

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-1004

September Term, 2019

FILED ON: DECEMBER 10, 2019

RANDALL EHRLICH,
PETITIONER

v.

POSTAL REGULATORY COMMISSION,
RESPONDENT

UNITED STATES POSTAL SERVICE,
INTERVENOR

On Petition for Review of an Order
of the Postal Regulatory Commission

Before: GARLAND, *Chief Judge*, GRIFFITH, *Circuit Judge*, and WILLIAMS, *Senior Circuit Judge*.

J U D G M E N T

This petition for review was considered on the record from the Postal Regulatory Commission and on the briefs of the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the petition for review be denied.

The Postal Service stopped providing mail service to Petitioner Randall Ehrlich's home in 2015 after his mail carrier reported that a large German Shepherd behaved aggressively when she approached Ehrlich's doorway mailbox. Ehrlich alleges that he gave away the offending dog shortly thereafter. Ehrlich Compl. ¶ 34 (J.A. 6). Nevertheless, the Postal Service has refused to lift this "dog hold" from his residence until he moves his mailbox to the sidewalk.

Ehrlich filed a complaint with the Postal Regulatory Commission (PRC). In addition to contesting the dog hold, Ehrlich alleged significant misconduct on the part of the mail

carrier toward himself and others on her delivery route. Ehrlich's complaint cited 39 U.S.C. § 403(c), which prohibits "any undue or unreasonable discrimination among users of the mails." Among other things, he sought restored mail delivery to his residence.

The PRC referred Ehrlich's complaint to the Postal Service for treatment as a rate or service inquiry under procedures set forth in 39 C.F.R. § 3031.11. Order at 12 (J.A. 142). It also dismissed Ehrlich's complaint without prejudice for failure to plead a cognizable discrimination claim under § 403(c). Order at 13 (J.A. 143).

Ehrlich filed this petition for review in accordance with 39 U.S.C. § 3663. This statute incorporates the APA as its framework for review. *Id.* Accordingly, we will not set aside the PRC's decision unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *GameFly, Inc. v. Postal Regulatory Comm'n*, 704 F.3d 145, 148 (D.C. Cir. 2013) (quoting 5 U.S.C. § 706(2)(A)).

At the outset, we reject the PRC's suggestion that referral to the Postal Service's rate or service inquiry procedures under 39 C.F.R. § 3030.13(b) constitutes a ground for the dismissal of Ehrlich's complaint. When a complaint remains unresolved within 45 days of such a referral, the Postal Service is ordinarily required to file an answer in proceedings before the PRC. 39 C.F.R. § 3030.13(c). That is, the referral only "[alters] the period of time for filing [the Postal Service's] answer" to a complaint. 39 C.F.R. § 3030.12(b). But through its dismissal, the PRC relieved the Postal Service of this obligation -- regardless of the outcome of the informal procedures. Order at 2 (J.A. 132). The PRC's referral to rate or service inquiry procedures thus has no bearing on whether the PRC properly dismissed Ehrlich's complaint.

Taking the dismissal on its own terms, we find that the PRC did provide a well-reasoned justification for its decision: Ehrlich "failed to show that the Postal Service has offered more favorable rates or terms and conditions [of mail service] to similarly situated individuals." Order at 10 (J.A. 140). The PRC has held that such a showing is required for a successful § 403(c) discrimination claim. Order at 7 (J.A. 137). And within the four corners of Ehrlich's complaint, there simply are no allegations of such similarly situated Postal Service customers. *See Ehrlich Compl.* (J.A. 3-18).¹ Therefore, the PRC's decision

¹ We note, however, that in his response to the Postal Service's motion to dismiss, Ehrlich made additional allegations. Among these, Ehrlich alleged that unlike him, similarly situated individuals -- such as "customers with well-behaved dogs," or "any other resident whose premises present no danger to the letter carrier" -- enjoy residential mail delivery. Response at 1, 10 (J.A. 59, 68). In making its decision, the PRC does not

withstands our “deferential,” arbitrary-and-capricious standard of review. *Alliance of Nonprofit Mailers v. Postal Regulatory Comm’n*, 790 F.3d 186, 193 (D.C. Cir. 2015).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Michael C. McGrail

Deputy Clerk

appear to have taken these allegations into account because they were not contained in Ehrlich’s initial complaint. If Ehrlich were to re-plead with the allegations of similarly situated individuals that appear in his response, he may well have a plausible § 403(c) discrimination claim.