

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 77037 / February 2, 2016

WHISTLEBLOWER AWARD PROCEEDING

File No. 2016-3

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In the Matter of the Claim for Award

in connection with

*In the Matter of Fiduciary Asset Management, LLC,*  
File No. 3-15150

Notice of Covered Action 2013-4

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

On June 5, 2015, the Claims Review Staff (“CRS”) issued a Preliminary Determination preliminarily denying a claim for award submitted by <sup>Redacted</sup> (“Claimant”) in connection with Notice of Covered Action 2013-4 (“Covered Action”). The CRS found that Claimant failed to submit the claim for award within ninety (90) days of the Notice of Covered Action, as required under Rule 21F-10(a) of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>1</sup> The CRS also found that Claimant was not a “whistleblower” under Rule 21F-2(a)(1) of the Exchange Act with respect to the Covered Action because Claimant did not provide the Commission with information relating to a possible violation of the federal securities laws,<sup>2</sup> and failed to submit information in the form and manner that is required under Rules 21F-2(a)(2), 21F-8(a) and 21F-9(a) & (b) of the Exchange Act.<sup>3</sup>

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<sup>1</sup> Under Exchange Act Rule 21F-10(a), “[w]henver a Commission action results in monetary sanctions totaling more than \$1,000,000, the Office of the Whistleblower will cause to be published on the Commission’s website a ‘Notice of Covered Action’ . . . A claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred.”).

<sup>2</sup> Exchange Act Rule 21F-2(a)(1) defines “whistleblower” as an individual who, alone or jointly with others, provides the Commission with information pursuant to the Commission’s procedures and the information “relates to a possible violation of the federal securities laws . . . that has occurred, is ongoing, or is about to occur.”

<sup>3</sup> For purposes of the award program, whistleblowers are required to submit their information about a possible securities law violation through the Commission’s online system, or by mailing or faxing a Form TCR, and to

On November 10, 2015, Claimant filed a written response contesting the Preliminary Determination. In Claimant’s request for reconsideration, Claimant argued that [Redacted] submitted an award claim within the 90-day deadline, but did not identify the date of when [Redacted] submitted the application and did not otherwise include any materials supporting [Redacted] contention that the award claim was timely made. Claimant’s request for reconsideration did not address the second, independent ground for the denial of [Redacted] claim—that [Redacted] is not a “whistleblower” because [Redacted] failed to provide information to the Commission of a possible violation of the federal securities laws. Having considered the record, including Claimant’s response to the Preliminary Determination, we are denying Claimant’s award claim because (1) the application was untimely and (2) Claimant is not a “whistleblower” and did not submit information in accordance with the Commission’s procedural requirements.

The Notice for Covered Action 2013-4 was posted on the Commission’s website on January 3, 2013. The 90-day deadline for filing an award claim in connection with the Covered Action was April 4, 2013. Claimant submitted multiple applications on Form WB-APP in connection with the Covered Action, but the first application was faxed to the Office of the Whistleblower (“OWB”) on October 9, 2013, six months after the filing deadline.

Claimant’s request for reconsideration makes the blanket assertion that [Redacted] award application was timely because [Redacted] “strategically calculated the time frame to make sure [Claimant] was in the 90 [day] window of opportunity.” Claimant, however, does not identify when [Redacted] submitted the award claim, and provides no materials supporting [Redacted] argument that the application was timely.<sup>4</sup> We find that the record conclusively demonstrates that the Claimant did not timely submit [Redacted] award application.

We also find that Claimant is not a “whistleblower” with respect to the Covered Action, something which Claimant does not dispute in the reconsideration request.<sup>5</sup> According to Claimant’s award applications, Claimant submitted information to other federal agencies, but does not identify any information that [Redacted] provided to the Commission. A search of the

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declare under penalty of perjury that the information submitted is true and correct to the best of the individual’s knowledge and belief. *See* Exchange Act Rules 21F-9(a) & (b).

<sup>4</sup> Claimant also contends that [Redacted] “double verified” the deadline with OWB staff. But Claimant has offered no proof of this contention, and OWB’s records show that the first time Claimant called the whistleblower hotline was on October 29, 2013—more than three weeks after Claimant filed [Redacted] first, untimely award claim in connection with the Covered Action. We thus find that the record does not support Claimant’s contention that [Redacted] “double verified” the filing deadline with OWB staff. And in any event, the obligation was on Claimant to submit a timely application for award and [Redacted] failed to do this.

<sup>5</sup> In light of the fact that the Claimant failed to contest the Preliminary Determination that [Redacted] does not qualify as a whistleblower, we separately find that [Redacted] has waived that issue.

Commission's Tips, Complaints and Referrals ("TCR") system—the Commission's electronic database which records and stores information received from whistleblowers and others about potential securities law violations and records staff action taken with regard to tips, complaints, and referrals entered into the system—confirmed that Claimant did not submit a tip to the Commission in connection with the Covered Action or with respect to any other matter or investigation.

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

By the Commission.

Brent J. Fields  
Secretary