

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

COMPLAINT OF JAMES D. GOODMAN AND
ROSALYN GOODMAN

Docket No. C2015-2

**UNITED STATES POSTAL SERVICE ANSWER IN OPPOSITION TO
COMPLAINANTS' MOTION TO VACATE ORDER GRANTING MOTION TO DISMISS
AND OTHER RELIEF**
(October 23, 2015)

The Postal Service respectfully opposes complainants' motion to vacate Postal Regulatory Commission ("Commission") Order No. 2585 on the grounds that there are no new issues of fact or law presented by Complainants. The Commission accordingly should deny Complainants' motion with prejudice.

INTRODUCTION

On April 23, 2015, James D. Goodman and Rosalyn Goodman (collectively "Complainants") filed a complaint with the Commission pursuant to 39 U.S.C. § 3662 concerning a Postal Service disruption of mail service to Complainants' home resulting from interference with mail delivery by Complainants' dog.¹ The Complaint contained allegations concerning a federal criminal statute regarding mail obstruction (18 U.S.C. § 1701); the Americans with Disabilities Act; and a provision of the Postal Accountability and Enhancement Act ("PAEA") which required the Postal Service to consider specific

¹ First Amended Complaint of James D. Goodman and Rosalyn Goodman Regarding Failure and Refusal to Deliver Mail by the US Postal Service to 1600 Entre Colinas Place, Pomona, California, April 23, 2015 (hereinafter "Complaint"). The Complaint, characterized as "amended," was not preceded by any complaint filed with the Commission.

factors when it established modern service standards (39 U.S.C. 3691§ (c)(2)). On May 14, 2015,² the Postal Service moved to dismiss the Complaint. Complainants did not respond to the Postal Service's Motion to Dismiss.

In Order No. 2585³ issued on July 15, 2015, the Commission concluded that the Complaint should be dismissed for lack of jurisdiction due to Complainants' failure to state a claim for which relief could be granted and for Complainants' failure to comply with the Commission's rules for filing complaints. The Commission granted the motion by dismissing the Complaint and referring the matter to the Postal Service as a rate or service inquiry pursuant to 39 C.F.R. § 3030.13(b). The matter was then resolved as explained in the Rate and Service Inquiry Report filed with the Commission on August 28, 2015.

ARGUMENTS

A. Complainants have failed to establish a proper basis for reconsideration.

In Commission Order No. 2586 dated July 15, 2015, the Commission granted the Postal Service's motion to dismiss. It dismissed Complainants' claims against the Postal Service after thorough consideration of the allegations contained in the complaint. Complainants now, in effect, seek reconsideration.⁴

The purpose of a motion to either vacate or for reconsideration is to correct errors of law or fact or to present the reviewing body with newly discovered evidence. See Federal Rules of Civil Procedure, Rule 54(b). See also *Harsco*

² United States Postal Service Motion to Dismiss the Complaint of James D. Goodman and Rosalyn Goodman, (Docket No. C2015-2) May 14, 2015.

³ Postal Regulatory Commission, Order Granting Motion To Dismiss, Order No. 2585 (Docket No. C2015-2), July 15, 2015.

⁴ The Complainants' motion is styled as a motion to vacate Order No. 2586. Motion to Vacate Order Granting Motion to Dismiss and Other Relief, Docket No. C2015-2 (Oct. 9, 2015) (hereinafter "Complainants' Motion").

Corp. v. Zlotnicki, 779 F.2d 906, 909 (3rd Cir. 1985). Such motions are generally granted only if (1) controlling law changed; (2) new evidence is available; or (3) to correct a clear error of law or prevent manifest injustice. *Blue Mountain Mushroom Co., Inc. v. Monterey Mushroom, Inc.*, 246 F. Supp. 2d 394, 398 (E.D. Pa. 2002). None of these three circumstances apply here.

In this instance, Complainants advance four, essentially procedural, arguments, none of which satisfy the aforementioned legal standards for reconsideration of the Commission's order dismissing the complaint. Complainants contend: (1) that the Postal Service failed to properly serve Complainants with its Motion to Dismiss; (2) that the Postal Service failed to provide an answer to the complaint (3) that the Postal Service, or the Commission, failed to provide discovery to the Complainants; and (4) that the Postal Service has misrepresented Complainants' efforts to comply with the requirement that they attempt to settle the complaint prior to filing. Complainants' Motion at 2-3. None of these arguments have merit. In fact, Complainants merely disagree with the Commission's decision and seek to have the Commission to reconsider arguments it previously considered and rejected.

1. The Commission properly dismissed Complainants' claims because of failure to state a claim upon which relief can be granted and failure to comply with the Commission's rules for filing complaints.

In Order No. 2585, the Commission specifically found that (1) "[t]hree of the provisions of title 39 included in section 3662(a) bear no relationship to the issues or facts"; (2) "Section 101(d) . . . is not relevant"; (3) "Section 404a . . . is not a basis for jurisdiction"; "Section 601 . . . is inapposite"; (4) "Section 401(2). . . fails to state a claim for which relief can be granted"; and (5) "Section 403(c) . . . there is no allegation that

supports a finding of unreasonable discrimination. See Order at 8-14. Each of these findings supports the Commission's conclusion that, under the proper scope of section 3662 and the Commission's practice, Complainants have failed to state a claim on which relief can be granted. Complainants' motion to vacate does not attempt to refute the Commission's findings or its conclusions.

2. The Postal Service and Commission properly served all documents on Complainant pursuant to Commission Rule 12 (39 C.F.R. 3030.12).

The Commission's rules require service through the Commission's website unless the Commission determines otherwise. Specifically, "[e]ach document filed in a proceeding via the Internet by an Account Holder shall be deemed served on all participants when it is accepted by the Secretary and posted on the Commission's Web site".⁵ There is no affirmative requirement to effect service upon any party by other means.⁶ In this instance, the Commission made no such order for alternate service. The Postal Service complied with the Commission's rules and had no duty to effect service other than as specified therein (i.e., by website submission).

3. The Postal Service is not required to file an answer to the Complaint.

As the Commission stated in Order No. 2585 dismissing the Complaint, "the Postal Service answer pursuant to Rule 3030.12 is no longer necessary" because the Commission dismissed the Complaint. See Order No. 2585 at 2. Thus, the Postal Service did not and could not have failed to provide a timely answer as Complainants allege, as there was no affirmative duty to make and submit an answer.

⁵ 39 C.F.R. § 3001.12(a)(1).

⁶ *Id.*

4. The Postal Service did not fail to provide discovery.

The Complainants' contention that the Postal Service had a duty to provide discovery is a novel claim.⁷ Consistent with past practice, discovery is normally not propounded in Commission complaint proceedings until after resolution of a dispositive motion. See 39 C.F.R. § 3030.30 (a)(1) (providing that the Commission will begin proceedings after issuing a notice and order if a complaint is not alternatively dismissed under paragraph (a)(2)). Thus, in this case, discovery would not have been expected along the lines suggested in Complainants' motion. Although the Complainants did file a request for information under the Freedom of Information Act⁸ ("FOIA") prior to filing their complaint, a FOIA request is separate and distinct from a request for production made in the course of litigation. Furthermore, the Postal Service responded to the FOIA request in writing initially on January 23, 2015⁹ and subsequently on February 20, 2015.¹⁰

5. The Postal Service has fairly represented to the Commission that it properly notified the Complainants of its actions taken to resolve any outstanding issues prior to initiating its action to seek dismissal. The Postal Service has fairly represented Complainants' failure to attempt to settle the Complaint.

⁷ 39 C.F.R. § 3001.25-.28. Sections 3001.26-.28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding.

⁸ 5 U.S.C. § 552, 39 C.F.R. § 265.

⁹ Amended Complaint, Plaintiff's Exhibit B.

¹⁰ Exhibit 1 to U.S. Postal Service Motion to Dismiss the Complaint of James D. Goodman and Rosalyn Goodman, Docket No. C2015-2 (May 14, 2015). The Postal Service granted in part and denied in part Complainants' request. Beyond the Complainants' arguments that the Postal Service's position is procedurally defective because discovery was not afforded, they complain that the Postal Service's decision on their FOIA request is wrong and denied them access to materials and facts needed to pursue their complaint. In this regard, the Complainants' FOIA allegations are outside the scope of jurisdiction or relief under section 3662. The Commission's jurisdiction is limited and does not extend to FOIA appeals. The Complainants do have the right to appeal any FOIA determination; however, any such appeal should follow proper FOIA appeal practice. The Commission is not the proper venue and it lacks jurisdiction over FOIA appeals. See U.S. Postal Service Handbook AS-353 - Guide to Privacy, the Freedom of Information Act, and Records Management, Ch. 4 (Feb. 2015).

The Postal Service has not, as Complainants allege, “wholly misrepresented to the Commission that it properly notified the Complainants of its actions taken to resolve any outstanding issues prior to initiating its action to seek dismissal”.¹¹ The Postal Service has complied with Commission rules and procedures and furnished accurate and adequate information regarding the facts and circumstances. Pursuant to 39 C.F.R. § 3030.10(9), “[a] complaint must: ... (9) Include a certification that states that prior to filing, the complainant attempted to meet or confer with the Postal Service’s general counsel to resolve or settle the complaint, why the complainant believes additional such steps would be inadequate, and the reasons for that belief.” As the Commission noted in Order No. 2585, Complainants’

Exhibit B evidences no communication by Complainant with any office in the Postal Service to meet or confer on this matter. As part of complainants’ filing, the Complaint did not offer sufficient evidence that Complainants reasonably attempted to meet or confer with the Postal Service’s general counsel prior to filing the Complaint. Neither Exhibit B nor Exhibit C provides evidence that the Complainants attempted to meet or confer with the Postal Service’s general counsel in any manner that would be sufficient to meet the requirements of section 3030.10(9). *Id.* at 16.

B. The Commission properly dismissed the Complaint as it is an isolated service issue.

Notwithstanding dismissal of the Complaint, the Commission has appropriately applied 39 C.F.R § 3031.11 and treated the complaint as an isolated service issue under its rate and service inquiry procedures. See Order at 16-17; 39 CFR § 3030.10(9). The matter was properly transferred and resolved as stated in the Rate and Service Inquiry Report filed with the Commission on August 28, 2015.

¹¹ Complainants’ Motion at 3.

CONCLUSION

For the reasons set forth above, and as the Commission has invoked the inquiry procedure pursuant to 39 CFR Part 3031, the Commission should deny the motion with prejudice.

Respectfully submitted,

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