

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95762 / September 13, 2022

Admin. Proc. File No. 3-18831

In the Matter of

SHAWN K. DICKEN

ORDER DISCHARGING ORDER TO SHOW CAUSE AND DIRECTING PREHEARING
CONFERENCE

On September 24, 2018, the Commission issued an Order Instituting Proceedings (“OIP”) against Shawn Dicken pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ On April 4, 2019, after Dicken did not file an answer or otherwise respond, the Division of Enforcement filed a motion for entry of default and sanctions against Dicken. The motion stated that service of the OIP was made on Dicken via United States Postal Service Certified Mail on September 27, 2018, and requested that Dicken be barred from the securities industry and from participating in any offering of a penny stock. Dicken did not respond to the Division’s motion.

On May 3, 2019, we issued our first order to show cause.² We directed Dicken to address the reasons for her failure to timely file an answer or respond to the Division’s motion, as well as the substance of the Division’s request for sanctions. We warned Dicken that if we found her in default, we would deem the OIP’s allegations to be true and could determine the proceeding against her upon consideration of the record. Dicken did not respond to that order.

On August 12, 2020, we issued an order requesting additional materials from the Division.³ We explained that the Commission’s sanctions analysis would benefit from further briefing and documentation regarding the factual predicate for Dicken’s underlying conviction and why these facts supported the sanctions the Division was seeking. We also gave Dicken leave to file a brief “addressing the same matters to be addressed by the Division” as well as “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.”⁴

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

² *Shawn K. Dicken*, Exchange Act Release No. 85778, 2019 WL 1977070 (May 3, 2019).

³ *Shawn K. Dicken*, Exchange Act Release No. 89526, 2020 WL 4678066 (Aug. 12, 2020).

⁴ *Id.* at *2.

On September 11, 2020, the Division filed a responsive brief and a declaration from the attorney serving as Division counsel. The Division indicated that these materials were also served on Dicken via certified mail. After reviewing the submissions, we determined that the Commission would benefit from being able to review the underlying documents in the trial court record, and so on October 16, 2020, we issued a second order requesting additional materials from the Division.⁵ Again, our order gave Dicken leave to respond to the Division's filings and to "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."⁶

On October 22, 2020, we received Dicken's first filing, labeled as a response to our August 12, 2020 order.⁷ Dicken acknowledged receiving the OIP in September 2018, but said that when she did, she "felt completely hopeless." She stated that at that point, she was already in prison and had spent her time since working on appealing her underlying conviction, and that "participation in a penny stock offering or any other securities transaction[] was the least of my problems." Dicken said that she had "no interest in returning to the Securities Industry, even if I can clear my name and have my charges vacated." The rest of her submission discussed the circumstances leading to her conviction and some details of the trial.

On November 4, 2020, the Division responded to Dicken's submission. The Division noted that Dicken did not address "whether she should be barred based on the State criminal conviction that forms the predicate for this administrative proceeding," and argued that the remainder of her submission did not contain any "valid arguments against sanctions." On December 10, 2020, the Division responded to our October 16, 2020 order by submitting almost 2,000 pages of additional materials, along with an updated brief with specific citations to those materials. The Division indicated that these materials were served on Dicken via certified mail.

On April 8, 2021, we issued a second order to show cause.⁸ We explained that it was unclear whether Dicken intended to participate further in this case because her submission did not explain her failure to file an answer and suggested that she had no interest in participating in penny stock offerings or reentering the securities industry. Still, in light of her *pro se* status and the fact that she was imprisoned, we offered her a final opportunity to explain why she never filed an answer to the OIP or a response to the other filing in this case, and to address the

⁵ *Shawn K. Dicken*, Exchange Act Release No. 90215, 2020 WL 6117716 (Oct. 16, 2020).

⁶ *Id.* at *2.

⁷ Dicken's submission was timely filed as it was postmarked before the October 12, 2020 deadline indicated in the order. *See Houston v. Lack*, 487 U.S. 266 (1988) (holding that under federal prison mailbox rule, *pro se* prisoners' notice of appeal are filed at moment of delivery to prison authorities for forwarding to district court); *Adams v. United States*, 173 F.3d 1339, 1341 (11th Cir. 1999) (noting that this "mailbox rule [applies] to other filings by *pro se* prisoners").

⁸ *Shawn K. Dicken*, Exchange Act Release No. 91512, 2021 WL 1316871 (Apr. 8, 2021).

appropriateness of the sanctions the Division sought. We explained that if Dicken did not file a responsive submission by May 24, 2021, the Commission would deem her in default.

On May 17, 2021, Dicken filed a response to the second order to show cause. Expressing “deep regret” and apologizing for not answering the OIP or responding to previous filings, Dicken reiterated that she failed to do so because she was focused on appealing her conviction and “felt completely hopeless.” Dicken thought that “once I could get my criminal conviction overturned, it would make dealing with the administrative proceedings much easier.” Moreover, Dicken again intimated that she did not oppose the Division’s proposed sanction, stating that “even if I was able to overturn my conviction, I have no future in the securities industry.” The remainder of the response focused on challenging her criminal conviction.

On May 27, 2021, the Division filed a notice stating that it would not respond to Dicken’s May 17, 2021 submission unless the Commission so ordered because its previous filings had already addressed Dicken’s arguments. Nevertheless, the Division noted that Michigan court records reflected that Dicken’s appeal has terminated. And it asserted that Dicken “appears to concede that she was convicted as set forth in the [OIP],” but “does not . . . address the standards for determining whether the Commission should impose administrative sanctions against her.”

In light of all the circumstances, including Dicken’s filings, her *pro se* and incarcerated status, and her expression of remorse for missing prior filing deadlines, the order to show cause is discharged and Dicken will not be deemed in default at this time. We will construe Dicken’s response to the order to show cause as her answer to the OIP. Dicken and the Division are directed to conduct a prehearing conference within 28 days after the date of this order.⁹ The parties may meet in person or participate by telephone or other remote means.

Following the conference, the parties shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at the conference and the possibility of settlement in light of Dicken’s suggestion that she no longer intends to work in the securities industry. If a prehearing conference is not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer. If Dicken fails to participate in the prehearing conference as directed by this order, she may be deemed in default and the proceeding may be determined against her.¹⁰ Regardless of whether a prehearing conference is held, the Division shall file a statement with the Office of the

⁹ Rule of Practice 221, 17 C.F.R. § 201.221; *see also Dicken*, 2018 WL 4562834, at *2 (providing that the parties shall conduct a prehearing conference pursuant to Rule 221 within 14 days after service of respondent’s answer).

¹⁰ Rules of Practice 155(a), 221(f), 17 C.F.R. §§ 201.155(a), .221(f); *see also Dicken*, 2018 WL 4562834, at *2 (“If Respondent fails to . . . appear at a hearing or conference after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against her . . .”).

Secretary advising the Commission whether it should construe the Division's April 4, 2019 motion for entry of default and sanctions as a motion for summary disposition.

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021, and which include new e-filing requirements.¹¹

Accordingly, IT IS ORDERED that the parties hold a prehearing conference and file a statement with the Office of the Secretary following that conference as directed in this order.

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

Vanessa A. Countryman
Secretary

¹¹ *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020) <https://www.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments impose other obligations such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81.