

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 92708 /August 19, 2021
WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-83

In the Matter of the Claim 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. The CRS also recommended the denial of the award application from Redacted (“Claimant 4”). Claimant 1 did not contest the Preliminary Determinations and Claimant 4 filed a timely response contesting the Preliminary Determinations.¹ For the reasons discussed below, the CRS’s recommendation is adopted with respect to both Claimant 1 and Claimant 4.²

¹ The CRS also recommended the denial of the award applications from Claimant 2 and Claimant 3, neither of whom contested the Preliminary Determinations. Accordingly, the Preliminary Determinations with respect to Claimant 2’s and Claimant 3’s 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).

² The CRS recommended the denial of a related action award to Claimant 4. Because Claimant 4 did not contest the preliminary denial of the related action award, the CRS’s preliminary determination as to the denial of the related action award became the final order of the Commission pursuant to Exchange Act Rule 21F-11(f); 17 C.F.R. § 240.21F-11(f).

I. Background

A. The Covered Action

On ^{Redacted} the Commission brought a civil action against ^{***} ^{Redacted} The Commission amended its complaint on ^{Redacted} (the “Amended Complaint”), adding defendants ^{Redacted} (collectively, the “Additional Defendants”). On ^{Redacted} the Court entered final judgment against ^{Redacted}

On ^{Redacted} the Office of the Whistleblower (“OWB”) posted the above-referenced Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.³ Claimants 1 and 4 filed timely whistleblower award claims.

B. The Preliminary Determinations

The CRS⁴ issued Preliminary Determinations⁵ recommending that: (1) Claimant 1 receive an award of ^{***} % of the monetary sanctions collected or to be collected in the Covered Action; and (2) the award claim of Claimant 4 in the Covered Action be denied. The CRS recommended that Claimant 4’s award claim be denied on the grounds that Claimant 4 did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. Claimant 4 provided information more than two years after Enforcement staff

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

⁴ Rule 21F-10(d) under the Exchange Act provides that the CRS will “evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in these rules.” 17 C.F.R. § 240.21F-10(d).

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

opened its investigation and approximately two months after the Commission filed the Covered Action in federal court. The CRS found that Enforcement staff responsible for the Covered Action did not rely upon the information provided by Claimant 4.

C. Claimant 4's Response to the Preliminary Determinations

Claimant 4 submitted a timely written response contesting the Preliminary Determinations.⁶ Claimant 4 contends that he/she first contacted the Commission in ^{Redacted} _{Redacted} and attached an email with Enforcement staff from that time. Claimant 4 argues that the information he/she provided to the Commission advanced the Enforcement staff's investigation because it helped the staff connect the Additional Defendants to the fraudulent scheme and the Additional Defendants were later added to the Amended Complaint.

II. Analysis

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.

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Claimant 1 provided new information to the staff that caused the staff to open

⁶ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

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a new investigation, and Claimant 1 provided ongoing assistance to the staff during the course of its investigation. The charges brought by the staff were directly based on the information Claimant 1 provided.

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B. Claimant 4

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.¹⁰ Under the whistleblower rules, an individual's original information leads to the success of an action where it causes staff 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 individual's original information, under Rule 21F-4(c)(1) of the Exchange Act; or alternatively, where in the context of an existing investigation, the individual's original information significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. In determining whether an individual's information significantly contributed to an action, we consider factors such as whether the information allowed us to bring the action in significantly less time or with significantly fewer resources; additional successful claims; or successful claims against additional individuals or entities. The individual's information must have been "meaningful" in that it "made a substantial and important contribution" to the success of the covered action.¹¹

Claimant 4 concedes in his/her request for reconsideration that Claimant 4's information does not satisfy Exchange Act Rule 21F-4(c)(1) as the investigation was opened before Claimant 4 provided his/her information. The information submitted by Claimant 4 also did not significantly contribute to the success of the Covered Action pursuant to Exchange Act Rule 21F-4(c)(2). Enforcement staff confirmed in a supplemental declaration, which we credit, that by the time Claimant 4 provided his/her information in ^{Redacted} Enforcement staff was already aware of the Additional Defendants, and the staff had already developed evidence supporting the allegations that would be added in the Amended Complaint. Accordingly, the information Claimant 4 provided did not significantly contribute to the Covered Action.

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¹⁰ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

¹¹ Whistleblower Award Proceeding File No. 2018-6, Rel. No. 34-82897 (Mar. 19, 2018); Whistleblower Award Proceeding File No. 2016-9, Rel. No. 34-77833 (May 13, 2016).

III. Conclusion

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award equal to ^{Redacted} percent (^{***} %) of the monetary sanctions collected or to be collected in the Covered Action. It is further ORDERED that Claimant 4's whistleblower award application in the Covered Action be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary