

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

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Complaint of Center for Art and Mindfulness, Inc.
and Norton Hazel

Docket No. C2015-1

ORDER GRANTING MOTION TO DISMISS

(Issued March 4, 2015)

I. INTRODUCTION

On December 29, 2014, the Center for Art and Mindfulness, Inc. and Norton Hazel (collectively Complainants and/or the Art Center/Hazel) filed a complaint under 39 U.S.C. § 3662 concerning the sale and closure of the Atlantic Street Station post office in Stamford, Connecticut (Atlantic Street Station).¹ On January 20, 2015, the

¹ Complaint of Center for Art and Mindfulness, Inc. and Norton Hazel, December 29, 2014 (Complaint).

Postal Service filed a motion to dismiss the Complaint.² Complainants responded by filing opposition to the Postal Service's Motion to Dismiss on February 4, 2015.³

On February 26, 2015, the Complainants filed a motion to amend the Complaint.⁴ In this Order, the Commission considers the issues raised by both the Complaint and the Amended Complaint.⁵ The Amended Complaint does not add any new claims against the Postal Service and the changes do not affect the Commission's analysis or conclusions regarding the disposition of the Complaint.

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.

II. BACKGROUND

The Art Center/Hazel complaint. The Art Center is a nonprofit organization that sought to purchase the Atlantic Street Station in a 2012 auction held by the Postal Service. Complaint at 1-2. Hazel is a resident business owner who had a post office box at the Atlantic Street Station in downtown Stamford, Connecticut. *Id.* at 15. The Art Center was the high bidder on the Atlantic Street Station property and entered into negotiations with the Postal Service for the sale of the property. *Id.* at 4-7. The Art Center entered into a contract to purchase the property from the Postal Service in September 2012. *Id.* at 2. The Art Center states that the Postal Service refused to negotiate in good faith regarding the terms of the sale and as a result, the Art Center

² United States Postal Service Motion to Dismiss the Complaint of the Center for Art and Mindfulness, Inc. and Norton Hazel, January 20, 2015 (Motion to Dismiss).

³ Reply of Center for Art and Mindfulness, Inc. and Norton Hazel in Opposition to the United States Postal Service's Motion to Dismiss their Complaint, February 4, 2015 (Reply). The Complainants also filed a motion for late acceptance of their reply. See Motion for Late Filing: Response to Motion to Dismiss Filed by the United States Postal Service, February 4, 2015. The Motion is granted.

⁴ Motion to File Amended Complaint, February 26, 2015 (Motion to Amend).

⁵ See Amended Complaint of the Center for Art and Mindfulness, Inc. and Norton Hazel Against the United States Postal Service, February 26, 2015 (Amended Complaint).

refused to fund the purchase of the Atlantic Street Station. *Id.* at 6-7. The Art Center maintains that after it refused to fund the sale, the Postal Service negotiated for the sale of the property with the second highest bidder, the Cappelli Family Limited Partnership III (Cappelli). *Id.* at 7. The Art Center states that the Postal Service gave Cappelli more favorable terms and rights under the contract of sale than it had offered the Art Center. *Id.* at 7-8.

The Art Center filed a lawsuit against the Postal Service and the Postmaster General in the Federal District Court of Connecticut in September 2013, challenging the proposed sale of the Atlantic Street Station on various legal grounds. *Id.* at 9. The Art Center's claims were ultimately dismissed by the Federal District Court on November 26, 2014,⁶ and the Atlantic Street Station property was sold shortly thereafter to Cappelli on December 4, 2014. Motion to Dismiss at 11; Amended Complaint at 2.

Complainants filed the present Complaint on December 29, 2014. Complainants assert four claims relating to the sale of the Atlantic Street Station property. First, they allege that the Postal Service violated 39 U.S.C. § 403(c) and engaged in undue preference and unreasonable discrimination against the Art Center relating to the sale of the Atlantic Street Station property. Complaint at 3-9. Second, Complainants allege the Postal Service had a conflict of interest relating to the sale of the Atlantic Street Station property. *Id.* at 9-11. Third, Complainants contend that the Postal Service breached their contract with the Art Center. *Id.* at 11-13. Last, the Complainants allege

⁶ *National Post Office Collaborate, et al. v. Patrick R. Donahoe, et al.*, Civ. No. 3:13cv1406(JBA), 2014 WL 6686691 (D. Conn. Nov. 26, 2014). The Federal District Court case involved two additional plaintiffs not part of the present action and concerned claims that the Postal Service violated sections of the National Environmental Protection Act, the National Historic Preservation Act, the public trust doctrine, and 39 U.S.C. § 403. In seeking dismissal of the present complaint before the Commission, the Postal Service argues that the doctrine of *res judicata* applies to preclude the Art Center/Hazel Complaint before the Commission because the claims were previously decided by the Federal District Court in the Postal Service's favor. Motion to Dismiss at 23. However, as the Commission has determined that it does not have jurisdiction to hear the Complaint, it need not address the impact, if any, of the proceedings before the Federal District Court.

that the Postal Service violated its policy requiring it to obtain the best value for the sale of its surplus real estate by selling the property to a lower bidder. *Id.* at 12-13.

Complainants' fifth claim asserts that the Postal Service violated its regulations when it closed the Atlantic Street Station post office without complying with the notice and hearing requirements regarding the closure of post offices. *Id.* at 13. Complainants state that the Postal Service closed the Atlantic Street Station on September 20, 2013, under the guise of an emergency suspension. *Id.* at 14. Complainants report that the closure of the Atlantic Street Station was previously before the Commission under Docket No. A2014-1 but that despite that proceeding, the Postal Service has failed to open a replacement post office. *Id.*

Relief requested. Complainants request that the Commission order a suspension of the Atlantic Street Station post office closing and reopen the Atlantic Street Station. *Id.* at 17. In addition, Complainants request that the Commission void the sale of the Atlantic Street Station and open an investigation into the Postal Service's sale of the property, among other relief. *Id.*

Postal Service motion to dismiss. In its Motion to Dismiss, the Postal Service refutes the facts relating to the negotiation and sale of the Atlantic Street Station and states that the Commission lacks jurisdiction to hear the claims under 39 U.S.C. § 3662. Motion to Dismiss at 2-15. The Postal Service maintains that there is no jurisdictional basis under the statute by which the Commission could hear Counts I-V of the Complaint. *Id.* at 14-15. It also asserts that the Complaint has failed to state a claim upon which relief can be granted, is precluded by the doctrine of *res judicata*, is moot, and is procedurally defective. *Id.* at 21-31.

With respect to Count V, the Postal Service states that any claims regarding the closure of a post office cannot be heard under the Commission's complaint jurisdiction; Count V could only be brought under 39 U.S.C. § 404(d) relating to appeals of post office closings. *Id.* at 20. However, the Postal Service maintains that even if Count V

was brought under section 404(d), the Commission would not have jurisdiction over the claims because services at the Atlantic Street Station have been suspended, not discontinued. *Id.* The Postal Service also states that it is relocating the Atlantic Street Station and has signed a lease for a new post office located within one-half mile of the Atlantic Street Station property. *Id.* at 14.

The Art Center/Norton reply. The Complainants' Reply opposes the Postal Service's Motion to Dismiss. Complainants refute the Postal Service's arguments in favor of dismissal, stating that the Commission has jurisdiction to hear all five counts of the Complaint. Reply at 6-7, 19.

III. COMMISSION ANALYSIS

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)..."⁷

Claims relating to the sale of the Atlantic Street Station. Counts I-IV of the Complaint set forth various claims based on the sale of the Atlantic Street Station property. Complainants assert their right to file the Complaint under 39 U.S.C. §§ 403(c), 404(a), and 410(b)(2). Complaint at 3; Reply at 6-7. The Complaint does not lie within the Commission's jurisdiction under any of the cited provisions.

Complainants allege in Count I that the Postal Service has violated 39 U.S.C. § 403(c) by engaging in undue preference and unreasonable discrimination in the sale of the Atlantic Street Station property. Section 403 prohibits the Postal Service from discriminating in "providing services and in establishing classifications, rates, and fees" under title 39. The threshold issue raised by this claim is whether the Postal Service's

⁷ 39 U.S.C. § 3662(a); see also 39 C.F.R. § 3030.2.

sale of the Atlantic Street Station is considered a “service” under section 403 of title 39. The Commission has previously determined that the sale of real property does not qualify as a “service” subject to the Commission’s review.⁸ A “postal service” is defined as “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.” 39 U.S.C. § 102(5). See also 39 C.F.R. § 3001.5(s). Therefore, the Commission does not have jurisdiction to review allegations of discrimination by the Postal Service relating to the sale of real property.

In their Reply and Amended Complaint, Complainants provide additional statutory citations for the jurisdictional basis of Counts I-IV of the Complaint. Reply at 6-7; Amended Complaint at 2-3. Complainants assert that section 404(a) provides the Commission with the power to investigate and enforce civil matters relating to the Postal Service and serves as the basis for jurisdiction of Complainants’ conflict of interest claim against the Postal Service. Reply at 11. However, 39 U.S.C. § 404(a) does not confer jurisdiction over the claims in the Complaint because section 404(a) is not enumerated under 39 U.S.C. § 3662(a). Rather, it is only violations of section 404a, not 404(a), that form the basis of the Commission’s complaint jurisdiction. Accordingly, Complainants’ allegations under section 404(a) do not fall within the Commission’s jurisdiction.

Complainants also allege 39 U.S.C. § 401(2) as a basis for jurisdiction under Counts II-IV in stating that the Postal Service did not comply with its own rules and regulations relating to the sale of the Atlantic Street Station. Reply at 6-7. 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, Complainants assert that the Postal Service failed to follow policies and procedures set forth in its Real Estate

⁸ Docket No. MC2008-1, Order No. 154, Review of Nonpostal Services under the Postal Accountability and Enhancement Act, December 19, 2008, at 66; see also *U.S. Postal Service v. Postal Regulatory Comm’n*, 599 F.3d 705, 708 (D.C. Cir. 2010).

Handbook when selling the Atlantic Street Station property.⁹ Complainants object to the Postal Service's alleged noncompliance with its own regulations, not to the regulations themselves. Thus, the Complaint does not fall within the Commission's jurisdiction under 39 U.S.C. § 401(2) and none of the claims raised in Counts II-IV are encompassed under the Commission's complaint jurisdiction.

Claims relating to the closure of the Atlantic Street Station. Complainants allege 39 U.S.C. § 404(d) as a basis for jurisdiction under Count V of the Complaint; contending the emergency suspension of the Atlantic Street Station was a de facto closing in violation of 39 U.S.C. § 404(d). However, section 404(d) is not one of the enumerated sections under the complaint jurisdiction set forth in 39 U.S.C. § 3662.¹⁰ Therefore, Count V of the Complaint must be dismissed for lack of jurisdiction.

Other grounds for dismissal. In seeking dismissal of the Complaint, the Postal Service argues that the doctrine of *res judicata*, mootness, and procedural defects require dismissal of the complaint. Given the Commission has determined that the Complaint should be dismissed on jurisdictional grounds, it is unnecessary to address the issues raised by the Postal Service in support of dismissing the Complaint.

Accordingly, the Motion to Dismiss is granted and the Complaint is dismissed with prejudice.

It is ordered:

1. The United States Postal Service Motion to Dismiss the Complaint of the Center for Art and Mindfulness, Inc. and Norton Hazel, filed January 20, 2015, is granted.

⁹ Complaint at 12 (*citing* Handbook RE-1, U.S. Postal Service Facilities Guide to Real Estate Property Acquisition and Related Services, October 2008).

¹⁰ The Postal Service identifies the source of the Commission's jurisdiction to hear post office closing appeals as the source of the Commission's jurisdiction relating to section 404(d). Motion to Dismiss at 20.

2. The Complaint of the Center for Art and Mindfulness, Inc. and Norton Hazel is dismissed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CONCURRING OPINION OF COMMISSIONER GOLDWAY

The Postal Service's record in dealing with citizens on the issues of post office closings, relocations and emergency suspensions demonstrates a disregard of the needs of the communities it serves. Moreover, the Postal Service has undertaken a short-sighted program to sell many of its historic and centrally-located post office buildings rather than finding mixed uses that would benefit both the Postal Service and the communities.

The Postal Service's poor handling of the closure and sale of the Atlantic Street Station is particularly problematic. I am disappointed that the complainants have been unable to reach a mutually satisfactory result with the Postal Service. However, I agree with my colleagues that the Commission is not the appropriate venue for their concerns.