

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69749 / June 12, 2013

WHISTLEBLOWER AWARD PROCEEDING
File No. 2013-1

In the Matter of the Claim for Award

in connection with

SEC v. Andrey C. Hicks and Locust Offshore Management, LLC,
1:11-cv-11888-RGS (D. Mass. 2011)
Notice of Covered Action 2012-27

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

Four individuals Claimant #1, Claimant #2, Claimant #3 and Claimant #4 —each filed timely whistleblower award claims pursuant to section 21F of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78u-6, in connection with Notice of Covered Action 2012-27. The Claims Review Staff ("CRS") issued a Preliminary Determination recommending that the respective claims of Claimant #1, Claimant #2 and Claimant #3 each be allowed in the amount of five percent (5%) of the monetary sanctions collected, and that Claimant #4 claim be denied. Only Claimant #4 now has filed a response contesting the Preliminary Determination. For the reasons set forth below Claimant #1, Claimant #2 and Claimant #3 claims each are approved in the amount of 5%, and Claimant #4 claim is denied.

I. SEC Enforcement Action and Notice of Covered Action

On October 26, 2011, the Commission filed an enforcement action in *SEC v. Andrey C. Hicks and Locust Offshore Management, LLC*, 1:11-cv-11888-RGS (D. Mass. 2011) (the "Locust Matter"). The Commission alleged in its complaint that the defendants, Andrey C. Hicks ("Hicks") and Locust Offshore Management, LLC ("Locust"), committed fraud in connection with the offer and sale of shares in the Locust Offshore Fund, Ltd. (the "Fund"), a pooled investment fund purportedly incorporated in the British Virgin Islands ("BVI"), which turned out to be wholly fictitious. On March 20, 2012, the U.S. District Court for the District of Massachusetts entered final judgments in favor of the Commission after default was entered against the defendants. Among other relief, the court held both defendants jointly and severally liable for disgorgement and prejudgment interest in the amount of \$2,512,058.39. In addition,

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the court imposed a civil penalty on Locust Offshore Management, LLC in the amount of \$2,512,058.39, and a civil penalty on Andrey C. Hicks in the amount of \$2,512,058.39.

On April 3, 2012, the Office of the Whistleblower posted Notice of Covered Action 2012-27 for the Locust Matter. As noted above, all four claimants filed timely whistleblower award claims.

II. Claimant #1 Claimant #2 and Claimant #3 Respective Claims are Approved.

On December 19, 2012, the CRS issued a Preliminary Determination recommending that Claimant #1, Claimant #2 and Claimant #3 each receive a whistleblower award because each of them voluntarily provided original information to the Commission that led to the successful enforcement of the Locust Matter pursuant to Section 21F(b)(1) of the Exchange Act, 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a). Further, the CRS recommended that each such award be set in the amount of 5% of monetary sanctions collected in the Locust Matter, after considering the factors set forth in Rule 21F-6, 17 C.F.R. § 240.21F-6, as they applied to each claimant.

Neither Claimant #1, Claimant #2 nor Claimant #3 filed a response contesting the Preliminary Determination. Upon due consideration under Rule 21F-10(f) and (h), 17 C.F.R. § 240.21F-10(f) and (h), their claims each are approved in the amount of 5%.

III. Claimant #4 Claim is Denied.

A. Background

In December 2011, Claimant #4 submitted a tip to the SEC about "securities fraud committed by many brokers/dealers/traders involved with naked shorting" of the securities of Redacted which, #4 alleged, had occurred as early as 2003 through 2005. Claimant #4 tip also noted that #4 had forwarded this same information to the Commission and that #4 had earlier sent written information about this fraud to staff in the Commission's Division of Enforcement and to Chairman Mary Schapiro on Redacted and again on Redacted. The Division of Enforcement determined that no further action would be taken on this Redacted tip because Claimant #4 information was vague or insubstantial.

In March and April 2012, Claimant #4 submitted two new tips regarding Redacted. The Division of Enforcement determined that no further action would be taken on these two tips.

None of Claimant #4 tips contained information on the Locust Matter, nor did they even mention the Locust Matter defendants. Further, the Commission's complaint in the Locust

Matter alleged that the defendants made misrepresentations when soliciting individuals to invest in a purported hedge fund controlled by defendants, and did not make any allegations concerning naked short selling, which was the subject of Claimant #4 tips.

On December 19, 2012, the CRS made a Preliminary Determination recommending that Claimant #4 claim should be denied. The Preliminary Determination explained that the information provided by Claimant #4 prior to July 21, 2010 was not "original information" because it was not submitted after July 21, 2010, the date that Section 21F was added to the Exchange Act by the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹ The Preliminary Determination further concluded that the information Claimant #4 provided after July 21, 2010 did not lead to the successful enforcement of the Locust Matter because it neither caused the Commission to open its investigation nor significantly contributed to the success of the enforcement action.

B. Claimant #4 Response to the Preliminary Determination

On February 19, 2013, Claimant #4 submitted a response contesting the Preliminary Determination pursuant to Rule 21F-10(e)(2). Rule 21F-10(e)(2) provides that a claimant seeking to contest a Preliminary Determination must submit a written response within 60 days that "sets forth the grounds for your objection to either the denial of an award or the proposed amount of an award." 17 C.F.R. § 240.21F-10(e)(2).

Claimant #4 response argues that #4 provided original information to the Commission alerting it to fraudulent activity allegedly conducted by Redacted and that this tip led the Commission to file suit against Redacted. Claimant #4 does not provide any information to show that #4 assisted or contributed to either the Commission's investigation or its successful enforcement action in the Locust Matter. Rather, #4 states that #4 is using Redacted as an "example of illegal naked shorting" and that this makes #4 "the 'original informant' to the Commission about security violations found in 2012-27, Exchange Act Section 10(b), and Rule 10(b)-5 thereunder" (internal quotation in original).

C. Analysis

To be considered for an award under Section 21F, a whistleblower must voluntarily provide the Commission with "original information" that leads to the successful enforcement of a covered judicial or administrative action or related action. 15 U.S.C. § 78u-6(b)(1). Under Rule 21F-4(b)(1)(iv), information will be considered "original information" only if it was provided to the Commission for the first time after July 21, 2010. 17 C.F.R. § 240.21F-4(b)(1)(iv). Further, as relevant here, original information "leads to" a successful enforcement action if either: (i) the

1 Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1841 (2010).

original information caused the staff to open an investigation, and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information; or (ii) the conduct was already under investigation, and the original information significantly contributed to the success of the action. Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

The information Claimant #4 provided prior to July 21, 2010, including the information re-submitted after July 21, 2010, is not "original information" and therefore does not provide a basis for a whistleblower award. With regard to the information Claimant #4 submitted after July 21, 2010, Claimant #4 fails to articulate any connection or nexus between this information and either the opening of the investigation or the success of the enforcement action in the Locust Matter. Further, we find no evidence whatsoever after our review of the record that Claimant #4 information was used in either the investigation or litigation of the Locust Matter; indeed, the record indicates that Claimant #4 information was not used in any Commission investigation or enforcement action. Accordingly, the information Claimant #4 provided after July 21, 2010 did not lead to a successful Commission enforcement action and therefore does not provide the basis for a whistleblower award. For these reasons, #4 claim is denied.

IV. Conclusion

Accordingly, it is ORDERED that Claimant #1, Claimant #2 and Claimant #3 each shall receive an award of 5% of the monetary sanctions collected in the above-referenced covered action, including any monetary sanctions collected after the date of this Order; and it is further

ORDERED that Claimant #4 whistleblower award claim be, and hereby is, denied.

By the Commission.

Elizabeth M. Murphy
Secretary