

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18831

<p>In the Matter of</p> <p style="text-align:center">SHAWN K. DICKEN,</p> <p>Respondent.</p>

REPLY BRIEF OF THE DIVISION OF ENFORCEMENT

On August 12, 2020, the Commission issued its Order Requesting Additional Briefing in this proceeding. Pursuant to the Commission's Order, on September 11, 2020, the Division filed a supplemental brief and a supporting declaration. On or about October 22, 2020, Respondent Shawn K. Dicken filed her Response to Order Requesting Additional Briefing ("Resp. Br."). The Division hereby replies to Dicken's brief.

On March 13, 2014, after an eight-day trial, a jury convicted Respondent of seven felony counts of obtaining money under false pretenses, one count of felony embezzlement, and one felony count of conducting a criminal enterprise by false pretenses. *People v. Shawn Kristi Dicken*, Case No. 2013-005531-FH (Cir. Ct., Midland County, Michigan). On July 31, 2014, a judgment in the criminal case was entered against the Respondent. She was sentenced to serve 140 months to 20 years in prison and to pay over \$780,000 in restitution. Her sentence was affirmed on appeal. *See People v. Dicken*, No. 322998, 2018 WL 632986 (Mich. Ct. App. Jan. 30, 2018), appeal denied, 502 Mich. 904, 913 N.W.2d 325 (2018).

In her brief, Respondent does not address whether she should be barred based on the State criminal conviction that forms the predicate for this administrative proceeding. Rather,

Respondent represents that she has no interest in ever again working in the securities industry. (Resp. Br. at 1.) She also states that she continues to pursue appeals from her conviction. (*Id.*) She then devotes the remainder of her brief to a recitation of her version of the facts, which she contends establish her innocence in the State criminal case. (*Id.* at 1 - 31.) In short, Respondent's brief presents no basis for avoiding an associational bar and a penny stock bar as a consequence of her conviction.

Respondent believes that she is innocent of the criminal charges the State of Michigan brought against her. And she disagrees with the verdict of the jury. But those are not valid arguments against sanctions in a follow-on administrative proceeding. The Commission has long held that a Respondent in Ms. Dicken's situation is not permitted to re-litigate the elements of an underlying criminal conviction in a follow-on administrative proceeding. "A criminal conviction cannot be collaterally attacked in an administrative proceeding. This prohibition extends to issues relating to the validity of the conviction, including the credibility of the evidence presented at trial and any defenses to the criminal charge." *William F. Lincoln*, Exchange Act Rel. No. 39629, 1998 WL 80228, at 2 (Feb. 9, 1998); *see also Daniel Joseph Touzier*, Exchange Act Rel. No. 85321, at 2 (affirming a party may not attack the validity of their criminal conviction in an administrative proceeding), *Joseph P. Galluzzi*, Exchange Act Rel. No. 46405, 1998 WL 80228, at 2 (Aug. 23, 2002) ("In any event, a party cannot challenge his injunction or criminal conviction in a subsequent administrative proceeding.").

It is unclear whether any more appeals from Respondent's criminal conviction are pending. But in any event, the pendency of an appeal from an underlying a criminal conviction is not a sufficient basis for the delay of a Commission proceeding. *Daniel Joseph Touzier*, Exchange Act Rel. No. 85321, at 2, 2019 WL 1225724 (Mar. 14, 2019). Thus, "once a

conviction has been entered, further ‘challenges in the criminal case do not bear on’ follow-on administrative proceedings unless and until those challenges are successful.” *Id.* (quoting *David G. Ghysels*, Exchange Act Rel. No. 62937, 2010 WL 3637005, at 5 n.32 (Sept. 20, 2010)).

If the Commission were to impose sanctions against Respondent in this proceeding and she were to subsequently succeed in a State court appeal from her conviction, she could then petition the Commission to set aside any administrative sanctions imposed here. *See, e.g., Donald J. Fowler*, Exchange Act Rel. No. 89226, 2020 WL 3791560, at 2 (July 6, 2020), *Michael T. Rand*, Exchange Act Rel. No. 87139, 2019 WL 4738064, at 1 (Sept. 27, 2019).

The jury found Respondent guilty of nine felony counts including embezzlement, conducting a criminal enterprise, and obtaining money by false pretenses. In sentencing her, the Court found, among other things, that: Respondent’s conduct showed she could not be trusted to follow orders not to return to this line of work; she exploited the trust her clients placed in her; she showed no real remorse; the investments at issue were not legitimate, rather the enterprise was a Ponzi scheme; she lied to her victims, repeatedly and face-to-face, about the risks and safety of the investments, for the purpose of getting them to invest; and her victims lost their life savings, suffered substantially lowered standards of living, and, in some cases, no longer could afford to live in their own homes.

At its heart, Respondent’s brief argues that she should not be sanctioned because she is innocent of the underlying criminal charges. Respondent was afforded the due process of a jury trial. And at the end of the trial, the jury convicted her of multiple felony counts of obtaining money by false pretenses, embezzlement, and operating a criminal enterprise. In sentencing Respondent, the Court made findings which establish that her violations were deliberate, repeated, and egregious. The Court found no remorse, and Respondent continues to deny her

culpability. Respondent may believe she is innocent. But the judge and jury did not. And this proceeding is not an opportunity for Respondent to pursue a collateral attack on her conviction. Given the foregoing, it is in the public interest that the Respondent should be barred, as requested by the Division.

Dated: November 4, 2020

Respectfully submitted,

s/John E. Birkenheier

John E. Birkenheier

Steven L. Klawans

Division of Enforcement

Securities and Exchange Commission

Chicago Regional Office

175 West Jackson Boulevard, Suite 1450

Chicago, Illinois 60604

Phone: 312-353-7390

Fax: 312-353-7398

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the Reply Brief of the Division of Enforcement to be served on the following on this 4th day of November 2020, in the manner indicated below:

CERTIFIED MAIL
Ms. Shawn K. Dicken
Women's Huron Valley Correctional Facility
[REDACTED]
Ypsilanti, MI [REDACTED]

Dated: November 4, 2020

s/John E. Birkenheier
John E. Birkenheier