

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 15e September 28, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-97

In the Matter of the Claims for Award

in connection with

Redacted

Notice of Covered Action Redacted

and

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending the denial of the joint whistleblower award claims submitted by Redacted (“Claimant 1”) and Redacted (“Claimant 2”) (together, “Claimants”) in connection with Redacted, Notice of Covered Action Redacted (the “Redacted Covered Action”), and Redacted Notice of Covered Action Redacted (the “Redacted Covered Action”) (together, the “Covered Actions”). Claimants filed timely responses contesting the preliminary denials. For the reasons discussed below, Claimants’ joint award claims are denied.

I. Background

A. The Covered Actions

1. The ^{Redacted} Covered Action

The Commission opened the investigation that culminated in the ^{Redacted} Covered Action in ^{Redacted} (the “^{Redacted} Investigation”) based on a referral from the Commission’s examination staff concerning possible ^{Redacted} (“^{Redacted}”), a registered broker-dealer. The examination staff’s decision to review ^{Redacted} records was not initiated as a result of a tip from the Claimants or any other whistleblower; rather, the staff selected the Company to review due to ^{Redacted}

The exam staff’s findings, which led to its decision to refer the matter to the Division of Enforcement, resulted from its interviews and review of documents provided by ^{Redacted}.

On ^{Redacted}, the Commission instituted settled administrative and cease-and-desist proceedings against ^{Redacted} and ^{Redacted}, finding that ^{Redacted} had violated ^{Redacted}

^{***} ² The Commission found that, from at least ^{Redacted} through at least ^{Redacted}, ^{Redacted}, at the direction of ^{Redacted}

^{Redacted} Among other sanctions, ^{Redacted} was ordered to pay a civil penalty of ^{Redacted} and ^{Redacted} was ordered to pay a civil penalty of ^{Redacted}

2. The ^{Redacted} Covered Action

The Commission opened the investigation that culminated in the ^{Redacted} Covered Action in ^{Redacted} (the “^{Redacted} Investigation”) as a result of staff’s investigative efforts in connection with an earlier investigation (together, the ^{Redacted} Investigation and the ^{Redacted} Investigation are referred to as the “Investigations”). The ^{Redacted} Investigation was not opened based on any information provided by the Claimants. The focus of the ^{Redacted} Investigation was to determine whether ^{Redacted} a registered broker-dealer and investment adviser, and its affiliate, ^{Redacted} ^{Redacted}, a registered broker-dealer ^{Redacted} had violated ^{Redacted} ³ and, if so, to understand the scope of the violations.

² ^{Redacted}

³ ^{Redacted}

On Redacted the Commission instituted settled administrative and cease-and-desist proceedings against Redacted finding that Redacted had violated Redacted in connection with Redacted. Among other sanctions, Redacted was ordered to pay disgorgement of Redacted and prejudgment interest of Redacted.

On Redacted and Redacted, the Commission's Office of the Whistleblower posted Notices of Covered Action for the Redacted Covered Action and the Redacted Covered Action, respectively, on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days.⁴ Claimants filed timely whistleblower award applications for the Covered Actions.

B. Claimants' Tips

Claimants base their joint award claims on a tip they submitted to the Commission on Redacted (the "Redacted Tip"), which was Redacted after the Redacted Investigation was opened and Redacted that the Redacted Investigation was opened.⁵ In the Redacted Tip, the Claimants alleged "[m]ultiple potential securities law violations spanning a number of years regarding Redacted and blue chip companies and the potential operation of Ponzi-type schemes." They further stated that they had previously provided detailed information about these allegations to the Division of Enforcement's then-Chief of the Market Abuse Unit ("MAU").

On Redacted, the Commission's Office of Market Intelligence forwarded the Redacted Tip to the MAU investigative staff that was working on an investigation that was separate from, and unrelated to, the Investigations. The Redacted Tip was not forwarded to either of the Investigations' staffs, nor did either staff receive any information from, or communicate with, the Claimants, before or during the course of their Investigations. In addition, representatives of both the Redacted and the Redacted Investigation staffs stated in sworn declarations that the Claimants "provided no information that was used in or that contributed to the success of [their respective] [I]nvestigation[s] or . . . [Covered] Action[s]."

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

⁵ To date, Claimants have applied for whistleblower awards in fourteen matters, including the Covered Actions. Of these twelve other matters, the Claimants have received final orders for seven of their award claims, all of which have been denials.

C. The Preliminary Determination

The CRS issued separate Preliminary Determinations⁶ for each of the Covered Actions recommending that the Claimants' award claims be denied because the information that the Claimants submitted to the Commission did not lead to the successful enforcement of the Covered Actions under Exchange Act Rules 21F-4(c)(1) and (2)⁷ since none of the information Claimants submitted was received by or forwarded to the staffs handling the Investigations, nor did either staff have any contact with them or use any of their information in the Commission's successful enforcement of the Covered Actions.

D. Claimants' Responses to the Preliminary Determinations

Claimants submitted timely written responses contesting the Preliminary Determinations.⁸ Specifically, Claimants argue in response to the Preliminary Determinations that they submitted information to the Commission ^{Redacted} times between ^{Redacted} including, as noted, at times directly to the then-head of the MAU. According to the Claimants, their information relating to ^{Redacted} which "discussed ^{Redacted} "would have been valuable to the SEC staff and furthered the resulting enforcement action against ^{Redacted} at issue here, if the SEC had not failed to distribute relevant tips, follow-up on leads and upload the information [Claimants] sent to the TCR database in a timely manner." Similarly, Claimants assert their information relating to "violations of ^{Redacted} submitted by [Claimants] would have been valuable to the SEC staff and furthered the resulting enforcement action against ^{Redacted} at issue here, if the SEC had not failed to distribute relevant tips and follow-up on leads." Claimants also point out that they met with the then-head of the MAU and other staff of the MAU in ^{Redacted} On this basis, Claimants argue that the Commission's staff improperly ignored the information they had submitted and failed to distribute it properly to the appropriate investigative staff.⁹ To further substantiate this argument, Claimants requested declarations from certain persons in the MAU, documents from the Commission's investigative files, and explanations from the staff as to why Claimants' information was not handled differently.

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

⁷ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rules 21F-3(a) & 4(c), 17 C.F.R. §§ 240.21F-3(a) & 4(c).

⁸ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

⁹ Because of these perceived errors, Claimants requested in their response "an extension on the appeal period . . . until the SEC provides responses to our questions, document[] requests and reasoning for withholding this information." The whistleblower rules do not provide for such an extension. See Exchange Act Rule 21F-10(e)(2) (providing that a decision to contest a Preliminary Determination must be submitted "within sixty (60) calendar days of the date of the Preliminary Determination, or if a request to review materials is made pursuant to paragraph (e)(1) of this section, then within sixty (60) calendar days of the Office of the Whistleblower making those materials available for your review"). Moreover, this Order addresses Claimants' questions and requests, so there is no need for such an extension.

II. Analysis

To qualify for a whistleblower award under Section 21F of the Exchange Act, an individual must have “voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action.”¹⁰ As relevant here, information will be deemed to have led to a successful enforcement action if it was “sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current . . . investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of [this] information.”¹¹ Alternatively, information will be deemed to have led to a successful enforcement action where the information was “about conduct that was already under examination or investigation by the Commission” and the “submission significantly contributed to the success of the action.”¹²

None of the information that Claimants submitted led to the successful enforcement of either Covered Action, in that their information did not cause either staff to commence an examination, open an investigation, or inquire concerning different conduct as part of a current investigation, nor did it contribute in any way to the success of these actions. We find, based on the evidence in the record, including declarations which we credit from the investigative staffs and another staff attorney who participated in the ^{Redacted} examination that was referred to the ^{Redacted} investigative staff,¹³ that Claimants’ information played no part in the opening of the ^{Redacted} examination or either Investigation nor was their information received, considered or used by either investigative staff during the course of their Investigations. As noted, Claimants do not dispute this. In addition to the staff declarations from the examination and investigative staffs, the record also includes a declaration from one of the MAU attorneys that Claimants asserted possessed relevant information about Claimants’ interactions with Commission staff.¹⁴ This declaration states that the Enforcement attorneys who met with Claimants as part of a separate investigation did not share the information they received from Claimants with any other

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

¹¹ Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

¹² Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

¹³ The whistleblower rules contemplate that the record upon which an award determination is made shall consist of a sworn declaration provided by the relevant Commission staff, in addition to the publicly available materials related to the Covered Action, the claimant’s tip and the claimant’s award application. *See* Exchange Act Rule 21F-12(a).

¹⁴ This declaration was sent to Claimants in connection with another matter for which they had applied for a whistleblower award subsequent to their submitting their reconsideration request for the Covered Actions. Since Claimants received the MAU staff declaration and it is included as part of the record for both Covered Actions, their request for this declaration is moot and need not be addressed further.

investigative team,¹⁵ except for two emails that contained minimal information and related to a different matter under investigation.¹⁶

Finally, Claimants assert that the staff mishandled their information and that they should be entitled to discovery to ascertain why it was not handled differently. Claimants recently raised this very same objection in another matter for which they had applied for a whistleblower award. Our response to that objection is equally applicable here:

In essence, Claimants argue that their information would have led to the success of the Covered Action had it been handled differently. But the standard for award eligibility is not what the staff would have, or could have done in hypothetical circumstances but, rather, what impact the whistleblower's information actually had on the investigation. Here, the [staff] [d]eclarations are clear that Claimants' information neither caused the staff to open its investigation nor significantly contributed to the success of the Covered Action, and thus we need not consider Claimants' request for discovery of additional information.¹⁷

We therefore conclude that Claimants' information did not lead to the successful enforcement of the Covered Actions and that, as a result, Claimants are ineligible for awards with respect to the Covered Actions.

III. Conclusion

Accordingly, it is ORDERED that Claimants' whistleblower award applications for the Covered Actions be, and hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹⁵ According to the declarant from the MAU, the declarant shared certain of the Claimants' submissions with staff in the Division of Trading and Markets ("TM") and the Commission's Division of Economic and Risk Analysis ("DERA"); however, after further consultations with TM and DERA staff, the Enforcement staff determined to close the investigation because it could not substantiate the Claimants' allegations.

¹⁶ One was a Redacted email from Claimant 1 in which Claimant 1 commented on the Commission's filing a few days earlier of the other enforcement action and the second was a Redacted email from one of the two Enforcement attorneys who participated in a meeting with the Claimants, noting that others in the Division of Enforcement were looking at certain allegations made by the Claimants about that other matter.

¹⁷ Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 90872 at 4 (Jan. 7, 2021) (internal citations omitted), available at <https://www.sec.gov/rules/other/2021/34-90872.pdf>.