

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 71849 / April 3, 2014

WHISTLEBLOWER AWARD PROCEEDING

File No. 2014-3

In the Matter of the Claims for Awards

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

Two individuals Claimant #1 and Claimant #2 filed separate 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 Redacted. #1 claim was timely filed; #2 claim, however, was untimely because #1 did not file it within ninety (90) calendar days of the date of the Notice of Covered Action, as required by Rule 21F-10(b) of the Exchange Act.

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that both Redacted claims be denied, albeit on separate grounds. Both claimants have now filed responses contesting their respective Preliminary Determination.

For the reasons set forth below, Redacted claims are denied.

I. Enforcement Proceeding and Notice of Covered Action

On Redacted the Commission Redacted
Redacted

Redacted The Commission found Redacted

Redacted

Redacted

Among other relief, the Commission ordered

Redacted

Redacted

On Redacted the Office of the Whistleblower posted Notice of Covered Action
Redacted for the Redacted Matter.

II. Claimant #1 Claim is Denied

A. Background

Effective July 21, 2010, Congress enacted Section 21F of the Exchange Act, “Securities Whistleblower Incentives and Protection,” as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).¹ Prior to the enactment of Dodd-Frank, #1 communicated with the Commission and its staff

Redacted

Redacted

Redacted Prior to Dodd-Frank, #1 also corresponded with the staff of the
Commission

Redacted

Redacted

After the enactment of Dodd-Frank, according to #1 whistleblower award claim on
Form WB-APP, #1 communicated

Redacted

Redacted

B. The Preliminary Determination

On Redacted the CRS issued a Preliminary Determination recommending that
#1 claim be denied. The Preliminary Determination concluded that the information provided
by #1 prior to July 21, 2010 was not “original information” because it was not submitted after
that date, as required by Rule 21F-4(b)(1)(iv) under the Exchange Act. The Preliminary
Determination further concluded that the information provided by #1 after July 21, 2010 did not

¹ Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1841 (July 21, 2010).

Redacted

lead to a successful action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder.

C. Claimant #1 **Response to the Preliminary Determination**

On Redacted #1 submitted a response contesting the Preliminary Determination pursuant to Rule 21F-10(e)(2) under the Exchange Act.³

In #1 response to the Preliminary Determination, #1 asserts that information #1 provided to the Commission resulted in

Redacted

Redacted

#1 argues that #1 was the first to identify and

Redacted

As a result of all of these circumstances, #1 asserts that the information #1 provided also led to the Commission's enforcement action against Redacted

D. 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 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).

³ Rule 21F-10(e)(2) provides that a claimant seeking to contest a Preliminary Determination must submit a written response within 60 days that "set[s] 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).

Redacted

Any information #1 provided prior to July 21, 2010 is not “original information” under Rule 21F-4(b)(1)(iv) and therefore does not provide a basis for a whistleblower award. Indeed, #1 response to the Preliminary Determination fails to raise any explicit challenge to that rule.⁵

With regard to any information #1 submitted after Redacted such information Redacted Matter. Accordingly, #1 communications on Redacted did not lead to successful enforcement of the Redacted Matter.

As noted above, #1 asserts in #1 form WB-APP that #1 identified violations

Redacted

Even assuming that #1 did in fact share “original information” with the edact this would not entitle #1 to an award because it did not lead to the successful enforcement of the Redacted Matter.⁷ #1 has not provided any information to support the conclusion that #1 communicated anything Redacted that was reasonably related to the Redacted Matter. Moreover, Redacted confirmed that Redacted did not open an investigation into #1 allegations and had no connection to the Redacted Matter.

Redacted

For all of these reasons, #1 claim is denied.

⁵ We recently rejected arguments by another whistleblower award claimant that Rule 21F-4(b)(1)(iv) was contrary to Dodd-Frank and impermissibly retroactive. See *In the Matter of the Claim for Award in connection with SEC v. Advanced Technologies Group Ltd., et al.*, 10-cv-4868 (S.D.N.Y. 2011), Notice of Covered Action 2011-4, Exchange Act Release No. 70772 (October 30, 2013).

⁶ To the extent that #1 repeated assertions made to the Enforcement staff prior to the enactment of Dodd-Frank concerning Redacted #1 communication with --- did not satisfy the requirement of Rule 21F-4(b)(1)(iv) that “original information” be provided to the Commission “for the first time after July 21, 2010.”

⁷ Further, #1 submission states that #1 ent Redacted Although the OWB has a general practice of taking reasonable steps to develop the record concerning a whistleblower’s involvement in assisting Commission staff with investigations and litigation, the ultimate responsibility rests with an award claimant to specifically identify those correspondence or communications in which the purported “original information” was provided to the Commission. This is particularly important where, as here, the claimant does not identify many of the persons with whom #1 corresponded or provide copies of the correspondence. Thus, to the extent that #1 seeks to rely on any of these unspecified communications or correspondence, we deem #1 to have waived any argument that the information contained therein constituted original information. Notably, for persons submitting information after the effective date of the whistleblower rules, Rule 21F-2(a) requires that a whistleblower’s original information must be submitted in accordance with the specified procedures in Rule 21F-9(a) – e.g., via a completed form TCR that is mailed or faxed to the Commission.

8 Redacted Indeed, the primary Enforcement attorney who worked on the Redacted Matter has never heard of #1

III. Claimant #2 Claim is Denied

Although award claims for the Notice of Covered Action Redacted were due no later than November 10, 2011, #2 submitted #1 WB-APP on Redacted

On Redacted the CRS made a Preliminary Determination recommending that #2 claim be denied. The Preliminary Determination concluded that the claimant did not submit a Form WB-APP for Notice of Covered Action Redacted within ninety (90) calendar days of the date of the respective Notice of Covered Action as required by Rule 21F-10(b) of the Exchange Act.

On Redacted #2 submitted a response contesting the Preliminary Determination pursuant to Rule 21F-10(e)(2) under the Exchange Act. In #2 response, #2 did not contest the fact that Redacted WB-APP was untimely; instead, #2 asserted that the Commission lost an earlier filed, timely WB-APP.

We reject #2 contention that #2 filed an earlier, timely application. We believe that had #2 in fact filed an earlier claim, #2 would have at least cross-referenced it in #2 Redacted award claim; yet the Redacted award claim makes no reference whatsoever to an earlier filed claim. Indeed, not until after #2 received the CRS's Preliminary Determination denying Redacted award claim as untimely did #2 first mention the alleged earlier filed application. At no point has #2 offered any evidence of this earlier filed application – neither a photocopy of it, a returned receipt, email correspondence regarding it, etc. Finally, an exhaustive review of our records reveals no such earlier filed award claim.

Further undercutting #2 contention is the fact that #2 has at no point offered an explanation for why, if #2 had in fact filed an earlier award application, #2 subsequently filed the Redacted application. We believe that a reasonable person under the circumstances that #2 alleges here would have offered an explanation for what motivated the filing of the second award application were that what actually occurred; the absence of an explanation from #2 throughout this proceeding thus, in our view, leads us to further doubt his version of events.

For these reasons, we reject #2 contention that #2 filed a timely award claim.⁹

⁹ In any event, we note that the information submitted by #2 to the Commission did not lead to the successful enforcement of the Redacted Matter because, as discussed above, Redacted

IV. Conclusion

Accordingly, upon due consideration under Rule 21F-10(h), 17 C.F.R. § 240.21F-10(h), it is hereby ORDERED that #1 and #2 whistleblower award claims are denied.

By the Commission.

Jill M. Peterson
Assistant Secretary