

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 10652 / June 24, 2019

Admin. Proc. File No. 3-16339

In the Matter of  
DIANE DALMY, ESQ.

ORDER DISMISSING PROCEEDING

On January 15, 2015, we instituted a public administrative and cease-and-desist proceeding against respondent Diane Dalmy and others pursuant to Section 8A of the Securities Act of 1933, Sections 4C, 15(b)(6), and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice ("OIP").<sup>1</sup> The OIP alleged that, in 2011 and 2012, Dalmy knowingly or recklessly provided a series of false attorney opinion letters in support of stock registration statements filed with the Commission for eighteen companies in violation of Securities Act Section 17(a).<sup>2</sup> The OIP further ordered that a public proceeding be instituted to determine whether the allegations were true, whether Dalmy should be ordered to cease and desist from any such future violations, and whether she should pay disgorgement and civil money penalties.<sup>3</sup> Dalmy is the sole remaining respondent in this proceeding. The Division of Enforcement now moves to dismiss the proceeding against her. We grant the Division's motion.

**Background**

The administrative law judge assigned to this matter held a hearing on May 27, 2015, and issued an initial decision on September 18, 2015.<sup>4</sup> The initial decision found that Dalmy violated Securities Act Sections 17(a)(1) and (3), ordered Dalmy to cease and desist from such future violations, and imposed a \$680,000 civil money penalty.<sup>5</sup> On October 13, 2015, Dalmy appealed

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<sup>1</sup> *John Briner, Esq.*, Securities Act Release No. 9699, 2015 WL 220959 (Jan. 15, 2015).

<sup>2</sup> *Id.* at \*8.

<sup>3</sup> *Id.* at \*29.

<sup>4</sup> *John Briner, Esq.*, Initial Decision Release No. 886, 2015 WL 5472623 (Sept. 18, 2015).

<sup>5</sup> *Id.* at \*20-29.

to the Commission.<sup>6</sup> While Dalmy's appeal was pending, the United States Supreme Court issued its decision in *Lucia v. SEC*.<sup>7</sup> On August 22, 2018, in light of *Lucia*, the Commission ordered "a new hearing before an ALJ who did not previously participate in the matter."<sup>8</sup> On September 12, 2018, this case was reassigned to a different administrative law judge.<sup>9</sup>

On September 30, 2015, in an unrelated Commission action against Dalmy and others, the United States District Court for the Northern District of Illinois found Dalmy liable for violating Securities Act Section 5.<sup>10</sup> On the basis of the district court's finding that Dalmy had violated the securities laws, the Commission instituted a separate administrative proceeding under Rule 102(e) against Dalmy on December 22, 2015.<sup>11</sup> On July 29, 2016, the chief administrative law judge issued an initial decision granting summary disposition and ordering Dalmy "permanently disqualified from appearing or practicing before the . . . Commission as an attorney."<sup>12</sup> On September 29, 2016, the Commission issued a finality order in that proceeding.<sup>13</sup>

On February 6, 2018, in an unrelated criminal case in the United States District Court for the District of Connecticut, Dalmy pleaded guilty to one count of conspiracy to commit wire fraud.<sup>14</sup> On May 15, 2018, the district court sentenced Dalmy to 36 months imprisonment and ordered her to pay \$2 million in restitution.<sup>15</sup> After her sentencing, Dalmy attempted to hide \$47,000 in cash to avoid having to pay that money toward her restitution obligation.<sup>16</sup> In July

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<sup>6</sup> See *Diane Dalmy, Esq., Order Granting Petition for Review and Scheduling Briefs*, Securities Act Release No. 9977, 2015 WL 6746513 (Nov. 4, 2015).

<sup>7</sup> 138 S. Ct. 2044 (2018).

<sup>8</sup> *Order*, Exchange Act Release No. 83907, 2018 WL 4003609 (Aug. 22, 2018).

<sup>9</sup> *John Briner, Esq., Reassignment Order*, Administrative Proceedings Rulings Release No. 5989 (Sept. 18, 2018), available at <https://www.sec.gov/alj/aljorders/2018/ap-5989.pdf>.

<sup>10</sup> *SEC v. Zenergy Int'l, Inc.*, 141 F. Supp.3d 846 (N.D. Ill. 2015).

<sup>11</sup> *Diane Dalmy, Esq., Order Instituting Public Administrative Proceedings and Imposing Temporary Suspension Pursuant to Rule 102(e)(3)(i)(B) of the Commission's Rules of Practice*, Exchange Act Release No. 76740, 2015 WL 9297327 (Dec. 22 2015).

<sup>12</sup> *Diane Dalmy, Esq.*, Initial Decision Release No. 1042, 2015 WL 4088747 at \*10 (Jul. 29, 2016).

<sup>13</sup> *Diane Dalmy, Esq., Notice That Initial Decision Has Become Final*, Exchange Act Release No. 78993, 2016 WL 11281398 (Sept. 29, 2016).

<sup>14</sup> *U.S. v. Dalmy*, No. 3:18-cr-21, 2018 WL 5817158 at \*1 (D. Conn. Nov. 6, 2018).

<sup>15</sup> *Id.* at \*1.

<sup>16</sup> *Id.* at \*2.

2018, the government notified the court of Dalmy's failure to pay restitution.<sup>17</sup> On December 11, 2018 the district court increased Dalmy's prison sentence to 60 months.<sup>18</sup>

### Analysis

The Division of Enforcement now moves to dismiss this proceeding with respect to Dalmy and stay the proceeding pending the Commission's consideration of its motion to dismiss. In support of its motion, the Division states that Dalmy apparently will not leave prison until age 68, that she is subject to a \$2 million criminal restitution order, and that a permanent bar from appearing or practicing before the Commission as an attorney has already been imposed. The Division also notes that these sanctions were imposed subsequent to the 2015 initial decision, that the \$2 million restitution order imposed in the criminal case exceeds the \$680,000 civil penalty ordered in that decision, and that the Division is unlikely to obtain monetary relief greater than \$2 million through re-litigating the case before a new administrative law judge. Given these facts, the Division submits that any public benefit to be gained by re-litigating this case is marginal and outweighed by the Commission's interest in conserving resources.

We conclude that, under the circumstances, it is appropriate to grant the Division's motion to dismiss the proceeding against Dalmy. We deny the stay motion as moot. Accordingly, it is ORDERED that the proceeding against Diane Dalmy is dismissed.

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>17</sup> *Id.*

<sup>18</sup> See Press Release, Department of Justice, United States Attorney's Office, District of Connecticut, *Attorney Who Hid Money to Avoid Paying Restitution to Fraud Scheme Victims Receives 2 More Years in Prison*, 2018 WL 6445766 (Dec. 7, 2018).