

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97728 / June 15, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-67

In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Office of the Whistleblower (“OWB”) issued a Preliminary Summary Disposition¹ (“PSD”) recommending the denial of the whistleblower award claims submitted by Redacted (“Claimant 1”) and Redacted (“Claimant 2”) in connection with the above-referenced covered action (the “Covered Action”). Claimant 1 and Claimant 2 each filed a timely response contesting the preliminary denial. For the reasons discussed below, the award claims of Claimant 1 and Claimant 2 are each denied.

I. Background

A. The Covered Action

On Redacted the Commission instituted settled cease-and-desist proceedings against Redacted (the “Company”). According to the Order, the proceedings stem from Redacted by the Company, Redacted

Redacted The Order noted that the Company failed to Redacted The Company also failed ***

Redacted As a result, the Company

¹ See Exchange Act Rule 21F-18, 17 C.F.R. § 240.21F-18.

Redacted

The Company agreed to pay disgorgement and prejudgment interest totaling

Redacted

On ^{Redacted} OWB posted the Notice for the Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days. Claimant 1 and Claimant 2 each filed timely whistleblower award claims.

B. The Preliminary Summary Disposition

On ^{Redacted} OWB issued the PSD in connection with the Covered Action recommending that the whistleblower award claims of Claimant 1 and Claimant 2 be preliminarily denied. OWB noted that Claimant 1 and Claimant 2 each did not provide information that led to the success of the Covered Action because their information did not cause the Commission to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation under Rule 21F-4(c)(1) of the Securities Exchange Act of 1934 ("Exchange Act"); or significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. OWB also noted the information provided by Claimant 1 and Claimant 2 was never provided to or used by staff handling the Covered Action or underlying investigation (or examination), and those staff members otherwise had no contact with either Claimant 1 or Claimant 2. Therefore, Claimant 1 and Claimant 2 each did not provide 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.

Claimant 1 and Claimant 2 each submitted a timely written response contesting the PSD.²

C. Claimant 1's Response to the Preliminary Summary Disposition

In Claimant 1's response to the PSD ("Claimant 1 Response"), Claimant 1 generally discusses his/her mistrust of "people", "corporat[ions]", "law makers" and "government." In this vein, Claimant 1 questions the veracity of the sworn declaration in support of the PSD denying his/her award claim. Claimant 1 also writes that the Commission indicated that the "investigation was opened in **January** ^{Redacted} But [his/her] complaint was also made on **January** as well." (bold in original). The Claimant 1 Response appears to question whether the Commission accurately determined the year the investigation of the Company was opened given that his/her TCR was submitted in the same month. Claimant 1 points out that even if the investigation had started prior to Claimant 1 submitting the information, the Covered Action was not finalized until after Claimant 1 submitted his/her information to the Commission, suggesting that his/her information may have been helpful in the Covered Action. Claimant 1 also takes issue with the record of materials provided to him/her and requests that additional documents be provided, including the "subpoena" issued to the Company and an "authorization" to initiate the investigation, for him/her to verify the year the investigation was opened. Claimant 1 requests

² See Exchange Act Rule 21F-18(b)(3), 17 C.F.R. § 240.21F-18(b)(3).

that rules be amended to permit access to these documents as part of the process in contesting the preliminary denial.

D. Claimant 2's Response to the Preliminary Summary Disposition

In Claimant 2's response to the PSD ("Claimant 2's Response"), Claimant 2 principally focuses on a TCR that he/she submitted in ^{Redacted} Specifically, Claimant 2 believes his/her TCR filed on ^{Redacted} ("^{Redacted} TCR"), led to the opening of the Office of Compliance Inspections and Examinations' ("OCIE") exam of the Company that later resulted in OCIE's referral to the Division of Enforcement ("Enforcement") and the opening of an investigation. While Claimant 2 acknowledges that he/she "did not file specific information on [the Company]", he/she believes that he/she is entitled to an award for providing the ^{Redacted} TCR that may have caused the examination of the Company and possibly other companies. Claimant 2 adds, "[a]s the writings below confirm and as explained in my original TCR on [the Company], I worked with the SEC from ^{Redacted} through the time of the beginning of the fines for violations of the anti-fraud provisions ^{Redacted}." Claimant 2 also contends that his/her work with Commissioners and staff at various Commission offices, such as the Office of Investor Education and Advocacy, served as an impetus for the examination that resulted in a referral that led to the Covered Action.

II. 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.³ Among other things, to be considered original information the submission must be provided to the Commission for the first time after July 21, 2010.⁴ Additionally, and as relevant here, original information will be deemed to lead to a successful enforcement action if either: (i) the original information caused the staff to open an investigation "or to inquire concerning different conduct as part of a current . . . investigation" and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information;⁵ or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."⁶

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.⁷ For example, the

³ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

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

⁵ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁶ See Exchange Act Rule 21-F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁷ 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 (same).

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.⁸

A. Claimant 1

Claimant 1 does not qualify for a whistleblower award in this matter because his/her information did not cause the staff to open the investigation that led to the Covered Action ("the Investigation"), nor did Claimant 1's information cause the staff to inquire into different conduct in or significantly contribute to the success of the Covered Action. Enforcement staff assigned to the Investigation reported that Claimant 1 provided no information that was used in or that contributed to the success of the Investigation or the Covered Action. As referenced above, Claimant 1 questioned the veracity of the Enforcement staff declaration in support of the PSD. According to the sworn Enforcement staff declaration, which we credit, Claimant 1's tip was submitted on January ^{Redacted} approximately two years after the investigation of the Company was opened, and the tip was never forwarded to the staff assigned to the investigation that led to the Covered Action. A supplemental sworn declaration from OWB staff, which we also credit, confirmed the same.

None of Claimant 1's information was used or considered by Enforcement staff in connection with the opening of the Investigation. Here, the two declarations each reflect that the Investigation was opened in January ^{Redacted} approximately two years before Claimant 1 submitted his/her tip. Enforcement staff assigned to the Investigation also noted that Claimant 1 did not provide any information that was used in the Investigation or the Covered Action. Based on the declarations, Claimant 1 cannot be credited with causing the staff to open the Investigation, causing the staff to inquire into different conduct, or significantly contributing to the success of the Covered Action.

The Claimant 1 Response also takes issue with the documents provided to him/her and requests that additional documents be provided, including the "subpoena" issued to the Company. Under the Commission's whistleblower rules, a claimant is authorized to receive materials listed in Rule 21F-12 of the Securities Exchange Act of 1934 that formed the basis for the disposition with respect to his or her own award application. As such, OWB staff informed Claimant 1 of the record of materials that formed the basis of the disposition and provided him/her with a copy of the redacted Enforcement staff declaration, as it related to his/her award

⁸ Exchange Act Rel. No. 85412 at 8-9.

application, pursuant to Rules 21F-12 and 21F-18(c). The rules do not provide for Claimant 1 to receive additional documents such as the “subpoena” issued to the Company or “authorization.”⁹

For these reasons, Claimant 1 is not eligible for a whistleblower award in this matter.

B. Claimant 2

Claimant 2 does not qualify for a whistleblower award in this matter because his/her information did not cause the staff to open the investigation or examination that led to the Covered Action, nor did Claimant 2’s information cause the staff to inquire into different conduct in or significantly contribute to the success of the Covered Action. As noted above, the Claimant 2 Response principally focuses on a ^{Redacted} TCR that Claimant 2 believes led to the OCIE exam that resulted in a referral to Enforcement, and references work with staff of other Commission offices.

Claimant 2 explains in his/her response to the PSD that he/she filed an additional TCR in ^{Redacted} as a result of rule changes to the whistleblower award program ^{Redacted}. Claimant 2 points to his/her information contained in a ^{Redacted} TCR, and believes his/her work with Commissioners and staff at various Commission offices led to items like the “^{Redacted}”, which was the impetus for the OCIE exam that resulted in a referral that led to the Covered Action. While Claimant 2 may have had some interaction with staff of the Commission, such as the Office of Investor Education and Advocacy, the information in the record refutes that he/she made any contribution to the OCIE exam or the Covered Action.

At the outset, we note that the ^{Redacted} TCR was never received or reviewed by Enforcement staff that conducted the Investigation, and a supplemental declaration indicates that the OCIE exam team did not receive or review any information provided by Claimant 2. Indeed, OCIE staff reported that the referral to Enforcement was not based on information provided by Claimant 2 and Claimant 2 did not contribute to OCIE’s exam and/or the referral to Enforcement. Further, Enforcement staff assigned to the Investigation noted in its declaration that Claimant 2 provided no information that was used in or that contributed to the success of the Investigation or the Covered Action. Claimant 2 argues that his/her work with Commissioners and staff of Commission Offices served as the impetus for the OCIE exam; however, given that Claimant 2’s information was not received or reviewed by OCIE exam staff or Enforcement staff, there is no evidence in the record to support that he/she contributed in any way to the Covered Action.¹⁰ Claimant 2 therefore cannot be credited with causing the staff to open the

⁹ To the extent that Claimant 1 argues that the Commission “should change their laws/rules,” a response to a proposed summary disposition is not an appropriate vehicle to petition for a rulemaking change. To the extent that the Claimant 1 wishes to make such a request, Claimant must follow the established procedures. *See* 17 C.F.R. §201.192.

¹⁰ Claimant 2 generally references information provided to the SEC from “^{Redacted}” but specifically names the ^{***} TCR in his/her response.

Investigation or significantly contributing to the success of the Covered Action given that his/her information did not contribute to the OCIE exam and was not used by Enforcement staff.¹¹

For these reasons, Claimant 2 is not eligible for a whistleblower award in this matter.

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimant 1 and Claimant 2 in connection with the Covered Action be, and they hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹¹ Claimant 2's information also may not satisfy the "original information" requirement under the whistleblower rules. In the Claimant 2 Response, Claimant 2 wrote: "... as explained in my original TCR on [the Company], I worked with the SEC *from* ***" In order for a whistleblower submission to be considered original information, it must be provided to the Commission for the first time *after* July 21, 2010. *See* Rule 21F-4(b)(1)(iv). To the extent Claimant 2 provided information to the Commission prior to July 21, 2010, that information would not satisfy the original information requirement.