

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940  
Rel. No. 3438 / July 25, 2012

Admin. Proc. File No. 3-14190

In the Matter of  EVELYN LITWOK
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ORDER DISMISSING PROCEEDING

On January 14, 2011, we issued an order instituting administrative proceedings ("OIP") against Evelyn Litwok pursuant to Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> On August 4, 2011, an administrative law judge issued an initial decision (the "Initial Decision") in the administrative proceeding granting the Division of Enforcement's motion for summary disposition and barring Litwok from associating with an investment adviser.<sup>2</sup> Both Litwok and the Division petitioned for Commission review of the Initial Decision.

The OIP and the Initial Decision were based on a February 2009 judgment of conviction based on a jury verdict in the United States District Court for the Eastern District of New York finding Litwok guilty of one count of mail fraud and three counts of tax evasion, one each in tax years 1995, 1996, and 1997. Litwok appealed the convictions to the United States Court of Appeals for the Second Circuit. On April 30, 2012, while this administrative appeal was pending, the Second Circuit reversed the tax evasion convictions for tax years 1996 and 1997 and vacated and remanded the mail fraud and 1995 tax evasion convictions.<sup>3</sup> The Division and Litwok have filed motions to dismiss the administrative proceeding.

Advisers Act Section 203(f) authorizes us to determine whether a sanction, including a bar, is in the public interest based on findings that a person associated with an investment adviser has been convicted of certain crimes, including any felony involving mail fraud violations or any

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<sup>1</sup> 15 U.S.C. § 80b-3(f).

<sup>2</sup> Initial Decision Rel. No. 426 (Aug. 4, 2011), 101 SEC Docket 44551.

<sup>3</sup> *United States v. Litwok*, 678 F.3d 208 (2d Cir. Apr. 30, 2012).

crime punishable by imprisonment for one or more years.<sup>4</sup> Under Section 202(a)(6), a conviction for purposes of the Advisers Act includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere that "has not been reversed, set aside, or withdrawn."<sup>5</sup> Because the Second Circuit reversed or vacated each of the criminal convictions, the convictions may no longer serve as the basis for proceeding against Litwok under Section 203(f). We conclude that there is currently no basis for the proceeding under Advisers Act Section 203(f) and that it is appropriate to dismiss the proceeding.<sup>6</sup>

Accordingly, IT IS ORDERED that this proceeding be, and it hereby is, dismissed.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>4</sup> 15 U.S.C. § 80b-3(f), incorporating 15 U.S.C. §§ 80b-3(e)(2)(D) & (e)(3)(A).

<sup>5</sup> 15 U.S.C. § 80b-2(a)(6).

<sup>6</sup> See *Terry Harris*, Investment Advisers Act Rel. No. 2622 (July 26, 2007), 91 SEC Docket 541, 543 (ordering dismissal of administrative proceeding based on finding that "none of the three bases for proceeding under Advisers Action Section 203(f) that were alleged in the OIP remains valid on the record before us on appeal"); *Jimmy Dale Swink, Jr.*, 52 S.E.C. 379, 379 (1995) (vacating findings and administrative bar order when an appellate court reversed the criminal conviction that was the basis for the proceeding).