

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 95753/ September 13, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2022-84

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 award application 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 Commission instituted settled cease-and-desist proceedings against ^{Redacted} (“the Company”), in which the Company agreed to pay ^{Redacted}

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Company made nearly

According to the Commission's Order, the
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On Redacted, the Office of the Whistleblower posted the Notice for the 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 Determination² recommending that Claimant's 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")³ and Rules 21F-3(a)(3) and 21F-4(c) thereunder.⁴ In reaching this recommendation, the CRS considered that the Enforcement staff responsible for the Covered Action investigation did not receive any information from Claimant, nor did staff communicate with Claimant; therefore, Claimant provided no information that helped advance the investigation or the resulting enforcement action.

C. Claimant's Response to the Preliminary Determination

Claimant submitted a timely written response contesting the Preliminary Determination.⁵ Claimant principally argues that Claimant submitted information in the form of a letter dated Redacted

Redacted

² See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

³ 15 U.S.C. § 78u-6(b)(1).

⁴ 17 C.F.R. §§ 240.21F-3(a)(3) and 4(c).

⁵ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

Letter”), a copy of which Claimant provided with his/her request for reconsideration, and that this letter prompted the opening of the Covered Action investigation. Claimant also complains that the CRS issued the Preliminary Determination the same day that the Enforcement attorney responsible for the Covered Action signed the declaration, and as such, the CRS could not have had enough time to review all the relevant aspects of the record. Finally, Claimant asserts that Claimant did not receive a copy of the dozens of tips that Claimant sent to the Commission over the years in connection with his/her request for the record.

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.⁶ As relevant here, original information leads 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; or (ii) the conduct was already under examination or investigation, and the original information significantly contributed to the success of the action.⁷

We find that the information Claimant provided did not lead to the successful enforcement of the Covered Action. According to the declaration provided by the Enforcement staff responsible for the Covered Action, which we credit, Enforcement staff opened a Matter Under Inquiry (“MUI”) on ^{Redacted} concerning possible violations of ^{Redacted}. The MUI was opened in response to a self-report about the possible violations made by outside counsel for the Company. The MUI was later converted to an investigation on ^{Redacted}.

Claimant contends that his/her ^{Redacted} Letter prompted the opening of the investigation.⁸ However, the record reflects that the MUI, which marked the beginning of

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

⁷ See Exchange Act Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

⁸ Staff in the Office of the Whistleblower (“OWB”) provided a declaration confirming that the ^{***} Letter was not in the Commission’s TCR system, an intra-agency database that contains information provided to the Commission regarding potential securities law violations. OWB staff conducted additional research with respect to other Commission databases, and could not locate any evidence that the ^{Redacted} Letter was received by the Commission in or around ^{***}. Further, the copy of the ^{Redacted} Letter that Claimant provided with his/her request for

the Enforcement staff's inquiry into the Company, had been opened almost three months before Claimant purportedly submitted his/her ^{Redacted} Letter. Further, the MUI was opened in response to the Company's self-report, and not because of Claimant's information. As such, Claimant cannot satisfy Rule 21F-4(c)(1).

Nor does Claimant satisfy Rule 21F-4(c)(2). Enforcement staff responsible for the Covered Action affirmed that the investigative team never received any information provided by Claimant; nor did responsible Enforcement staff have any communication with Claimant before or during the investigation. Further, with respect to the ^{***} tips that Claimant submitted to the Commission, all but one was closed with a disposition of "No Further Action" or "NFA"⁹ and not forwarded to Enforcement staff in connection with any matter. The single tip that was not designated for No Further Action was provided to other Enforcement staff in connection with a matter unrelated to the Covered Action.

Claimant's contention that the CRS could not have had enough time to review the record before issuing the Preliminary Determination is without merit. That the Enforcement attorney signed the declaration the same day that the Preliminary Determination was issued does not mean that the CRS did not adequately consider the underlying record, nor does it mean that the CRS did not have opportunity to review the declaration prior to the issuance of the Preliminary Determination. To the contrary, the staff declaration succinctly and conclusively shows that Claimant could not have provided information that led to the success of the Covered Action because Enforcement staff responsible for the investigation received no information from, and had no communication with, Claimant.

Finally, contrary to Claimant's contention, the record reflects that Claimant received the record materials underlying the CRS's Preliminary Determination recommending that Claimant's award claim be denied. Claimant asked for the record and also, at around the same time, submitted a request to the Commission's Freedom of Information Act Office ("FOIA request") for a copy of the tips Claimant submitted to the

reconsideration was not accompanied by a Form TCR. As such, even assuming the Commission received the ^{Redacted} Letter, Claimant did not satisfy Exchange Act Rules 21F-9(a) and (b), which require claimants to provide their information on Form TCR or through the Commission's on-line TCR portal, and sign the requisite whistleblower declaration. Lastly, contrary to Claimant's assertions, the Commission's TCR ^{***} portal was established prior to ^{***} and was able to accept submissions from outside the U.S. in ^{***}, and the rules requiring submission of a Form TCR were established as part of the Commission's whistleblower rules adopted in 2011.

⁹ An NFA disposition indicates that the staff will not take any additional steps with respect to a TCR unless subsequent information leads staff to reopen or reexamine that TCR.

Commission. Through intra-agency coordination, Claimant was provided not only with the Enforcement staff declaration but also copies of the voluminous TCRs and attachments that Claimant had submitted to the Commission over the years.¹⁰

IV. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

¹⁰ In providing the record materials to Claimant, OWB included an exhibit list that incorrectly indicated a "Tip submitted on ^{Redacted}" was part of the record. As reflected in a declaration provided by OWB, there is no evidence that the Commission received the ^{Redacted} Letter in or around ^{***}, much less that it was submitted on Form TCR.