

ORDER NO. 2850

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

Before Commissioners:

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

Complaint of James D. Goodman
and Rosalyn Goodman

Docket No. C2015-2

ORDER DENYING MOTION TO VACATE
ORDER GRANTING MOTION TO DISMISS AND OTHER RELIEF

(December 4, 2015)

I. INTRODUCTION

On April 23, 2015, James D. Goodman and Rosalyn Goodman (collectively Complainants) filed a complaint pursuant to 39 U.S.C. § 3662 to reinstate package and accountable mail delivery to the door of their residence and for other relief.¹ The service had been suspended by the Postal Service because of interference by

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 (Complaint). The Complaint, characterized by Complainants as “amended,” was not preceded by any complaint filed with the Commission.

Complainants' dog with such deliveries. On July 15, 2015, by Order No. 2585, the Commission granted the Postal Service's Motion to Dismiss the Complaint.²

On October 16, 2015, Complainants filed a motion both to vacate the Commission's Order No. 2585 granting the Postal Service's Motion to Dismiss and for other relief.³ On October 23, 2015, the Postal Service filed a response to Complainants' Motion to Vacate.⁴ For the reasons set forth below, the Complainants' Motion to Vacate is denied.

II. ORDER NO. 2585

Order No. 2585 granted the Postal Service's Motion to Dismiss, noting Commission jurisdiction over complaints is defined by 39 U.S.C. § 3662(a).⁵

The Complaint invoked Commission jurisdiction under section 3662(a) and other laws.⁶ Order No. 2585 evaluated whether the Commission had jurisdiction over the Complaint under section 3662(a) and considered the allegations and facts presented in the Complaint.

The Commission determined there was no basis in the Complaint for jurisdiction under several provisions, and no facts alleged in the Complaint that would constitute a

² Order Granting Motion to Dismiss, July 15, 2015 (Order No. 2585). *See also* United States Postal Service Motion to Dismiss the Complaint of James D. Goodman and Rosalyn Goodman, May 14, 2015 (Motion to Dismiss).

³ Motion to Vacate Order Granting Motion to Dismiss and other Relief, October 16, 2015 (Motion to Vacate).

⁴ United States Postal Service Answer in Opposition to Complainants' Motion to Vacate Order Granting Motion to Dismiss and Other Relief, October 23, 2015 (Answer).

⁵ Order No. 2585 at 15, 17. 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)...." *See also* 39 C.F.R. § 3030.2.

⁶ The Complaint included allegations of Postal Service violations of 18 U.S.C. § 1701 and portions of the Americans with Disabilities Act (ADA), and 42 U.S.C. chapter 126. Complaint at 3-5. The Commission dismissed those claims because 39 U.S.C. § 3662(a) does not grant the Commission jurisdiction to hear complaints arising under those laws. *See* Order No. 2585 at 15.

Postal Service violation of other provisions.⁷ Additionally, the Commission rejected the Complaint for failure to include a certification that Complainants had attempted to meet or confer with the Postal Service's general counsel or why they believe additional steps to meet or confer would be inadequate and the reasons for that belief. Order No. 2585 at 15-16. See 39 C.F.R. § 3030.10(9).⁸

Order No. 2585 also applied the rate or service inquiry process to the Complaint pursuant to 39 C.F.R. part 3031. As required by those rules, the Postal Service filed a report in writing with the Commission with its disposition of the matter.⁹ The Report was posted on the Commission's website in the instant docket. The Report included an attached Postal Service letter dated August 7, 2015, to Complainants' Pomona address from a Postal Service manager with the Office of Consumer and Industry Contact in Santa Ana, CA indicating the matter could be resolved upon proper assurances that Complainant James D. Goodman "will properly restrain [the] dog."¹⁰

III. COMPLAINANTS' MOTION TO VACATE AND OTHER RELIEF

The Motion to Vacate asserts, in the same manner as the Complaint and without any additional reasoning, that Complainants have invoked Commission jurisdiction under 39 U.S.C. § 3662 and regulations thereunder. Motion to Vacate at 1.

The Motion to Vacate alleges the Postal Service willfully failed to comply with the service provisions of the rules by filing its Motion to Dismiss without first filing the motion

⁷ The Complaint referenced 39 U.S.C. §§ 101(d), 401(2), 403(c), 404a, 601, and 3691. Complaint at 1-2. The Commission found no factual basis for jurisdiction or allegation that if proven true would demonstrate the Postal Service violated any of those provisions. Order No. 2585 at 8-15.

⁸ "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...."

⁹ United States Postal Service Rate and Service Inquiry Report, August 28, 2015 (Report). The Postal Service was required to report on the resolution within 45 days of initiation of the inquiry. Order No. 2585 at 17.

¹⁰ Report, Letter to James D. Goodman, from Dora Therien, United States Postal Service Manager, Office of Consumer and Industry Contact, dated August 7, 2015, at 1.

with Complainants. *Id.* at 2-3. The Motion to Vacate further alleges the Postal Service failed to timely answer to the Complaint, and upon Complainants' information and belief failed to provide discovery as requested and has misrepresented to the Commission that it properly notified the Complainants of its actions to resolve issues prior to its Motion to Dismiss. *Id.*

Complainants state that they first learned of Order No. 2585 on October 7, 2015, following an Internet search. *Id.* at 3. They claim numerous inquiries have been made on their behalf since filing the Complaint that have remained unanswered. *Id.* They now state the address at the time of filing the Complaint for all purposes, including where notice is to be provided, is a street address in Pasadena, CA and an email address.¹¹ They claim that since the Complaint was filed, they have received neither oral nor written communication regarding these proceedings at either the home address or any other address where Complainants reside. Motion to Vacate at 4. In support, a one-page affidavit to this effect is attached to the Motion to Vacate. *See id.* at 7.

The affidavit states that on August 24, 2015, a letter from the Postal Service was found in the mailbox at Complainants' home address stating the Complaint was dismissed. *Id.* Complainants further state they attempted to discover the status of this case by contacting the Postal Service and the Commission by directing agents and designees to make inquiries. *Id.* They state that they were not provided a copy of Order No. 2585 until October 7, 2015. *Id.*

Complainants' Motion to Vacate requests that the Commission: vacate Order No. 2585; reinstate the Complaint and order the Postal Service to answer it; direct the Postal Service to comply with Complainants' discovery requests; impose fines pursuant to section 3030.50 of the Commission's rules; award damages, costs, and fees as

¹¹ The Complaint identified Complainant James D. Goodman's street number and suite on Colorado Boulevard and an email address. Complaint at 1. The Complaint did not request notice at that location. Rather, Complainants requested relief by an order directing reinstatement of mail service at the full address of the Complainants' residence in Pomona, CA, where delivery for packages and accountable mail has been suspended. *Id.* at 9.

allowed under the circumstances; and provide such other additional relief as may be appropriate. *Id.* at 5.

IV. POSTAL SERVICE ANSWER TO MOTION TO VACATE

The Postal Service's Answer argues the Complainants have failed to establish a proper basis for reconsideration to correct either errors of law or fact or to present newly discovered evidence. Answer at 2. It contends none of the four essentially procedural arguments put forth by Complainants have merit and that they indicate nothing more than disagreement with the decision. *Id.* at 3. The Postal Service indicates that Complainants seek reconsideration of arguments previously considered and rejected. *Id.* The Postal Service alleges that the Motion to Vacate does not attempt to refute the Commission's findings of failure to state a claim upon which relief can be granted or failure to comply with the Commission's filing requirements. *Id.* at 3-4. The Postal Service avers that it served all documents pursuant to rule 3030.12 and that there is no requirement to serve a party by other means. *Id.* at 4. The Postal Service states that is not required to file an answer to the Complaint because the Commission dismissed the Complaint. *Id.* The Postal Service also contends that it did not have a duty to provide discovery because discovery is not normally required unless the Commission begins proceedings after issuing a notice and order to move forward with complaint proceedings, but it twice responded to Complainants' FOIA requests prior to filing. *Id.* at 5. The Postal Service claims that it has not misrepresented to the Commission that it properly notified the Complainants of its actions to resolve outstanding issues prior to filing its Motion to Dismiss, it has complied with Commission rules and procedures, and it has furnished accurate and adequate information regarding the facts and circumstances. *Id.* at 5-6.

V. COMMISSION ANALYSIS

- A. Postal Service action or inaction did not violate relevant statutes or other regulatory requirements.

Complainants raise several objections about Postal Service actions or inactions that they claim violate statutes or other regulatory requirements. Motion to Vacate at 2. The Commission rejects these contentions.

Complainants claim the Postal Service violated the Commission's rules by filing its Motion to Dismiss without first serving it on Complainants. *Id.* at 2-3. The Commission finds the Postal Service's filing complied with Commission rules. The Commission's rules do not require motions to be served on any parties prior to filing.

Complainants also claim the Postal Service failed to provide a timely answer to the Complaint. Under the circumstances as they evolved, a Postal Service answer to the Complaint is not necessary. The Postal Service's Motion to Dismiss tolled the due date for any potential answer. 39 C.F.R. § 3030.12(b). Upon the Commission's initiation of the service inquiry process, a Postal Service answer to the Complaint was no longer required because, by that date, the Complaint had been dismissed by Order No. 2585.¹²

Complainants further allege upon information and belief that the Postal Service failed to provide discovery as requested. Given the procedural context of this proceeding, discovery was not required.

Complainants contend the Postal Service "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." Motion to Vacate at 3. Complainants do not specify which particular action the Postal Service misrepresented

¹² 39 C.F.R. § 3030.12(b)(2). Complainants suggest the time to file an answer to a complaint is altered by the filing of a motion in accordance with Rule 12 of the Federal Rules of Civil Procedure. Motion to Vacate at 2 n. 1. The Commission's rules regarding complaints are contained in 39 C.F.R. part 3030. In particular, section 3030.12 relates to pleadings filed in response to a complaint. The Federal Rules of Civil Procedure are not applicable.

and the Commission's rules do not require the Postal Service to take any particular action prior to seeking dismissal of a complaint. See 39 C.F.R. § 3030.12. However, documents filed in this proceeding indicate the Postal Service took steps to resolve the Complainants' issues, including the letter of January 8, 2015, delivered to Complainants' address requesting that Complainants meet with a delivery supervisor, bring a copy of the current license and vaccination certificate for their dog, and sign a commitment to restrain the animal. See Order No. 2585 at 3. The Complaint acknowledges this letter was received on January 8, 2015. Complaint at 7. Although Complainants argue the Postal Service did not adequately respond to their request for discovery, there is no showing the Postal Service misrepresented its actions prior to filing the Motion to Dismiss.

Complainants assert they did not receive notice of the Postal Service's Motion to Dismiss. The Commission finds that the Postal Service properly complied with applicable rules upon filing its Motion. The Complaint was filed electronically on April 23, 2015. The Postal Service's May 14, 2015 Motion was also filed in this docket through the Commission's website. Unless otherwise ordered by the Commission, the rules provide that filing through the Commission's website is sufficient service: "Each 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." 39 C.F.R. § 3001.12(a).

B. Notice of Order No. 2585 was available to Complainants

Complainants also assert they sought to determine the status of the proceeding through their personal contacts and did not obtain a copy of Order No. 2585 until October 7, 2015. The Commission finds no irregularities with the notice or service procedures in this proceeding. As with other documents filed in this proceeding, posting of the order provided effective service: "*Service by the Commission*. Except as provided in this section, each document issued by the Commission or presiding officer shall be deemed served upon the participants in the proceeding upon its posting by the

Commission on its website.” 39 C.F.R. § 3001.12(c). Moreover, Complainants do not indicate any action they would have undertaken if they had informed themselves earlier of the Postal Service’s Motion to Dismiss or had obtained sooner a copy of Order No. 2585.

Complainants had reason to know how to obtain information about filings and orders in this docket. Complainants were directed by letter from the Commission’s staff to the appropriate Commission rules, and they filed the Complaint electronically on the Commission’s website. Prior to filing the Complaint, Complainants twice inquired of the Commission’s Office of Public Affairs and Government Relations (PAGR) about procedures for filing complaints with the Commission. Commission records include two letters dated January 22, 2015, and April 9, 2015, from Commission PAGR staff responding to Complainants’ inquiries about filing a formal complaint with the Commission.¹³ The January 22, 2015 letter indicated the Commission’s complaint rules are located at 39 C.F.R. part 3030 and that a complaint proceeds under the Commission’s rules at 39 C.F.R. part 3001. The January 22, 2015 letter also referred Complainants to two contacts at the Postal Service for resolution of delivery concerns: the Office of Consumer and Industry Contact in Santa Ana, CA; and the Postal Service’s Consumer Advocate in Washington, D.C. The letter concluded with an explanation for filing a formal complaint online at the Commission.

The April 9, 2015 letter, dated just prior to the Complaint filing, discussed both the less formal rate or service inquiry process and the formal complaint process. That letter also enclosed a “Guide to Consumer Complaints and Rate or Service Inquiries.” It again referenced parts 3030 and 3001 of the Commission’s rules. It noted there may be motions and other activities in a complaint proceeding and stated that, as part of the complaint process, complainants are to meet and confer with the Postal Service’s general counsel and provided the general counsel’s contact address. *Id.* It again

¹³ The January 22, 2015 letter was addressed to Complainants’ home address in Pomona, CA. The April 9, 2015 letter was addressed to Complainants at the Pasadena, CA business address, the location where Complainants for the first time in the Motion to Vacate request service.

referenced the Postal Service's office for resolution of postal concerns and included the phone number and email address of the Postal Service's Office of Consumer Advocate in Washington, D.C.

Complainants have not shown a reasonable basis for their failure to receive notice of Order No. 2585. Order No. 2585 was filed and posted July 15, 2015, on the Commission's website in this docket, in the same manner that the Complaint was filed and posted, both filings and postings in accordance with Commission rules.

VI. CONCLUSION

No new arguments of fact or law having been presented to warrant vacating Order No. 2585 or otherwise reopening this proceeding, therefore Complainants' Motion to Vacate is denied.

VII. ORDERING PARAGRAPH

It is ordered:

The James D. Goodman and Rosalyn Goodman Motion to Vacate Order Granting Motion to Dismiss and other Relief, filed on October 16, 2015, is denied.

By the Commission.

Stacy L. Ruble
Secretary