

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 89526 / August 12, 2020

Admin. Proc. File No. 3-18831

In the Matter of  
SHAWN K. DICKEN

ORDER REQUESTING ADDITIONAL BRIEFING

On September 24, 2018, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Shawn Dicken pursuant to Section 15(b) of the Securities Exchange Act of 1934.<sup>1</sup> The OIP alleged that Dicken had been convicted of violating various Michigan state laws for financial misconduct that occurred while she was associated with a broker-dealer. Dicken filed no answer to the OIP or otherwise responded and, on April 4, 2019, the Division of Enforcement filed a motion requesting that Dicken be found in default and barred from the securities industry and from participating in any offering of a penny stock. Dicken has not responded to the Division’s motion.

When determining whether remedial action, such as an industry bar, is in the public interest under Exchange Act Section 15(b), the Commission must consider the question with reference to the underlying facts and circumstances of the case.<sup>2</sup> The factors that the Commission considers are: the egregiousness of the respondent’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.<sup>3</sup> Such analysis must do more than “recite[], in general terms,

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<sup>1</sup> *Shawn K. Dicken*, Exchange Act Release No. 84272, 2018 WL 4562834 (Sept. 24, 2018).

<sup>2</sup> *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981).

<sup>3</sup> *See id.*; *see also Lawrence Allen Deshetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at \*2-3 (Nov. 21, 2019) (applying *Steadman* factors in follow-on proceeding).

the reasons why [a respondent's] conduct is illegal," but rather "devote individual attention to the unique facts and circumstances of th[e] case."<sup>4</sup>

In this instance, the Division supported its motion with copies of the Judgment and the Information filed in the state criminal proceeding, in addition to the OIP. While in the case of default the OIP's allegations may be deemed to be true,<sup>5</sup> the OIP here contains only allegations that Dicken's underlying convictions were based on certain allegations. According to the OIP, the Division "alleges that . . . a jury found Dicken guilty" of nine counts of violating various Michigan laws relating to fraud and embezzlement, and that "[t]he counts of the criminal Information as to which Dicken was convicted alleged," among other things, that she "made material misrepresentations" about the risks associated with a recommended real estate investment.<sup>6</sup>

Although Dicken's default would permit the Commission to deem as true the allegations that she was convicted of the nine counts identified (and to find that those counts all involved an enhanced level of intent),<sup>7</sup> it would not appear, by itself, to permit a finding that the Information's underlying allegations are also true. The Judgment of Sentence summary, which is the only document the Division included that references Dicken's convictions, provides no details about the basis for those convictions. By implication, the convictions on these nine counts establishes that the Information's allegations supporting those counts were found by the jury to be true. But while the Information provides an overall summary of the alleged illegal conduct, including that Dicken made the material misrepresentations referenced in the OIP, it provides no factual details regarding the individual counts. Significantly, the count which would appear most relevant to the allegations made in the Information's summary, "Count 10: Securities – Fraudulent Sales," was, according to the Judgment of Sentence, "dismissed by court," and the summary fails to distinguish between the conduct underlying the counts as to which Dicken was convicted, and this dismissed final count.

Under the circumstances, the Commission would benefit from further briefing regarding the factual predicate for Dicken's convictions and the reasons for dismissal of the final count against her, as well as the Division's arguments as to why these facts establish that industry and

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<sup>4</sup> See *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (vacating and remanding suspension for failing to meet this standard).

<sup>5</sup> See Commission Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), 201.220(f).

<sup>6</sup> *Dicken*, 2018 WL 4562834, at \*1.

<sup>7</sup> See Michigan Compiled Laws §§ 750.218; 750.174a; 750.159i(1) (requiring that defendant act "with intent to defraud or cheat"; "through fraud, deceit, misrepresentation, coercion, or unjust enrichment" while "knowing or having reason to know"; and "knowingly", respectively).

penny stock bars are warranted. The Commission would also benefit from any further documentation relevant to such matters or otherwise relevant to its public interest analysis.

Accordingly, it is ORDERED that the Division shall file a brief by September 11, 2020, not to exceed 5000 words, limited to addressing facts underlying Dicken's convictions, the reasons for dismissal of the final count against her, and the appropriateness of the sanctions sought. To the extent the Division deems it necessary, any additional evidentiary materials shall be attached to the brief, which must contain specific citations to the evidence relied upon.<sup>8</sup>

It is further ORDERED that Dicken may file a brief by October 12, 2020, not to exceed 5000 words, addressing the same matters to be addressed by the Division. Dicken's brief should also address why she has failed to file an answer previously or to otherwise defend this proceeding until now, and why the Commission should not find her in default as a result.<sup>9</sup> Dicken is reminded that when a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding a public hearing.<sup>10</sup> If Dicken files a response to this order, the Division may file a reply within 14 days after its service.

The parties' attention is called to the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that pending further order of the Commission parties to the extent possible shall submit all filings electronically at [apfilings@sec.gov](mailto:apfilings@sec.gov).<sup>11</sup>

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman  
Secretary

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<sup>8</sup> Rule of Practice 452, 17 C.F.R. § 201.452.

<sup>9</sup> See *Shawn K. Dicken*, Exchange Act Release No. 85778, 2019 WL 1977070, at \*1 (May 3, 2019) (show cause order warning Dicken that failure to respond may cause the Commission to find her in default, and noting that the OIP did the same).

<sup>10</sup> Rules of Practice 155, 180, [17 C.F.R. § 201.155, .180](#).

<sup>11</sup> See *Pending Administrative Proceedings*, Exchange Act Release No. 88415, <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>