

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95489 / August 12, 2022

WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-75

In the Matter of the Claims for an Award

in connection with

Notice of Covered Action: Redacted

Redacted

Notice of Covered Action Redacted

Redacted

Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that Redacted (“Claimant 1”) receive a whistleblower award of more than \$2.1 million, and that Redacted (“Claimant 2”) receive a whistleblower award of more than \$1 million, equal to Redacted percent (**) and ** percent (**), respectively, of the amounts collected, or to be collected, in the above-referenced Covered Actions (“Covered Actions”). The CRS also preliminarily recommended that the award claim of Redacted (“Claimant 3”) should be denied. Claimant 1 and Claimant 3 filed timely responses contesting the Preliminary

Determinations, and Claimant 2 provided written notice of Claimant 2's decision not to contest the Preliminary Determinations.¹ For the reasons discussed below, the CRS's recommendations are adopted with respect to Claimant 1, Claimant 2, and Claimant 3.

I. Background

A. The Covered Actions

1. ^{Redacted} Enforcement Action

On ^{Redacted}, the Commission filed an action in federal district court captioned ^{Redacted}. The Commission charged ^{Redacted}

^{Redacted}

^{Redacted}

The Commission's complaint charged ^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}. The complaint also alleged that ^{Redacted}

^{Redacted}

^{Redacted}

The

Court granted the Commission's ^{Redacted}

^{Redacted}

On ^{Redacted} ^{Redacted} consented to the entry of a final judgment ordering ^{Redacted}

^{Redacted}

^{Redacted} No collections have been made from ^{Redacted}.

¹ The CRS also preliminarily determined to recommend denying an award to two other claimants, who did not file a written response. Accordingly, the two other claimants have failed to exhaust administrative remedies and the preliminary denial of those award claims have become the Final Order of the Commission pursuant to Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

The Court-Appointed Receiver has distributed ^{Redacted} to harmed investors. Amounts distributed to harmed investors by court-appointed receivers as relief for the securities violations, like here, may be treated as collected monetary sanctions for purposes of making an award payment.²

On ^{Redacted} the Office of the Whistleblower posted the relevant Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.³ Claimants 1, 2 and 3 each separately filed a timely whistleblower award claim.

2. ^{Redacted} Enforcement Action

On ^{Redacted} the Commission filed an action in federal district court captioned ^{Redacted} The Commission charged

^{Redacted}

^{Redacted}

According to the complaint,

^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

^{Redacted}

The Commission’s complaint charged

^{Redacted}

² See Exchange Act Rule 21F-4(e): “Monetary sanctions means: (1) An order to pay money that results from a Commission action or related action and which is either: (i) Expressly designated as penalty, disgorgement, or interest; or (ii) Otherwise ordered as relief for the violations that are the subject of the covered action or related action” 17 C.F.R. § 240.21F-4(e).

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

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On Redacted consented to the entry of Redacted
 *** a court order prohibiting Redacted
 Redacted and agreed to pay Redacted On Redacted
 Redacted also consented to Redacted
 Redacted To date, Redacted has paid Redacted

On Redacted consented to the entry of a final judgment ordering ***
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 Redacted To date, Redacted has paid Redacted

On Redacted the Office of the Whistleblower posted the relevant Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.⁴ Claimants 1, 2 and 3 each separately filed a timely whistleblower award claim.

B. The Preliminary Determinations

The CRS issued Preliminary Determinations⁵ recommending that Claimant 1 and Claimant 2 receive a whistleblower award equal to Redacted percent (***) and *** percent (***), respectively, of the amounts collected in the above-referenced Covered Actions and that Claimant 3’s award be denied because Claimant 3 did not provide original information that “led to” the success of the Covered Actions as required under Exchange Act Rule 21F-4(c).

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

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

C. Claimants' Responses to the Preliminary Determination

Claimant 1 submitted a timely written response contesting the Preliminary Determination.⁶ Specifically, Claimant 1 argues in response to the Preliminary Determination that Claimant 1 should receive a higher award given that Claimant 1 assisted throughout the entire investigation. Claimant 1 further states that the Commission should use its discretion to award Claimant 1 a *** award and Claimant 2 a *** award in the Covered Actions.

Claimant 3 submitted a timely written response contesting the Preliminary Determination.⁷ Specifically, Claimant 3 explains that he/she submitted a TCR in ***, not on the date stated in the staff declaration, but does not show how Claimant 3's information was used in the Covered Actions or the underlying investigation.

III. Analysis

A. Claimant 1 and Claimant 2

The recommendation of the CRS is adopted. The record demonstrates that Claimants 1 and 2 both voluntarily provided original information to the Commission, and that this information led to the successful enforcement of the Covered Actions.⁸ Specifically, Claimant 1 and Claimant 2 provided tips that collectively caused Commission staff to open an investigation, and both Covered Actions are based, in part, on conduct alleged by Claimants 1 and 2.

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

⁷ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

⁸ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

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We agree with the CRS's recommendation that

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We further agree with the CRS's recommendation that Claimant 1 should receive a ^{***} award while Claimant 2 should receive a ^{***} award. While Claimant 1 argues that he/she should receive an even higher award percentage vis-à-vis Claimant 2, we disagree. Claimant 2

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actually reported first to the Commission, and it was both Claimant 1's and Claimant 2's information that caused Commission staff to open the underlying investigation. And while Claimant 1 provided significant assistance during the investigation, Claimant 2 also provided additional assistance by communicating with Enforcement staff on at least two occasions. Finally, the ^{Redacted} award allocation already recognizes the fact that Claimant 1's information and assistance played a more significant role in the success of the Covered Actions than Claimant 2's.

B. Claimant 3

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.¹³ 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;”¹⁴ or, alternatively, 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.”¹⁵

Claimant 3 does not satisfy Rule 21F-4(c)(1), as Enforcement staff opened the Covered Actions investigation based on information provided by Claimants 1 and 2, not because of information provided by Claimant 3, whose information did not cause Enforcement staff to commence an investigation or inquire concerning different conduct as part of a current investigation. Claimant 3 also does not satisfy Rule 21F-4(c)(2) because his/her information did

¹³ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

¹⁴ Rule 21F-4(c)(1).

¹⁵ Rule 21F-4(c)(2).

not significantly contribute to the success of the Covered Actions. While Enforcement staff responsible for the Covered Actions received a tip from Claimant 3, the tip was submitted many months after the investigation opened and after the Commission had already filed the ^{Redacted} action. Enforcement staff confirmed that they did not use any information from Claimant 3 in connection with the Covered Actions and had no communications with Claimant 3.

In Claimant 3's response, Claimant 3 asserts that an incorrect date was utilized as Claimant 3's TCR submission date in the Preliminary Determination and that Claimant 3 should be awarded a "small recovery" because of Claimant 3's contributions to the Covered Action. Claimant 3 does not attempt to explain how his/her information helped advance either of the Covered Actions or the underlying investigation.

According to a declaration provided by staff from the Office of the Whistleblower, Claimant 3, through counsel, sent a letter to the Commission dated ^{Redacted} which included a Form TCR and attachments that primarily consisted of publicly available documents. Claimant 3's submission was uploaded to the Commission's TCR system on ^{Redacted} ¹⁶ It was then referred to Enforcement staff who closed the tip with a disposition of "No Further Action" or "NFA"¹⁷ because the Commission had already filed the ^{Redacted} action and the tip provided no new, useful information.

¹⁶ Under standard practice, whenever members of the public provide the Commission with information about possible violations of the securities laws pursuant to the procedures set forth at 17 C.F.R. §240.21F-9(a), or otherwise, that information is uploaded and preserved in the Commission's Tips, Complaints, and Referrals ("TCR") System, where it is retrievable by the submitter's name or TCR submission number. In addition, the TCR System records staff action taken with regard to tips, complaints, and referrals entered into the system.

¹⁷ A disposition of NFA generally means that no further action is planned with respect to that TCR unless subsequent information leads Commission staff to reopen, or reexamine that TCR.

As such, Claimant 3's award claim in the Covered Actions is denied because Claimant 3 did not provide original information that led to the success of the Covered Actions.

IV. Conclusion

Accordingly, it is ORDERED that Claimant 1 and Claimant 2 receive whistleblower awards of ^{Redacted} percent (^{***}) and ^{***} percent (^{***}), respectively, of the amounts collected or to be collected in the Covered Actions and that Claimant 3's award application is denied.

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary