

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76634 / December 14, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3727 / December 14, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-17002

In the Matter of

MICHAEL MCKENNA, CPA,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Michael McKenna, CPA (“McKenna” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Respondent, a former employee of Diebold, Inc. ("Diebold"), entered into a cooperation agreement with the Division of Enforcement on April 19, 2010, in connection with the Commission's investigation of violations of the federal securities laws at Diebold, and related enforcement proceedings. That investigation and related enforcement proceedings against the company and certain of its former senior executives are now concluded. The Commission, having taken into consideration Respondent's substantial cooperation, enters this Order resolving the matter with respect to Respondent.

2. As described below, Respondent, often at the direction of management, made improper accounting entries in Diebold's books, records, and accounts in 2003 and 2004 while he was Vice President of Global Finance at the company. As a result of the conduct described herein, Respondent caused violations of Section 13(b)(2)(A) of the Securities Exchange Act of 1934 (the "Exchange Act"), and violated Rule 13b2-1 thereunder.

Respondent

3. Michael McKenna, 53, is a resident of New Hartford, New York. McKenna was the Vice President of Global Finance at Diebold from 2002 to 2005, and the company's Vice President of North American Finance from 2005 through 2007. In July 2007, McKenna separated from Diebold. Since January 2010, McKenna has been the Finance Director and Controller of a private company in Utica, New York. McKenna is a certified public accountant in Ohio. His license is inactive. McKenna entered into a cooperation agreement with the Division of Enforcement on April 19, 2010.

Other Relevant Individuals and Entity

4. Diebold, Inc. is an Ohio corporation headquartered in North Canton, Ohio. Diebold manufactures and sells ATMs and bank security systems. Diebold's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and is listed on the New York Stock Exchange.

5. Walden O'Dell, 69, is a resident of Columbus, Ohio. O'Dell was the CEO and Chairman of Diebold from 1999 to 2005. He is retired.

6. Gregory Geswein, 60, is a resident of Toledo, Ohio. Geswein was the CFO of Diebold from 2000 to 2005. Subsequently, Geswein was the CFO of Reynolds & Reynolds, Co.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

from 2005 to 2006, and the CFO of Libbey, Inc., from May 2007 through June 2010. Geswein currently operates a restaurant in Akron, Ohio. Geswein is not a certified public accountant.

7. Kevin Krakora, 59, is a resident of Canton, Ohio. Krakora was Diebold's Controller from 2001 through 2005, and the company's CFO from 2005 through March 2008. Krakora was removed as Diebold's CFO in March 2008, and later separated from the company in 2010. From December 2011 through May 2012, Krakora worked part-time as a business consultant. From July 2012 through September 2013, Krakora operated a handyman franchise. Krakora is currently unemployed. Krakora is a certified public accountant in Ohio. His license is inactive.

8. Sandra Miller, 47, is a resident of Houston, Texas. Miller was Diebold's Director of Corporate Accounting from 2002 to 2006. From 2006 through 2011, Miller was the Controller at JoAnn Stores, Inc. Currently, she is a reporting and compliance director at a private company in Houston, Texas. Miller is a certified public accountant in Ohio.

9. Charles Loveless, 50, is a resident of Massillon, Ohio. Loveless was a finance manager at Diebold from 2001 to 2006, and the company's Manager of External Reporting from 2006 to 2008. In January 2008, Loveless separated from Diebold. Currently, Loveless is the Finance Director and Controller of a private company in North Canton, Ohio. Loveless is a certified public accountant in Ohio. His license is inactive. Loveless entered into a cooperation agreement with the Division of Enforcement on March 23, 2010.

Background

10. McKenna is a former employee of Diebold, Inc., a public company based in North Canton, Ohio that manufactures and sells ATMs and bank security systems. McKenna was the Vice President of Global Finance at Diebold from 2002 to 2005, and the company's Vice President of North American Finance from 2005 through 2007. In 2003 and 2004, McKenna, often at the direction of senior management, made improper accounting entries in Diebold's books, records, and accounts. These improper entries assisted the company and its management in artificially inflating Diebold's reported earnings to meet forecasts.

11. Under generally accepted accounting principles ("GAAP"), normally a product must be shipped to the customer or services rendered before revenue can be recognized. An exception exists, however, for what are known as "bill and hold" transactions. With a "bill and hold" transaction, revenue can be recognized on the sale of products prior to delivery to the customer if the GAAP criteria for a bill and hold transaction are met.

12. From at least 2002 through 2007, Diebold improperly used "bill and hold" accounting to recognize revenue on certain transactions it called "F-term" (or "Factory") orders. Diebold recognized revenue on these orders when it shipped products from its factory to a Diebold warehouse. During his tenure at Diebold, McKenna had accounting responsibilities for F-term orders. At the direction of management, McKenna and his subordinates recorded revenue on F-term orders when the company shipped products from its factory to a Diebold warehouse. Many

of these F-term orders, however, did not satisfy the GAAP criteria for bill and hold accounting. By improperly applying bill and hold accounting to certain F-term orders, the company prematurely recognized revenue on many of these transactions.

13. In 2004, at the direction of management, McKenna directed Diebold employees to ship certain F-term orders from factory to warehouse prior to the shipment dates agreed to with customers. This practice was known at the company as “pulling in” F-term orders. The amount of F-term orders “pulled in” varied by quarter, but in many instances was done purposely to inflate earnings in order to meet forecasts. For example, at the end of the second quarter of 2004, the company “pulled in” approximately \$3.4 million in orders that were not scheduled to ship until the following quarter, and in the fourth quarter of 2004 the company “pulled in” approximately \$3.8 million in orders that were not scheduled to ship until the following year. This improper practice inflated Diebold’s earnings in those quarters by approximately \$1.1 million and \$1.3 million, respectively.

14. As a result of changes in the company’s revenue recognition practices in 2004, fewer orders were being designated as F-term orders, and thus less revenue was being recognized. As a result, by the third-quarter of 2004, the company was not on track to meet earnings forecasts. At the direction of senior management to close the gap, McKenna made an \$18.8 million top-level journal entry that pulled in revenue that would not have been recognized until subsequent quarters under its new practices. As a result of this improper entry, Diebold met its revised earnings forecast in the third quarter of 2004.

15. As a result of the conduct described above, McKenna caused Diebold’s violations of Section 13(b)(2)(A) of the Exchange Act, which requires Commission registrants to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the registrant.

16. As a result of the conduct described above, McKenna violated Rule 13b2-1 of the Exchange Act, which states that no person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Exchange Act.

Cooperation

17. McKenna entered into a cooperation agreement with the Division of Enforcement on April 19, 2010, in connection with the Commission’s investigation of violations of the federal securities laws at Diebold and related enforcement proceedings. As a result of the investigation, the Commission filed the following enforcement actions, all of which are now concluded:

18. On June 2, 2010, the Commission filed a settled enforcement action against Diebold in which it consented to a final judgment ordering injunctive relief and a \$25 million civil penalty. *See SEC v. Diebold, Inc.*, Civ. Action No. 1:10-CV-00908 (D.D.C.) / Lit. Rel. No. 21543.

19. On June 2, 2010, the Commission filed a settled compensation claw-back action against Walden O’Dell, Diebold’s former CEO and Chairman, pursuant to Section 304 of the

Sarbanes-Oxley Act of 2002, in which he consented to a final judgment ordering him to reimburse \$470,016 in cash bonuses, 30,000 shares of Diebold stock, and stock options for 85,000 shares of Diebold stock. *See SEC v. O'Dell*, Civ. Action No. 1:10-CV-00909 (D.D.C.) / Lit. Rel. No. 21543.

20. On June 2, 2010, the Commission filed a contested enforcement action against Gregory Geswein, Diebold's former CFO. On May 26, 2015, pursuant to a settlement, the court entered a final consent decree against Geswein ordering him to pay \$680,000 in disgorgement, a \$170,000 civil penalty, and prohibiting him for three years from acting as an officer or director of a public company. *See SEC v. Geswein, et al.*, Civ. Action No. 5:10-CV-01235 (N.D. Ohio) / Lit. Rel. Nos. 21543 and 23268.

21. On June 2, 2010, the Commission filed a contested enforcement action against Kevin Krakora, Diebold's former Controller and later CFO. On May 26, 2015, pursuant to a settlement, the court entered a final consent decree against Krakora ordering him to pay \$400,000 in disgorgement, a \$100,000 civil penalty, prohibiting him for three years from acting as an officer or director of a public company, and prohibiting him from appearing or practicing before the Commission as an accountant, with a right to apply for reinstatement after three years. *See SEC v. Geswein, et al.*, Civ. Action No. 5:10-CV-01235 (N.D. Ohio) / Lit. Rel. Nos. 21543 and 23268.

22. On June 2, 2010, the Commission filed a contested enforcement action against Sandra Miller, Diebold's former Director of Corporate Accounting. On May 26, 2015, pursuant to a settlement, the court entered a final consent decree against Miller that permanently enjoins her from aiding and abetting any violation of Section 13(a), Section 13(b)(2)(A), and Section 13(b)(2)(B) of the Exchange Act, and Rules 13a-1, 13a-11, 13a-13, and 12b-20 thereunder, and ordered disgorgement of \$29,057, which was waived, and no penalty imposed, based on her financial condition. *See SEC v. Geswein, et al.*, Civ. Action No. 5:10-CV-01235 (N.D. Ohio) / Lit. Rel. Nos. 21543 and 23268.

23. McKenna provided significant cooperation in connection with the Commission's investigation of this matter and its related enforcement actions.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent McKenna's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent McKenna cease and desist from committing or causing any violations and any future violations of Section 13(b)(2)(A) of the Exchange Act, and Rule 13b2-1 thereunder.

B. Respondent shall pay disgorgement of \$42,700 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC

Rule of Practice 600. Payment shall be made in the following installments: (1) \$21,350 due no later than ten days after the entry of this Order; and (2) \$21,350, plus interest pursuant to Rule 600 of the Commission's Rules of Practice, due no later than one year after the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, plus any additional interest accrued pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Michael McKenna as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Brian O. Quinn, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon his agreement to cooperate in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether he knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary