented the Postal Service from selling or conveying real property located at 421 Atlantic Street, Stamford, Connecticut.⁴⁴ On December 4, 2014, the Postal Service and Cappelli finalized the sale of 421 Atlantic Street.

Docket No. A2014-1, Atlantic Street Station, Stamford, Connecticut

On October 17, 2013, the Commission docketed correspondence from Drew Backstrand on behalf of Kaysay Abrha (Petitioner), a postal customer.⁴⁵ Petitioner argued that the Postal Service actions affecting the Atlantic Street Station amounted to a discontinuance in violation of 39 U.S.C. § 404(d). Specifically, Petitioner alleged the "action is a closure because there is no replacement post office in the downtown area."⁴⁶ Petitioner argued that the Postal Service failed to comply with discontinuance procedures required by section 404(d). The Petition for Review included an Application

⁴¹ *Id.*

⁴² *Id.*

⁴³ *NPOC v. Donahoe*, No. 3:13-cv-1406, 2014 WL 46686691, at *4 (D. Conn. Sept. 12, 2014).

⁴⁴ *Id.* at *14.

⁴⁵ Petition for Review Received from Kaysay Abrha Regarding Downtown Stamford, CT Post Office 06901, and Application for Suspension of Determination, Docket No. A2014-1, (Oct. 17, 2013) (A2014-1 Petition for Review).

⁴⁶ A2014-1 Petition for Review, at 3.

for Suspension, in which Petitioner requested the Commission order the Postal Service to “reopen” the Atlantic Street Station.

By means of Order No. 1855, the Commission instituted a proceeding under 39 U.S.C. § 404(d)(5) and established Docket No. A2014-1 in order to consider Petitioner’s appeal.⁴⁷ On October 28, 2013, the Postal Service moved to dismiss the appeal as premature.⁴⁸ The Postal Service argued that matter concerned the emergency suspension of retail operations at the Atlantic Street Station, and did not involve the discontinuance of a retail facility.⁴⁹ On November 8, 2013, the Public Representative filed a response in which she opposed the Postal Service’s Motion to Dismiss.⁵⁰ The Public Representative argued that the actions affecting the Atlantic Street Station amounted to a “*de facto* closing.”⁵¹ On November 15, the Commission posted a response from the Petitioner, in which he also opposed the Postal Service’s Motion to Dismiss.⁵²

On November 19, 2013, Petitioner filed his initial brief in support of his appeal.⁵³ In his initial brief, Petitioner argued that 39 U.S.C. § 404(d) applied to stations and branches, and, by incorporating arguments made in his Response to the Postal Service’s motion to dismiss, Petitioner argued that the actions affecting the Atlantic Street Station amounted to a *de facto* closing in violation of section 404(d) and other

⁴⁷ Order No. 1855, Notice and Order Accepting Appeal and Establishing Procedural Schedule, Docket No. A2014-1, (Oct. 23, 2013).

⁴⁸ United States Postal Service Answer in Opposition to Petitioner’s Application for Suspension and Motion to Dismiss Proceedings, Docket No. A2014-1, (Oct. 28, 2013) (A2014-1 MTD).

⁴⁹ A2014-1 MTD, at 5.

⁵⁰ Response of the Public Representative in Opposition to United States Postal Service Motion to Dismiss, Docket No. A2014-1, (Nov. 8, 2013) (A2014-1 PR Response).

⁵¹ A2014-1 PR Response at 3.

⁵² Response of Kaysay H. Abrha in Opposition to United States Postal Service Motion to Dismiss Proceedings, Docket No. A2014-1, (Nov. 15, 2013) (A2014-1 Petitioner MTD Response).

⁵³ Brief in Support of Petitioner’s Appeal, Docket No. A2014-1, (Nov. 19, 2013) (A2014-1 Petitioner Brief). The brief was dated November 18, 2013, but received by the Commission on November 19, 2013.

sections of title 39. On December 2, 2013, the Postal Service filed an Answering Brief in which it argued that that the Commission lacked subject matter jurisdiction over alleged violations of statutes other than section 404(d).⁵⁴ The Postal Service renewed its argument that the actions affecting the Atlantic Street Station amounted to an emergency suspension which is outside the Commission's section 404(d) appeal authority.⁵⁵ On December 17, 2013, Petitioner filed a Reply Brief in which he argued that the actions affecting the Atlantic Street Station do not fall within the definition of an "emergency suspension" and therefore, must be a Post Office closing in violation of section 404(d).⁵⁶

On January 28, 2014, the Commission issued Order No. 1980 in which the Commission concluded that the Postal Service had placed retail operations under an emergency suspension and, accordingly, dismissed the appeal without prejudice.⁵⁷ In Order No. 1980, the Commission required that by no later than February 14, 2014, the Postal Service file a status report which described all steps that it had taken since September 20, 2013 to discontinue the Atlantic Street Station, to resume operations at the Atlantic Street Station, or to secure suitable alternative quarters within the community.⁵⁸ On February 14, 2014, the Postal Service fulfilled this requirement and reported that Postal Service management determined to continue its efforts to find alternate quarters in downtown Stamford. In support of that goal, the Postal Service held frequent meetings discussing the search for alternate quarters and informed the

⁵⁴ Postal Service Answering Brief, Docket No. A2014-1, (Dec. 2, 2013) (A2014-1 USPS Answering Brief).

⁵⁵ *Id.* at 4-7.

⁵⁶ Reply Brief of the Petitioner, Docket No. A2014-1, (Dec. 17, 2013) (A2014-1 Petitioner Reply Brief).

⁵⁷ Order No. 1980, Order Dismissing Appeal Without Prejudice and Requiring Periodic Status Reports, Docket No. A2014-1, (Jan. 28, 2014), at 3.

⁵⁸ *Id.* at 9.

mayor and the community that the Postal Service was considering two potential locations.⁵⁹

Postal Service's Search for Alternate Quarters in Stamford, Connecticut

As stated in the Status Report, the Postal Service had selected two potential alternate quarters for further consideration.⁶⁰ Between late January 2014 and August 2014, the Postal Service conducted the necessary studies and analysis and negotiated a lease agreement for one of the two potential locations. On August 29, 2014, the Postal Service signed and executed a lease agreement for 550 Summer Street in downtown Stamford, which is located approximately one half mile from the Atlantic Street Station.⁶¹ Before retail operations may be relocated to 550 Summer Street, the landlord must complete required renovations and approve the Postal Service's "postalization" plans, and the Postal Service must complete the buildout as contained in these plans.

ARGUMENT

I. THE COMMISSION LACKS SUBJECT MATTER JURISDICTION OVER THE CLAIMS ALLEGED BY COMPLAINANTS

A. The Commission's Complaint Jurisdiction is Limited.

Congress has provided the Commission limited jurisdiction to entertain complaint cases against the Postal Service. Specifically, the Commission's authority to adjudicate complaints, which is set forth in 39 U.S.C. § 3662(a), allows an interested person to bring a complaint when "the Postal Service is not operating in conformance with the

⁵⁹ Status Report of the United States Postal Service in Response to Order No. 1980, Docket A2014-1, February 14, 2014 (A2014-1 USPS Status Report).

⁶⁰ *Id.*

⁶¹ Driving distance is approximately 1.5 miles.

requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, 601, or [chapter 36] (or regulations promulgated under any of those provisions).”

The Commission has repeatedly recognized these limitations in prior orders dismissing other parties’ complaints. For example, in Docket Nos. C2013-3 through C2013-9, the Commission dismissed claims advanced under section 302 of the Postal Accountability and Enhancement Act of 2006⁶² because that section was not one of the provisions enumerated in 39 U.S.C. § 3662.⁶³ Likewise, in Docket No. C2010-2, the complainant alleged that the sale of the Queen Anne Station did not comply with title 39 and various Postal Service rules and regulations.⁶⁴ There, the Commission dismissed the complaint on grounds that none of the allegations in the complaint implicated any of the enumerated provisions in 39 U.S.C. § 3662, thereby depriving the Commission of jurisdiction.⁶⁵

B. The Commission’s Complaint Jurisdiction Does Not Include Authority to Consider Claims Alleging Conflict Of Interest, Breach of Contract, or Violations of Real Estate Policies and Regulations.

There can be no doubt that Congress limited the Commission’s complaint jurisdiction to rate and service allegations regarding the Postal Service’s conformance with certain sections of title 39. Specifically, Congress intended to focus the Commission’s efforts on certain rate and service controversies and avoid exposing the Postal Service to challenges aimed at other internal aspects of Postal Service

⁶² Pub. L. No. 109-435, 120 Stat. 3198 (Dec. 20, 2006) (PAEA).

⁶³ Order No. 1762, Order Dismissing Complaints, Docket Nos. C2013-3 to C2013-9, (June 26, 2013), at 11.

⁶⁴ Complaint of Lance P. McDermott, Docket No. C2010-2 (May 3, 2010).

⁶⁵ Order No. 471, Order Granting Motion to Dismiss, Docket No. C2010-2 (June 11, 2010).

operations. Despite this limitation, Complainants present numerous claims without reference to any violation of a statute over which the Commission has jurisdiction.

Counts II, III, and IV allege Conflict of Interest, Breach of Contract, and Violations of the Postal Service's Real Estate Policies and Regulations respectively.⁶⁶ None of these counts, however, provide any basis for jurisdiction before the Commission.⁶⁷

The onus rests with Complainants to establish jurisdiction for each claim, which they have failed to do for Counts II, III, and IV. Counts II, III, and IV cite no statutory authority as a basis for the claim but instead rely purely on common law. Absent this necessary citation to the enumerated provisions of section 3662, the Commission should dismiss these counts.⁶⁸ Nevertheless, the Postal Service will briefly identify why none of the enumerated provisions provide a jurisdictional basis for these claims.

First, section 101(d) requires the Postal Service to establish rates that "apportion the costs of all postal operations to all users of the mail on a fair and equitable basis." The Complaint makes no allegations related to rates, thereby negating section 101(d) as a jurisdictional basis.

Second, section 401(2) requires the Postal Service "to adopt, amend, and repeal such rules and regulations, not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title." Counts II and III do

⁶⁶ Complainants identify the Conflict of Interest allegation as Claim Two instead of Count Two, but the Postal Service will refer to it as Count Two for consistency.

⁶⁷ Complainants make several references to sections in title 5 of the U.S. Code. As title 5 of the U.S. Code is not enumerated in 39 U.S.C. § 3662, none of these sections can be the basis for Commission jurisdiction.

⁶⁸ In 39 C.F.R. § 3030.10(a)(2), the Commission requires, that the complainants "includ[e] citations to the relied upon section or sections of title 39" for every claim. Failure to include this information should invalidate such claims.

not relate to any Postal Service rules or regulations. Count IV does relate to Postal Service rules and regulations and the alleged violation of those rules and regulations by the Postal Service. Nevertheless, such an allegation still does not provide jurisdiction before the Commission. To utilize section 401(2) as a basis for jurisdiction, a complainant must allege that the Postal Service *adopted, amended or repealed* a rules or regulation inconsistent with title 39. The mere failure of the Postal Service to follow its own rules and regulations is not a section 401(2) violation. This issue was specifically addressed by the Commission in Docket No. C2010-2. There, the complainant argued “that the Postal Service did not follow its own regulations, including 39 C.F.R. § 241.3, when deciding to sell the Queen Anne Station.”⁶⁹ In response, the Commission stated that “39 U.S.C. § 401(2) would apply only if the Postal Service adopted, amended, or repealed rules or regulations inconsistent with title 39.”⁷⁰ As the complainants only objected “to the Postal Service’s alleged noncompliance with its own regulations, [and] not to the regulations themselves,” the Commission held that the allegation did “not lie within the Commission’s jurisdiction under 39 U.S.C. § 401(2).”⁷¹ Likewise, Complainants here are merely alleging that the Postal Service violated certain provisions in its Handbook RE-1, U. S. Postal Service Facilities Guide to Real Estate Property Acquisition and Related Services.⁷² As this allegation does not relate to the adoption, amendment, or repeal of a rules or regulation, the Commission lacks jurisdiction over Count IV.

⁶⁹ Order No. 471, at 3.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Complaint at ¶¶ 36- 37.

Moreover, even if a violation of a regulation were cognizable under section 401(2), Complainants also would be required to show how the regulation and its potential violation are inconsistent with the other sections of title 39 enumerated in section 3662(a), which relate to rates and service complaints. Complainants, however, have made no logical argument that Handbook RE-1 violates any section of title 39. Nor have they even argued that the alleged Handbook RE-1 violations are contrary to any provisions in title 39, let alone those enumerated in section 3662(a). Instead, Complainants simply allege that potential violations of Handbook RE-1 should void the sale. Any such allegation is not a violation of any section of title 39.

Third, to the extent that Complainants are attempting to rely upon 39 U.S.C. § 403(c) as a basis for jurisdiction implicitly, including with respect to Counts II and III through the incorporation clauses of paragraphs 24 and 28 of the Complaint, Complainants have failed to establish any nexus between the allegations of the claim and section 403(c) sufficient to extend jurisdiction.⁷³ In Docket No. C2009-1, Order No. 235, the Commission identified that an incorporation clause could be used as a jurisdictional hook to a prior allegation, “unless the allegations otherwise fail to state a colorable claim.”⁷⁴ Here, Complainants have made no assertion or implication that the conflict or breach of contract claims rely upon section 403(c). As Section II explains, section 403(c) relates only to providing postal services or establishing classifications, rates, and fees. Moreover, section 403(c) only prevents “undue or unreasonable

⁷³ The Complaint included incorporation clauses in Counts II and III of the Complaint but did not do the same for Count IV. This failure prevents Complainants reliance upon section 403(c) as a jurisdictional basis.

⁷⁴ Order No. 235, Order Denying Motion of United States Postal Service for Partial Dismissal of Complaint and Notice of Formal Proceedings, Docket No. C2009-1 (July, 1, 2009), at 6.

discrimination among user of the mails.” The conflict of interest and breach of contract claims have no relation to the Postal Service providing service or establishing classifications, rates, and fees nor do those claims assert any type of discrimination, let alone undue or unreasonable discrimination. Thus, section 403(c) cannot serve as a basis for jurisdiction.

Fourth, section 404a relates to establishment of rules or regulations that create unfair competition, disclosure of intellectual property, and obtaining and using information from a third-party without consent. Here, Complainants have made no allegations related to the establishment of rules or regulations, disclosure of intellectual property, or obtaining and using information from a third-party without consent. Thus, Complainants cannot rely upon section 404a for jurisdiction.

Fifth, section 601 relates exclusively to carriage of letters outside the mail, *i.e.* the Private Express Statutes. As the Complaint does not relate to the movement of letters within or outside the mail, Complainants cannot use section 601 to establish jurisdiction before the Commission.

Finally, chapter 36 of title 39 specifically addresses postal rates, classes, and services. The Complaint does not relate to the provisions set forth in this chapter; in fact, the underlying controversy has nothing to do with rates or service. As such, Complainants cannot use chapter 36 of title 39 as a jurisdictional basis.⁷⁵

Based on the foregoing, the Commission should dismiss Counts II, III, and IV for lack of jurisdiction.

⁷⁵ The Postal Service will not attempt to explain why none of the individual sections in chapter 36 of title 39 provide a basis for jurisdiction, as this would require analysis of 26 separate sections. If Complainants assert, for the first time, in their response that one of these sections is the basis for jurisdiction, the Postal Service reserves the right to file a reply to that assertion.

C. The Commission's Complaint Jurisdiction Does Not Include Authority to Consider Claims Alleging De Facto Discontinuance in Violation of 39 U.S.C. § 404.

Complainants are improperly attempting to litigate an alleged discontinuance through the Commission process despite their previous appeal being dismissed as premature. Count V of the Complaint alleges that the Atlantic Street Station is functionally closed because the Postal Service has not yet resumed operations at 421 Atlantic Street nor attempted to transfer retail operations to an alternate quarters in the community. Even if these allegations were factually true, which they are not, the Commission's complaint process is not the proper procedure for challenging the Postal Service's actions. Section 404(a)(3), which is not one of the enumerated sections of 39 U.S.C. § 3662, provides the Postal Service the specific power to determine the need for Post Offices and provide such offices as needed. If the Postal Service determines that a discontinuance of a Post Office is appropriate, 39 U.S.C. § 404(d)(5) provides the exclusive means for challenge to such a determination.

Furthermore, the Commission's authority to hear alleged 39 U.S.C. § 404(d)(5) violations does not extend to instances where retail operations have been suspended and not discontinued, such as in this case. Even if the Commission had jurisdiction over emergency suspensions, the Postal Service is not in violation of its regulations. Postal Service regulations do not require that an emergency suspension be resolved within 90 days as alleged by Complainants. Rather, the Postal Service is required to have an action plan within 90 days.⁷⁶ The Postal Service has developed and is

⁷⁶ Handbook PO-101, Section 61.

implementing its action plan to provide for a Postal Service operated retail facility in downtown Stamford.

II. COMPLAINANTS' ALLEGATION OF DISCRIMINATION FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Complainants' assertion of discrimination related to the disposal of real property, contained in Count I, is not a violation of section 403(c). Based on the allegations in the Complaint, Complainants' section 403(c) claim is based on perceived differences between the terms of sale offered to CAM and those offered to Cappelli,⁷⁷ which is not the type of action prohibited in section 403(c).

Section 403(c) prohibits "undue or unreasonable discrimination among users of the mails" and the provision of "undue or unreasonable preferences" to other users. This, however, applies only to specified Postal Service activities – the provision of services, or establishment of classifications, rates, and fees.

In discussing Count Four of Plaintiffs' Second Amended Complaint, the District Court reasoned that Complainants' allegations of discrimination were not cognizable under section 403(c). The District Court determined that section 403(c) only applies to postal services and not facilities, buildings, or other functions necessary to provide services.⁷⁸ The District Court noted that based on the plain language of the statute, "any undue or unreasonable discrimination among users of the mails," must relate directly to the Postal Service's requirement to provide postal services.⁷⁹

As recognized by the District Court, Complainants have not alleged discrimination with respect to the provision of postal services or the establishment of

⁷⁷ Complaint at ¶¶ 2, 5, 14-16, and 19-22.

⁷⁸ *NPOC v. Donahoe*, No. 3:13-cv-1406, 2014 WL 4544094, at *5 (D. Conn. Sept. 12, 2014).

⁷⁹ *Id.*

classifications, rates, and fees under section 403(c).⁸⁰ After considering arguments from CAM and the Postal Service, the District Court concluded that section 403(c)'s prohibition on discrimination in "providing services and in establishing classifications, rates, and fees" does not apply to the disposal of real property by the Postal Service.⁸¹ The District Court reasoned that section 403(c) refers to the Postal Service's basic function and obligation to provide postal services and that the prohibition against discrimination is logically related to the Postal Service's mandate to provide prompt, reliable, and efficient services.⁸²

Furthermore, the court recognized that section 403(c) does not apply to non-postal service transactions of the Postal Service. The court rejected CAM's position that section 403(c) applies more broadly to include actions that are "service related." The District Court rejected CAM's position and stated that section 403(c) is predicated upon discrimination or preferences between "users of the mails."⁸³ Had Congress intended section 403(c) to relate to Postal Service activities with a more tangential relationship to the mails, Congress would have chosen a broader word, such as "persons." This point is further underscored by the immediate context of section 403(c): subsections (a) and (b) of that section pertain to postal services, i.e., the "transmit[ta]l of written and printed matter, parcels, and like materials," and "mail service." Similarly, other courts have recognized that "[u]sers of the mails" fall within the ambit of 39 U.S.C.

⁸⁰ *NPOC v. Donahoe*, No. 3:13-cv-1406, 2014 WL 4544094, at *4 and *5 (D. Conn. Sept. 12, 2014).

⁸¹ *Id.*, at *9.

⁸² *Id.*, at *9 and *10.

⁸³ *Id.*

§ 403(c) only when they allege discrimination related directly to postal services and to the establishment of classifications, rates, and fees.⁸⁴

Complainants' assertions here do not concern postal operations and do not allege discrimination against Complainants in their capacity as mail users. Similarly, Complainants' representations regarding the sale of property do not allege discrimination with respect to the Postal Service's provision of postal services or to the establishment of classifications, rates, and fees.⁸⁵ Although Complainants attempt to create some corollary relationship between the sale of property and the provision of postal services, any such nexus is well beyond the confines of section 403 (c). The sale of real property is a fundamental power of the Postal Service under 39 U.S.C. § 401(5), not a general duty under section 403. As such, Complainants' factual allegations cannot amount to a violation of section 403(c) and the Commission should dismiss Count I of the Complaint.

III. RES JUDICATA OPERATES TO PRECLUDE THE COMMISSION FROM CONSIDERING THE ALLEGATIONS PUT FORTH IN THE COMPLAINT

The dual doctrines of claim preclusion and issue preclusion, collectively known as "res judicata," serve to protect against "the expense and vexation attending multiple law suits, conserve judicial resources, and foste[r] reliance on judicial action by

⁸⁴ See *Currier v. Potter*, 379 F.3d 716 (9th Cir. 2004) (holding that individuals had standing because the allegations related to the service and delivery of mail); *UPS Worldwide Forwarding, Inc. v. United States Postal Serv.*, 66 F.3d 621 (3d Cir. 1995) (finding that plaintiff had standing because claim related to preferential rates to large capacity mailers).

⁸⁵ See 39 U.S.C. 102(5) (defining "postal service" as "the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto"; Order No. 154, Review of Nonpostal Services under the Postal Accountability and Enhancement Act, PRC Docket No. MC2008-1 (December 19, 2008) (recognizing that real estate sales activity is not a "service" subject to regulation).

minimizing the possibility of inconsistent decisions.”⁸⁶ Claim preclusion bars successive litigation of the very same claim, even if the issues were not raised in the earlier suit.⁸⁷ Issue preclusion bars successive litigation of an issue of fact or law actually litigated and resolved, even if the issue recurs in the context of a different claim.⁸⁸

As part of the District Court proceeding, in which CAM previously attempted to block the sale and invalidate the Postal Service’s decision to sell the building to Cappelli, and the prior Post Office closing appeal heard by the Commission, in which CAM represented the petitioner, Complainants had ample opportunity to argue these claims which the District Court or Commission ultimately rejected. Furthermore, Complainants had ample opportunity to raise claims contained in Count IV before the District Court and failed to do so. The Commission should not waste its administrative resources to hear arguments made and rejected during prior litigation. Thus, even if the Commission had subject matter jurisdiction to consider Complainants’ claims, res judicata operates to bar Complainants from raising Counts II, III, IV, and V, and the Commission should dismiss these counts with prejudice.

A. Complainants Raised Counts II and III Before the District Court and Should Be Precluded From Raising the Same Claims Before the Commission.

Res judicata operates to bar successive litigation of the very same claim and prevents parties from arguing the same issues that were raised during previous litigation. Rather than accepting the result of the District Court proceeding, Complainants filed the instant complaint before the Commission and alleged several of

⁸⁶ *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (citing *Montana v. United States*, 440 U.S. 147, 153-154 (1979)).

⁸⁷ *Taylor*, 553 U.S. at 892.

⁸⁸ *Id.*

the same claims that the District Court considered and for which Complainants had a full and fair opportunity to be heard.

Counts II (Breach of Contract) and III (Conflict of Interest) of the Complaint are practically identical to the substance of CAM's proposed Fourth Amended Complaint before the District Court. There, CAM sought to add a count, which alleged that the Postal Service breached the September 2012 PSA between the Postal Service and CAM.⁸⁹ The District Court found that the proposed amendment would be futile.⁹⁰

Specifically, the District Court found that the relief that CAM requested, i.e., an order setting aside the Cappelli PSA, which is similar to Complainants' prayer for relief in the instant proceeding, was not available.⁹¹ The District Court concluded that the September 2012 PSA itself provides that "[u]nder no circumstances shall [CAM] be entitled to specific performance of this Agreement."⁹² Thus, CAM would not be entitled to the relief it requested. Additionally, Complainants' request, as CAM now requested before the District Court, that the Commission invalidate the Cappelli PSA. Here, as CAM did before the District Court, Complainants merely allege that the Commission has the authority to void the Cappelli PSA but fail to cite any bases for this authority. The District Court concluded that Complainants are not entitled to the relief requested. Because the District Court considered the claims raised by Complainants in Counts II and III, res judicata operates to bar Complainants from raising the same claims before the Commission, and the Commission should dismiss these Counts.

⁸⁹ This proposed claim included an allegation that the Postal Service failed to disclose that Mr. Rouse, a Postal Service Real Estate Specialist, was contemplating leaving the Postal Service and taking a position with CBRE, when C&W, a separate and distinct entity, brokered the purchase and sale agreement between the Postal Service and CAM.

⁹⁰ *NPOC v. Donahoe*, No. 3:13-cv-1406, 2014 WL 4544094, at *7 and *8 (D. Conn. Sept. 12, 2014).

⁹¹ *Id.*

⁹² *Id.*

B. Complainants Could Have Raised Count IV Before the District Court but Failed to Do So and Should Be Precluded From Raising This Claim Before the Commission.

Complainants' failure to allege violations of the Postal Service real estate regulations before the District Court precludes them from raising Count IV before the Commission. Under the doctrine of claim preclusion, "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or *could have been raised in that action.*"⁹³ Thus, claim preclusion operates to bar Complainants from raising issues that they could have raised during earlier litigation. In the proceeding before the District Court, CAM sought to invalidate the Cappelli PSA. This is the same sale agreement at issue before the Commission in the instant complaint.

Complainants had a full and fair opportunity to present their claim that the Cappelli PSA violated the Postal Service's real estate regulations, yet it failed to do so. Claim preclusion operates to prevent the Complainants from benefiting from their previous failure and from raising this claim in subsequent litigation. Thus, even if violations of Postal Service regulations gave rise to a private cause of action, Complainants' failure to raise this claim before the District Court should not result in their ability to allege the same claim in different fora.

C. Complainants Raised Count V Before the Commission in Docket No. A2014-1 and Should Be Precluded from Raising the Same Claim Before the Commission a Second Time.

In Count V, Complainants allege that on September 20, 2013, the Postal Service "closed" the Atlantic Street Station without providing notice or allowing for public input in violation of its discontinuance regulations, and without satisfying statutory requirements

⁹³ *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 476 (1998) (emphasis added) (internal citations omitted).

detailed in section 404(d). As Complainants acknowledge, this issue has been previously litigated before the Commission.⁹⁴ In fact, Complainants recycle the same factual basis and allege the same violations that their representative alleged in Docket No. A2014-1. In the previous proceeding, the Commission concluded that the actions affecting the Atlantic Street Station amounted to an emergency suspension, which is outside of the Commission's section 404(d)(5) jurisdiction, and granted the Postal Service's motion to dismiss.⁹⁵

Complainants argue, as the petitioner argued in Docket No. A2014-1, that because the Postal Service has not transferred retail operations to alternate quarters within the Stamford community within 90 days of the emergency suspension, the Postal Service is violating its regulations.⁹⁶ However, questions surrounding the interpretation of the Postal Service's emergency suspension regulations have been resolved as well. In Order No. 1980, the Commission noted that the Postal Service's emergency suspension regulations require the Postal Service to *develop a plan of action* within 90 days from when the effective date of the suspension. As noted in the A2014-1 Status Report, the Connecticut Valley District decided to search for suitable alternate quarters within the downtown Stamford community on September 20, 2013, and communicated that decision to Headquarters.⁹⁷

⁹⁴ Complaint, ¶ 40; see Docket No. A2014-1. Complainant alleged that CAM was a petitioner in Docket No. A2014-1. The Commission did not receive or docket a petition for review from CAM. However, Mr. Drew Backstrand, who is representing the Complainant here, is the Secretary of CAM and represented Mr. Kaysay Abrha, the named petitioner in Docket No. A2014-1.

⁹⁵ Order No. 1980, at 3.

⁹⁶ Complaint ¶ 40.

⁹⁷ A2014-1 USPS Status Report, at 1. The Postal Service fully satisfied its obligation to provide a status report as required by Order No. 1980. The Commission directed the Postal Service to file a single status report and Order No. 1980 did not create a continuing obligation to submit status reports. Order No. 1980, at 9 ("To clarify the status of the Stamford post office, by no later than February 14, 2014, the

The Commission has previously considered allegations that the Postal Service violated section 404(d)'s discontinuance procedures and violated its regulations as applied to emergency suspensions. Complainants do not introduce any new facts surrounding the emergency suspension and parrot the same arguments that the petitioner made in Docket No. A2014-1. The Commission previously determined that the actions affecting the Atlantic Street Station amounted to an emergency suspension. Even if the Commission's complaint jurisdiction encompassed alleged violations of section 404(d), which it does not, res judicata precludes Complainants from alleging such violations in Count V.

IV. COMPLAINT SHOULD BE DISMISSED AS MOOT

Complainants request that the Commission "order the suspension of this post office closing and further order that the USPS either reopen the Stamford Post Office. . . or alternatively that the USPS be ordered to sign a lease for a new downtown Stamford Post Office location."⁹⁸ Complainants also request that the Commission initiate an investigation with respect to the contract process in an effort to rescind the sale of 421 Atlantic Street to Cappelli. Given the current factual situation, rescission of this sale is impossible.

Postal Service is directed to file a detailed status report describing all steps that have been taken since September 20, 2013 to discontinue the Stamford post office, plans to conduct a new discontinuance study, plans to restore service at the facility, or secure suitable alternative quarters within the community."). Compare Order No. 1980 with Order No. 1852, Order Dismissing Appeal Without Prejudice and Requiring Periodic Status Reports, Docket No. A2013-3, (Oct. 22, 2013), at 10 ("The Commission will therefore order a status report within 10 days from the date of this Order, and periodic reports every 45 days thereafter, providing details of the progress of the discontinuance study until the completion of that study and reopening of the Climax post office or until the Postal Service issues a final written determination to close the Climax post office.").

⁹⁸ Complaint at 17.

Mootness exists “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.”⁹⁹ Mootness occurs when “events have so transpired that [a judicial] decision will neither presently affect the parties’ rights nor have a more than speculative change of affecting them in the future.”¹⁰⁰ Mootness can arise at any point during the course of litigation.¹⁰¹ When mootness occurs, the case should be dismissed. The Postal Regulatory Commission addressed the issue of mootness in Docket No. C2011-5. There, a complainant sought resumption of mail delivery to his home. As delivery to that address resumed during the pendency of the case, the Commission had no remedy left to grant the complainant. As a result, the Commission dismissed the complaint as moot.¹⁰² The Commission faces a similar scenario here.

Complainants seek to enjoin or void the sale of the Atlantic Street Station to Cappelli. The Postal Service has, however, already sold the property that is the subject of this dispute, and the sale is final. No action by the Commission can alter this result, Complainants can no longer obtain the relief they seek, and the Commission should dismiss Counts I, II, III, and IV as moot.

Complainants also request that the Commission order the Postal Service to open another retail facility in downtown Stamford near 421 Atlantic Street. The Postal Service already has selected alternate quarters for the retail facility in downtown Stamford, and a lease for that location has been signed. The Postal Service is

⁹⁹ *Powell v. McCormack*, 395 U.S. 486, 496 (1969); *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979); *Cameron-Grant v. Maxim Healthcare Services, Inc.*, 347 F.3d 1240, 1245 (11th Cir. 2003).

¹⁰⁰ *Ralls Corp. v. Committee on Foreign Inv. in U.S.*, 758 F.3d 296, 321 (D.C. Cir. 2014) (citing *Clarke v. United States*, 915 F.2d 699, 701 (D.C. Cir. 1990)).

¹⁰¹ *Steffel v. Thompson*, 415 U.S. 452, 459, n.10 (1974).

¹⁰² Order No. 1392, Order Dismissing Complaint, Docket No. C2011-5, (July 3, 2011), at 6.

collaborating with the landlord at the new location and expects to open a new retail location in downtown Stamford in the near future. As a result, there is no additional remedy left to grant, and the Commission should dismiss Count V as moot.

V. THE COMPLAINT SUFFERS FROM PROCEDURAL DEFECTS

Complainants erroneously name three different parties as defendants: the United States Post Office, Postmaster General Patrick Donahoe, and Cappelli. The “United States Post Office” no longer exists as an entity. The Department of the Post Office was abolished by the 1970 Postal Reorganization Act.¹⁰³ That same Act created the United States Postal Service, and this name change was codified in 39 U.S.C. § 201. As such, the United States Post Office is not a proper party to this action.

The Postmaster General is an individual employee of the Postal Service and is not personally subject to the jurisdiction of the Commission. While the Commission has jurisdiction over the Postal Service as an entity, section 3662 does not provide a mechanism for the Commission to order specific performance of the Postmaster General or to levy fines against the Postmaster General in his or her official or personal capacity.

Likewise, the Commission has no such power over third-parties unrelated to the Postal Service. Cappelli is simply a party to the disputed transaction and the Commission’s cannot issue enforceable orders against third parties in complaint cases. The requirements for complaint cases filed under 39 U.S.C § 3662 only allow the Commission to issue orders to the Postal Service as a remedy.¹⁰⁴

¹⁰³ Pub. L. No. 91-375, 84 Stat. 759 (Aug. 12, 1970).

¹⁰⁴ “If the Postal Regulatory Commission finds the complaint to be justified, it shall order that *the Postal Service* take such action as the Commission considers appropriate in order to achieve compliance with

Limitations on the Commission under section 3662 to only issuing orders against the Postal Service contrast with other provisions in title 39 outlining the Commission's authority. For example, Congress provided the Commission authority over third-parties and Postal Service employees with respect to the issuance of subpoenas.¹⁰⁵

The Commission's narrow delegation of authority permits it only to regulate the Postal Service, and thus, the Commission cannot consider this to be a controversy against the United States Post Office, the Postmaster General, or Cappelli.

CONCLUSION

For the reasons set forth above, the Commission should dismiss the Complaint with prejudice.

Respectfully submitted,

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the applicable requirements and to remedy the effects of any noncompliance." 39 U.S.C. § 3662(c) (emphasis added).

¹⁰⁵ 39 U.S.C. § 504(f)(2)(A).