

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97612 / May 30, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-65

In the Matter of the Claim for an Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by Redacted (“Claimant”) in connection with the above-referenced covered action (the “Covered Action”). Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claim is denied.

I. Background

A. The Covered Action

On Redacted, the SEC filed a litigated civil injunctive action in Federal District Court Redacted against Redacted (“the Firm”) and Redacted the firm’s Redacted, alleging that the Firm violated Redacted, and that Redacted violated Redacted. The SEC alleged that the Firm Redacted, which were based on information Redacted (the “Company”), Redacted. On Redacted, the court issued a final judgment including Redacted.

On ^{Redacted}, the Office of the Whistleblower (“OWB”) posted a Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Claimant filed a timely whistleblower award claim.

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that Claimant’s award claim be denied because Claimant did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS preliminarily determined that Claimant’s information did not either (1) cause the Commission to (a) commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and (b) thereafter bring an action based, in whole or in part, on conduct that was the subject of Claimant’s information, under Exchange Act Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action, under Exchange Act Rule 21F-4(c)(2). The CRS preliminarily determined that investigative staff responsible for the Covered Action received information from Claimant and had communications with Claimant, but the information and communications primarily concerned another covered action involving ^{Redacted} (“Other Entity”), for which Claimant already received an award. Claimant’s information did not contribute in any way to this Covered Action. In addition, the CRS preliminarily determined that Claimant did not provide original information as the limited information Claimant provided concerning the Firm was already known to the SEC staff.

C. Claimant’s Response to the Preliminary Determination

Claimant submitted a timely written response (the “Response”) contesting the Preliminary Determination.¹ In the Response, Claimant argues that the SEC did not consult with or obtain input from Claimant’s central contact at the SEC in issuing the Preliminary Determination and that the recollection of the Enforcement staff member who provided a declaration was limited.

Claimant also argues in the Response that Claimant provided original information that caused staff to inquire concerning different conduct, or alternatively, significantly contributed to the success of the Covered Action. First, Claimant argues that no subpoena was issued to the Firm until after Claimant reached out to the SEC and submitted information and assisted staff. Second, Claimant argues that he/she provided his/her own conversations with ^{Redacted} and detailed the red flags that the Firm was aware of misconduct, including by ^{Redacted}, which caused the SEC to focus on the Firm as a participant in the fraud. Third, Claimant argues that he/she was the key element that led to an investigation involving the Company being extended to the Firm, just as Claimant’s information extended that investigation to the Other Entity that was the defendant in the other covered action for which Claimant already received a whistleblower award. Claimant argues that the SEC only

¹ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

became aware of the substance of what inculpated the Firm as a direct result of Claimant stepping forward as a whistleblower.

D. Analysis

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.² As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered action if either (1) the original information caused the staff to commence an examination, open an investigation, or inquire into different conduct as part of a current examination or investigation and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information;³ or (2) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁴

In determining whether the information “significantly contributed” to the success of the action, the Commission will consider whether the information was “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.⁵ For example, the Commission will consider a claimant’s information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.⁶

Based on the record, which includes detailed declarations, which we credit, from the primary Enforcement attorneys responsible for the Covered Action investigation, including the one identified by Claimant in his/her Response, Claimant did not provide information that led to the success of the Covered Action. First, Claimant’s information did not cause Enforcement staff to identify or focus on the Firm. Rather, in connection with the investigation into the Company, staff sent a subpoena to the Firm in ^{Redacted}, which was months before Claimant provided any information to the Commission. It was the information and documents provided by the Firm in response to the subpoena that caused staff to open the Covered Action investigation. As such, Claimant’s information did not cause the staff to open the Covered Action investigation or inquire into the Firm’s role in the misconduct.

Second, Claimant’s tips and information did not significantly contribute to the success of the Covered Action. Claimant’s information primarily concerned the Other Entity, at which ^{Redacted}. Further, while Claimant provided limited information about the

² Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

³ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁴ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁵ Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9.

⁶ Exchange Act Rel. No. 85412 at 8-9.

Firm alleging that Firm personnel were aware of red flags with ^{Redacted}
^{Redacted}, the staff already had received documents and information directly from the Firm that established this point. As such, Claimant provided no new information that was used in, or otherwise had any impact on, the Covered Action.

We therefore conclude that Claimant did not provide original information that led to the successful enforcement of the above-referenced Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder.

II. Conclusion

Accordingly, it is hereby ORDERED that Claimant's whistleblower award application be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary