

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 96642 / January 12, 2023
WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-24

In the Matter of the Claims for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that Redacted (“Claimant 1”) receive a whistleblower award equal to *** percent (** %), of the monetary sanctions collected or to be collected in the above-referenced Covered Action, and that Redacted (“Claimant 2,” and collectively with Claimant 1, “Claimants”) receive a whistleblower award equal to Redacted percent (** %) of the monetary sanctions collected or to be collected in the above-referenced Covered Action. Claimant 1 filed a timely response contesting the Preliminary Determinations (the “Response”), and Claimant 2 did not contest the Preliminary Determinations.¹ After a review of Claimant 1’s Response, the CRS determined on reconsideration that a *** percent (** %) award to Claimant 1 and a Redacted percent (** %) award to Claimant 2 is warranted. For the reasons discussed below, the CRS’s recommendation is adopted. Based upon current collections, the Commission anticipates the combined payment to Claimants will be approximately \$300,000.

¹ The CRS also recommended the denial of the award applications from two other claimants, neither of whom contested the Preliminary Determinations. Accordingly, the Preliminary Determinations with respect to those award claims became the Final Orders of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. §240.21F-10(f).

I. Background

A. The Covered Action

On ^{Redacted} the Commission instituted cease and desist proceedings against ^{Redacted} (the “Company,” and together with ^{Redacted} the “Respondents”). The Commission alleged that the Company ^{Redacted} the Commission alleged that the Company ^{Redacted} The Commission charged the Company with violating ^{Redacted} Respondents agreed to pay a civil penalty ^{Redacted}

B. The Preliminary Determinations

The CRS issued Preliminary Determinations³ recommending that: (1) Claimant 1 receive an award of ^{**}% of the monetary sanctions collected in the Covered Action; and (2) Claimant 2 receive an award of ^{***}% of the monetary sanctions collected in the Covered Action. The CRS preliminarily concluded that while Claimant 1’s information caused the staff to open the investigation that led to the Covered Action (the “Investigation”) and that Claimant 1 provided ongoing assistance, Claimant 1 was aware of misconduct for more than two years before Claimant 1 contacted the Commission. The CRS also considered that Claimant 1 offered to withhold Claimant 1’s information from the Commission in exchange for a settlement from the Company, contrary to the law enforcement interest of the Commission, the goals of the whistleblower program, and the interests of investors.

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

³ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

The CRS preliminarily determined that Claimant 2's information caused the staff to expand an existing investigation to address conduct that was not under review by the staff. Claimant 2 was also interviewed by the staff and corroborated statements made by Claimant 1.

C. Claimant 1's Response to the Preliminary Determinations

Claimant 1 submitted a timely written response (the "Response") contesting Claimant 1's award of **% in the Preliminary Determinations.⁴ Claimant 1 principally contends, among other things, that he/she did not delay in reporting because he/she had only been at the Company for several months when he/she first learned of potential concerns. Claimant 1 discussed his/her concerns with supervisors and made formal inquiries within the Company within months of learning of the potential misconduct. Claimant 1 also contends that he/she "spent time in the next two years to figure out what it really means and finally confirmed the fraud information in ^{Redacted}." According to Claimant 1, he/she was also not aware of the whistleblower program until a few months later in ^{Redacted}. Claimant 1's tip was submitted to the Commission one month later.

Claimant 1 argues that consideration of his/her requested settlement with Company is inappropriate because his/her settlement amounted to an internal report. Claimant 1 also claims that he/she sent the settlement offer to Company in the hopes that the company would "correct the violation themselves timely and settle the case." Further, Claimant 1 states that settlements are not contrary to the law enforcement interest of the Commission and do not trigger any of the negative factors under Rule 21F-6(b). Claimant 1 also argues that the "law enforcement interest of the Commission" factor must not be used to decrease his/her award since the Whistleblower Rules identify it is a factor considered solely for purposes of increasing awards.

Claimant 1 also claims that he/she provided valuable information to the Commission that caused the staff to open the investigation, and that he/she played a critical role in causing the other claimants to come forward to the Commission, which warrants an increase in the award under Rule 21F-6(a)(2)(iv). Claimant 1 also claimed that he/she suffered hardships while working at the Company and attempting to report information. Lastly, Claimant 1 argues that policy considerations warrant a larger award because his/her attempts to report and correct the misconduct served the interests of investors and the public.

II. Analysis

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⁴ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

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A. Claimant 1

The record demonstrates that Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action. Accordingly, Claimant 1 qualifies for a whistleblower award. “[C]onsider[ing] all relevant facts” and circumstances, as well as our review of Claimant 1’s Response, we find that an award of *** percent (** %) to Claimant 1 is appropriate.

The arguments for a larger award raised in Claimant 1’s Response are not persuasive.¹⁰ The record shows that Claimant 1, through counsel, attempted to trade his/her whistleblower tip

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¹⁰ While the Preliminary Determinations noted that Claimant 1 was aware of the underlying misconduct for approximately two years, the CRS did not recommend concluding that Claimant 1 engaged in unreasonable

for a cash settlement from the Company and as part of that exchange offered to withhold that tip from the Commission.¹¹ We find this behavior contrary to our law enforcement interest,¹² the goals of the whistleblower program, and the interests of investors. As we said when we adopted the whistleblower rules in 2011, “the Commission’s primary goal, consistent with the congressional intent behind Section 21F [of the Securities Exchange Act of 1934], is to encourage the submission of high-quality information to facilitate the effectiveness and efficiency of the Commission’s enforcement program.”¹³ Our law enforcement interest looks to “(i) [t]he degree to which an award enhances the Commission’s ability to enforce the Federal securities laws and protect investors; and (ii) [t]he degree to which an award encourages the submission of high quality information from whistleblowers by appropriately rewarding whistleblowers’ submission of significant information and assistance”¹⁴ Claimant 1’s behavior is contrary to this goal and the law enforcement interest, and encourages potential whistleblowers to use their information about violations of the securities laws as leverage for their own personal gain.¹⁵

Accordingly, we find that a ** % award is warranted for Claimant 1.¹⁶

reporting delay that warrants a decrease in the award based upon the facts and circumstances of this matter. In any event, the Commission does not base its conclusions in this Final Order upon any finding of unreasoning reporting delay.

¹¹ Claimant 1’s argument that his/her settlement letter amounts to an internal report is not on point. The whistleblower program encourages internal reporting so that companies might address such concerns, but not at the cost of a whistleblower’s agreement to remain silent.

¹² Contrary to Claimant 1’s argument, the CRS is not considering the “law enforcement interest of the Commission” as a negative factor; rather the Commission is exercising its discretion to determine the appropriate award by considering this and other positive factors laid out in Rule 21F-6 and weighing them relative to the positive factors attributable to the other meritorious claimant.

¹³ *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34323 (June 13, 2011).

¹⁴ *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34366 (June 13, 2011).

¹⁵ Claimant 1 argues that settlements with an employer do not implicate the law enforcement interest. We do not agree with this categorical statement. As in the case of Claimant 1, if such a settlement implicates potential violations of the federal securities laws, and the employee offers to withhold information about such violations from the Commission, then the Commission’s law enforcement interest is directly affected.

¹⁶ For the reasons already stated above, Claimant 1’s other argument are not persuasive. While Claimant 1 may have submitted information to the Commission before Claimant 2, endured some hardships, caused the staff to open the Investigation and potentially convinced other whistleblowers to report misconduct, Claimant 1 still attempted to use his/her tip as a bargaining chip for a settlement with the Company. Similarly, policy considerations here do not warrant a larger award for Claimant 1, but warrant emphasizing that the whistleblower program does not condone a claimant attempting to trade a whistleblower tip for a monetary payment from the company allegedly engaged in the misconduct.

B. Claimant 2

Claimant 2 did not contest the Preliminary Determinations. The record demonstrates that Claimant 2 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action. Accordingly, Claimant 2 qualifies for a whistleblower award. Based on the facts and circumstances here, we find that an award of ^{Redacted} percent (^{***} %) is appropriate. Claimant 2 provided new information that significantly contributed to the success of the Covered Action and caused the staff to expand its existing investigation to address different conduct not previously under review. Claimant 2 was also interviewed by the staff and the Commission's charges in the Covered Action were based in part on the information provided by Claimant 2.

III. Conclusion

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award equal to ^{***} percent (^{**} %) of the monetary sanctions collected in the Covered Action, and that Claimant 2 receive an award equal to ^{Redacted} percent (^{**} %) of the monetary sanctions collected in the Covered Action.

By the Commission.

Vanessa A. Countryman
Secretary