

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 78355 / July 19, 2016

WHISTLEBLOWER AWARD PROCEEDING

File No. 2016-14

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In the Matter of the Claims for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS**

The Commission received sixteen claims for award in connection with Notice of Covered Action Redacted (“Covered Action”).<sup>1</sup> On July 13, 2015, the Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that all sixteen award claims be denied because none of the Claimants’ information led to the successful enforcement of the Covered Action. *See* Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”); Rules 21F-3(a)(3) and 21F-4(c).<sup>2</sup> Three of the sixteen claimants, Claimant #13

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<sup>1</sup> The following sixteen individuals submitted claims for award in the Covered Action: Claimants  
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(collectively, “Claimants”).

<sup>2</sup> As relevant here, original information leads to the success of a covered action if it: (1) causes the Commission to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation, and the Commission brings a successful judicial or administrative action based in whole or in part on conduct that was the subject of the original information, under Rule 21F-4(c)(1) of the Exchange Act; or (2) the information significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

(“Claimant #13”), Claimant #11 (“Claimant #11”), and Claimant #9 (“Claimant #9”), submitted requests for reconsideration of the preliminary denial of their claims.<sup>3</sup>

For the reasons stated below, the claims submitted by Claimants #13, #11, and #9 are denied.

## I. Background

The Covered Action arose out of two separate investigations, one by Enforcement staff in the Commission’s Home Office and the other by Enforcement staff in the Denver Regional Office (“DRO”), into Redacted Redacted Home Office and DRO staff opened their investigations in Redacted in response to media reports and inquiries made by investigative staff, and not in response to any tip or complaint submitted by any of the Claimants.

In Redacted, DRO staff became aware of and began to investigate Redacted Redacted Redacted Redacted Redacted Information related to Redacted Redacted had been reported in the news media Redacted These media reports led DRO staff to shift the focus of its investigation entirely to Redacted Redacted

On Redacted the two investigations culminated in Redacted Redacted Redacted Redacted Redacted

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<sup>3</sup> The other thirteen claimants failed to submit a timely response contesting the Preliminary Determination. Accordingly, pursuant to Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f), the Preliminary Determination as to Claimants Claimants Claimants denying their claims for award has become the Final Order of the Commission.

<sup>4</sup> Redacted

## II. Claimant #13's Claim Is Denied

After careful consideration of the administrative record, including Claimant #13's written response, we deny Claimant #13's award application. We find that Claimant #13 is not entitled to an award because the record conclusively demonstrates that Claimant #13's information did not lead to successful enforcement of the Covered Action. *First*, the Home Office investigative staff never received any information from, and had no communication with, Claimant #13, and Claimant #13's Response fails to show otherwise. *Second*, although DRO staff received and reviewed Claimant #13's information, it was not used in and did not contribute to the investigation. The DRO's investigation was opened before DRO staff received Claimant #13's information. Further, DRO staff began to inquire into [Redacted] because of a [Redacted] reported in the media, not because of Claimant #13's information. Because Claimant #13's information focused on [Redacted] [Redacted] while the DRO's investigation shifted to focus on [Redacted] [Redacted] the DRO staff did not use Claimant #13's information in any way in their investigation. Finally, the charges brought by the Commission arising from the DRO's investigation related to [Redacted] [Redacted] [Redacted]

Although in the Response Claimant #13 identifies a number of interactions and communications [Redacted] concerning Claimant #13's information, Claimant #13 fails to identify any communications with Enforcement staff responsible for the underlying investigations that led to the Covered Action. Whether Claimant #13's information [Redacted] [Redacted] has no bearing on whether Claimant #13's information led to the success of this particular Covered Action.

Finally, Claimant #13 argues that Claimant #13 should have had the opportunity to see and respond to the record, which included declarations by the relevant investigative staff, before the CRS issued its preliminary denial of Claimant #13's claim. Claimant #13 had the opportunity to submit whatever information or supporting documentation Claimant #13 thought relevant to the award determination when Claimant #13 submitted the application for award on Form WB-APP. Indeed, Claimant #13's award application was voluminous and attached several exhibits. Furthermore, Claimant #13 received a copy of all the materials that provided the basis for the CRS's preliminary denial of Claimant #13's claim, and had the opportunity to submit whatever factual or legal arguments Claimant #13 believed relevant in connection with the request for reconsideration. But nothing in Claimant #13's Response shows that Claimant #13's information caused staff to open the investigations, caused staff to inquire into different conduct, or significantly contributed to the success of the Covered Action.

Because Claimant #13's information did not lead to the successful enforcement of the Covered Action, Claimant #13's claim should be, and hereby is, denied.

### **III. Claimant #11's Claim Is Denied**

After careful consideration of the administrative record, including Claimant #11's written response, we deny Claimant #11's award application. We find that Claimant #11 is not entitled to an award because the record conclusively demonstrates that Claimant #11's information did not lead to successful enforcement of the Covered Action.

Claimant #11 bases the claim for award on a tip Claimant #11 submitted to the Commission in Redacted Claimant #11's tip was forwarded to Enforcement staff in the Los Angeles Regional Office ("LARO") in connection with an investigation that was separate from and unrelated to the investigations that led to the Covered Action. LARO Enforcement staff closed Claimant #11's tip with a disposition of no further action (or "NFA"),<sup>5</sup> and the tip was not forwarded to Enforcement staff responsible for the investigations that led to the Covered Action. Both Home Office and DRO Enforcement staff confirmed that they do not know Claimant #11, had no communications with Claimant #11, and did not receive any information from Claimant #11, before or during the course of their investigations.

In the Response, Claimant #11 fails to show how the information provided by Claimant #11 led to the successful enforcement of the Covered Action. Rather, Claimant #11 argues that the record is insufficient because it does not include materials from the underlying investigations and that additional declarations from individuals both inside and outside of the Commission are necessary to show whether Claimant #11's information was used in the Covered Action.

Claimant #11's argument that Claimant #11 should have received Enforcement staff's investigative files, in connection with Claimant #11's request for the record, is without merit. Exchange Act Rule 21F-12(a) specifically identifies those materials that may comprise the record upon which the CRS's preliminary determination is based; they do not include Enforcement staff's investigative files. Rule 21F-12(b) specifically states that claimants are not entitled to obtain from the Commission any materials other than those listed in Rule 21F-12(a).

Furthermore, based on our careful review of the record, we disagree with Claimant #11's argument that additional declarations are necessary to show that Claimant #11's information did

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<sup>5</sup> When a tip is NFA'd by Enforcement investigative staff, this means both that the tip was deemed to not be useful to the investigation and that Enforcement staff will not take any additional investigative steps in connection with the tip unless subsequent information leads to a reopening or reexamination of that tip.

not lead to successful enforcement. The administrative record demonstrates that Claimant #11's tip was not referred to either of the teams conducting the investigations that led to the Covered Action. The record, which includes declarations from the Enforcement staff responsible for the underlying investigations, also demonstrates that the investigative teams never received any information from, or had any communications with, Claimant #11. We believe that the current record therefore provides us with a sufficient basis to determine that Claimant #11's information did not lead to the success of the Covered Action.<sup>6</sup>

Finally, Claimant #11's Response appears to concede that Claimant #11's information did not relate specifically to the charges brought in the Covered Action, instead arguing that Claimant #11's information globally related to Redacted Redacted. The whistleblower rules require, however, that a claimant's information lead to the successful enforcement of the particular Covered Action. That Claimant #11's information purportedly helped advance Redacted does not mean that Claimant #11's information had any impact on the Covered Action. The record conclusively demonstrates that Claimant #11's information was not used in connection with the underlying investigations, as neither the Home Office nor the DRO investigative staff received any information from Claimant #11 before or during the course of their investigations. As such, Claimant #11's claim for award should be, and hereby is, denied.

#### **IV. Claimant #9's Claim Is Denied**

After careful consideration of the administrative record, including Claimant #9's written response, we deny Claimant #9's award application. We find that Claimant #9 is not entitled to an award because the record conclusively demonstrates that Claimant #9's information did not lead to successful enforcement of the Covered Action.

Claimant #9 submitted information to the Commission in Redacted and again in Redacted alleging Redacted Redacted. Claimant #9's information was forwarded to Enforcement staff in the Atlanta Regional Office ("ARO") in connection with an investigation that was separate from and unrelated to the Home Office's and DRO's investigations, and the tip was not forwarded to Enforcement staff responsible for the investigations that led to the Covered Action. Both Home Office and DRO staff responsible for the underlying investigations that led to the Covered Action confirmed that they do not know Claimant #9, had no communications with Claimant #9, and received no information from Claimant #9 before or during the course of their investigations.

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<sup>6</sup> We note that obtaining declarations from other individuals who had no direct responsibility for the investigations leading to the Covered Action, or for the prosecution of the Covered Action, would be a futile effort, as such individuals would not be in a position to state whether Claimant #11's information was used in the investigations, let alone whether the information "led to" the success of the Covered Action.

Claimant #9's Response contesting the Preliminary Determination failed to offer any evidence to the contrary. Rather, Claimant #9 contends that we should contact a former Commission Chair and former Commission staff to understand how the information Claimant #9 submitted to the Commission was used. We decline to do so, as the record clearly shows that Claimant #9's information was forwarded to Enforcement staff in ARO in connection with a separate and unrelated investigation, and not forwarded to investigative staff responsible for the underlying investigations that led to the Covered Action. Moreover, Home Office and DRO Enforcement staff responsible for the underlying investigations confirmed that they did not receive any information from Claimant #9 before or during the course of their investigations.

Claimant #9 also argues that the whistleblower rules do not require an on-going relationship between Enforcement staff and the whistleblower in order for the whistleblower to receive an award. While we do not disagree, we think it is plain that the responsible Enforcement staff must have, at the very least, received the whistleblower's information in order for the information to have contributed to the success of the enforcement action. Because Claimant #9's information did not lead to the successful enforcement of the Covered Action, Claimant #9's claim for award should be, and hereby is, denied.

#### **V. Conclusion**

Accordingly, it is ORDERED that Claimant #13's, Claimant #11's, and Claimant #9's whistleblower award claims are denied.

By the Commission.

Brent J. Fields  
Secretary