

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 87288 / October 11, 2019

WHISTLEBLOWER AWARD PROCEEDING

File No. 2019-12

In the Matter of the Claim for Award

in connection with

Notice of Covered Action: Redacted

Redacted

Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

Redacted (“Claimant”) seeks a whistleblower award pursuant to Section 21F of the Securities Exchange Act of 1934 (“Exchange Act”), and the rules thereunder, in connection with the above-referenced Commission enforcement matter (“Covered Action”). For the reasons set forth below, we deny Claimant’s claim.

A. Background

In Redacted Claimant submitted two largely-duplicative tips to the Commission concerning Redacted (“Firm”). In Redacted, staff of the Commission’s Division of Enforcement (“Enforcement”) reviewed the tips and concluded that they did not appear to allege a violation of applicable rules or regulations, and that they therefore did not warrant the opening of an enforcement investigation.¹

¹ Enforcement staff also reviewed a substantively-identical *** complaint Claimant submitted to the Financial Regulatory Authority (“FINRA”). Staff concluded that the conduct alleged in the tip to FINRA also did not amount to a violation of the securities laws. Thereafter, in Redacted Claimant submitted a third, substantively-identical tip directly to the Commission.

In ^{Redacted} through independently developed leads and a referral from the Commission’s Office of Compliance Inspections and Examinations (“OCIE”), Enforcement staff opened an investigation concerning potential misconduct by the Firm that was unrelated to the conduct alleged in Claimant’s tips. On ^{Redacted} after a ^{Redacted} investigation, the Commission filed the Covered Action against the Firm.

On ^{Redacted} the Office of the Whistleblower (“OWB”) posted a Notice of Covered Action, which commenced the 90-day period for interested individuals to submit applications for award in connection with the Covered Action. *See* Exchange Act Rule 21F-10(b), 17C.F.R. § 240.21F-10(b). Claimant submitted a timely award application based on Claimant’s aforementioned tips.

After reviewing the award application and the relevant record compiled by OWB, the Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that we deny Claimant’s award application. The Preliminary Determination stated that none of the information Claimant provided to FINRA or directly to the Commission led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Exchange Act Rules 21F-3(a)(3), 17 C.F.R. § 240.21F-3(a)(3), and 21F-4(c), 17 C.F.R. §240.21F-4(c).² In reaching this preliminary determination, the CRS relied on the declarations of one of the principal attorneys assigned to the investigation and the exam manager assigned to the examination that prompted OCIE’s referral to Enforcement staff. Together, the declarations demonstrated that Claimant’s information played no role in the decision to open an investigation or commence an examination of the Firm, and that it did not otherwise contribute to the success of the Covered Action. The CRS also noted in the Preliminary Determination that the information submitted by Claimant did not relate to the claims asserted by the Commission in the Covered Action.

Claimant filed a timely written response (“Response”) to the Preliminary Determination in which Claimant appears to argue that Claimant submitted information to the Commission that the CRS did not consider in reaching its Preliminary Determination.

B. Analysis

After careful consideration of the administrative record, including Claimant’s Response, we have determined to deny Claimant’s award application. In the Response, Claimant contends that Claimant alleged misconduct related to the Firm’s pricing of newly-issued municipal bonds, the gravamen of the Covered Action. However, Claimant has not supported this contention with references to any tips Claimant submitted concerning newly-issued municipal securities, nor are we aware of any such tips. Moreover, we would not grant

² As relevant here, 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; or (2) significantly contributes to the success of a covered action based on conduct that was already under examination or investigation by the Commission. *See* Exchange Act Rule 21F-4(c)(1) and (2), 17 C.F.R. §240.21F-4(c)(1) and (2).

Claimant's claim for a whistleblower award even if Claimant had identified such a tip, as we credit the sworn declarations of the Commission staff responsible for the investigation and examination of the Firm, which state that Claimant's information played no role in staff's decisions to open the investigation or commence the examination that led to the Covered Action, and that it did not otherwise contribute to the success of the Covered Action.³

In light of the foregoing, we deny Claimant's award claim in connection with the Covered Action.

By the Commission.

Eduardo A. Aleman
Deputy Secretary

³ To the extent Claimant contends that we should grant the award claim based on Claimant's tip that the Firm was ^{Redacted}, we find that meritless as well in light of the sworn declarations stating that Claimant's information was not used by Enforcement staff. We also note that (a) one of the declarations states that staff decided not to investigate the tip because the alleged conduct was not viewed as contrary to any law or regulation, and (b) the Covered Action did not include a charge relating to this alleged misconduct.