

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91512 / April 8, 2021

Admin. Proc. File No. 3-18831

In the Matter of

SHAWN K. DICKEN

SECOND ORDER TO SHOW CAUSE

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.²

On May 3, 2019, we issued our first order to show cause.³ Dicken was directed 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. Dicken was warned that if found in default the allegations in the OIP would be deemed to be true and the Commission could determine the proceeding against her upon consideration of the record. Dicken did not respond.

On August 12, 2020, we issued an order requesting additional materials from the Division.⁴ 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. That order also gave Dicken leave to file a brief “addressing the same matters to be addressed by the Division” as well

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

² The failure to timely oppose a dispositive motion is itself a basis for a finding of default. *See* Rules of Practice 155(a)(2), 180(c), 17 C.F.R. § 201.155(a)(2), .180(c); *see, e.g., Benham Halali*, Exchange Act Release No. 79722, 2017 WL 24498, at *3 n.12 (Jan. 3, 2017).

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

⁴ *Shawn K. Dicken*, Exchange Act Release No. 89526, 2020 WL 4678066 (Aug. 12, 2020).

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.”⁵

On September 11, 2020, we received the Division’s response, which consisted of a brief and declaration from the attorney serving as counsel for the Division in the matter. 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 of the proceeding that led to Dicken’s conviction, and so on October 16, 2020, we issued a second order requesting additional materials from the Division.⁶ Again, our order gave Dicken leave to respond to the Division’s filings, and also 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.”⁷

On October 22, 2020, over two years after these proceedings were first instituted, we received Dicken’s first (and thus far only) filing. Dicken labeled her filing a response to our August 12, 2020 order.⁸ Her submission 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 has 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.” She stated she has “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 is primarily concerned with 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 pointed out 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 that remainder of her submission does not contain any “valid arguments against sanctions.” On December 10, 2020, the Division responded to our October 16, 2020 order by submitting additional materials, along with an updated brief with specific citations to those materials. The Division indicated that these materials were also served on Dicken via certified mail.

It is unclear from Dicken’s submission whether she intends to participate further in this case. Pending before the Commission is the Division’s request that Dicken be barred from the

⁵ *Id.* at *2.

⁶ *Shawn K. Dicken*, Exchange Act Release No. 90215, 2020 WL 6117716 (Oct. 16, 2020).

⁷ *Id.* at *2.

⁸ Dicken’s submission is postmarked September 30, 2020, meaning it was timely filed before the deadline of October 12, 2020 indicated in the August 12, 2020 order. *See Houston v. Lack*, 487 U.S. 266, 266 (1988) (stating that under the 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”).

securities industry and from participating in any offering of a penny stock. Dicken's sole submission suggests she has no interest in participating in penny stock offerings or reentering the securities industry. Nor does Dicken's submission explain her continued failure to file an answer, over two years after this case's commencement, and to otherwise present a defense.

Nevertheless, in light of Dicken's filing in response to the August 12, 2020 order, we offer her one last opportunity to defend this proceeding. If Dicken wishes to have this case proceed with her as a participant, she must make a responsive filing by the deadline indicated below. Her filing must explain why she never filed an answer to the original OIP, or responded to any of the other filings in this case. Her explanation will have to establish "good cause" for us to accept it.⁹ Her filing should also address the appropriateness of the sanctions the Division is seeking against her, as that is the primary remaining issue in the proceeding.¹⁰

If Dicken does not submit a compliant, responsive filing by the deadline provided below, we will deem her in default. That means that we will find the facts of the OIP to be true, such as the dates of her association with a registered broker-dealer, her criminal conviction, and her sentence. We will then address the Division's motion for sanctions, where it requests that Dicken be barred from the securities industry and from penny stock offerings. To do that, we will review the materials submitted by both the Division and Dicken to determine whether such sanctions are in the public interest.

Accordingly, Dicken is ORDERED to SHOW CAUSE by May 24, 2021, why the Commission should not find her in default. Dicken's submission shall address the reasons for her failure to timely file an answer or response to the Division's motion, as well as her response to the substance of the Division's request for sanctions (including why, pursuant to Exchange Act Section 15(b)(6), the Commission should not bar her from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating, or bar her from participating in any offering of a penny stock). If Dicken responds to this order to show cause, the Division may file a reply within 28 days after its service. If Dicken does not reply to this order to show cause, the Division may file any additional submission it wishes on the issue of sanctions by June 7, 2021. The Division may also rely on the submissions it has already made in this case.

⁹ Cf. Rule of Practice 161(a), (b), 17 C.F.R. § 201.161(a), (b) (allowing Commission to extend time limits "for good cause shown" and to consider "such matters as justice might require").

¹⁰ See generally *Allan Michael Roth*, Exchange Act Release No. 90343, 6488283, at *4 (Nov. 4, 2020) ("In determining if any remedial action is in the public interest, we consider the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.").

The parties' attention is called to the Commission's March 18, 2020 order regarding the filing and service of papers, which provides that pending further order of the Commission parties to the extent possible shall submit all filings electronically at apfilings@sec.gov.¹¹ Also, the Commission's Rules of Practice were recently amended to include new e-filing requirements, which take effect on April 12, 2021.¹²

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

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

Vanessa A. Countryman
Secretary

¹¹ *Pending Administrative Proceedings*, Exchange Act Release No. 88415, 2020 WL 1322001 (Mar. 18, 2020), <https://www.sec.gov/litigation/opinions/2020/33-10767.pdf>.

¹² *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020); *see also Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. The amendments also impose other obligations on parties to administrative proceedings 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.