

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97285 / April 11, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-49

In the Matter of the Claims for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that ^{Redacted} (“Claimant 1”) receive a whistleblower award of about \$1 million, which represents ^{Redacted} percent (^{***}) of the monetary sanctions collected in the above-referenced Covered Action. The CRS further recommended the denial of the whistleblower award claim submitted by ^{Redacted} (“Claimant 2”).¹ Claimant 2 filed a timely response contesting the preliminary denial. For the reasons discussed below, the CRS’s recommendations are adopted.

I. Background

A. The Covered Action

On ^{Redacted}, the Commission filed the settled covered action against ^{Redacted} (“Firm”), a registered broker-dealer, finding that the Firm ^{Redacted}

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The Commission found that,

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¹ The CRS also preliminarily determined to recommend that the award application of one other claimant be denied. The claimant did not submit a request for reconsideration and, as such, the Preliminary Determination with respect to his/her award claim became the Final Order of the Commission, pursuant to Rule 21F-10(f) promulgated under the Securities Exchange Act of 1934, 17 C.F.R. § 240.21F-10(f).

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The Firm was found to have

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Among other relief, the Firm was ordered to pay disgorgement of interest of Redacted and a civil money penalty of Redacted. All amounts have been collected. Redacted

On Redacted the Office of the Whistleblower (“OWB”) posted Notice of Covered Action Redacted on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. The 90-day deadline for this posting was Redacted. While Claimant 1 submitted his/her award application before the deadline, Claimant 2 did not submit his/her award application until more than 17 months after the deadline.

B. The Preliminary Determinations

The CRS issued Preliminary Determinations recommending that Claimant 1 receive a whistleblower award of *** of the monetary sanctions collected in the Covered Action and that the award claim of Claimant 2 be denied because Claimant 2 failed to submit his/her claim for award to OWB within ninety days of the date of the Notice of Covered Action, as required under Rule 21F-10 of the Exchange Act.³

C. Claimant 2’s Response to the Preliminary Determinations

Claimant 2 submitted a timely written request contesting the Preliminary Determinations.⁴ In the reconsideration request, Claimant 2 contends that the Commission should exercise its authority under Exchange Act Rule 21F-8(a) to waive the award application deadline in the Covered Action. Claimant 2 asserts in support of his/her contention that at the time of the submission deadline, Claimant 2 was not represented by counsel and that, while

³ Exchange Act Rules 21F-10(a) (“A claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred”) and 21F-10(b)(1) (“All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award”). See also Order Determining Whistleblower Award Claim, Redacted, *pet. for rev. denied sub nom. Cerny v. SEC*, 707 F. App’x 29 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 2005 (2018).

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

he/she had submitted award claims for matters for which he/she had directly provided information, Claimant 2 was not aware that he/she could submit an award claim based on Commission enforcement actions brought against other entities arising out of the same investigation for which he/she had not provided specific information or given direct testimony. Claimant 2 concludes that it is unfair that Claimant 1, whom Claimant 2 asserts used Claimant 2's information, is being rewarded while Claimant 2 is denied an award.⁵

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.⁶

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In reaching this determination, we considered that Claimant 1's tip was the initial source of the underlying investigation and caused the opening of the investigation. Further, Claimant 1 provided the Commission's investigative staff with extensive and ongoing assistance during the course of the investigation, including identifying witnesses, and helping staff understand complex fact patterns and issues related to the matters under investigation. Claimant 1's information and assistance

⁵ Claimant 2 contends that, if the Commission were to exercise its discretionary authority to waive the late-filed award claim and consider his/her award claim, it should find that much of the information for which the CRS credited Claimant 1 with having provided first was, in actuality, information Claimant 1 had received from Claimant 2. Since, as discussed below, we have decided it is not appropriate here to exercise our discretionary authority to waive Claimant 2's failure to submit his/her award claim by the deadline set out in the Notice of Covered Action, we have not addressed, and make no findings, on these contentions.

⁶ 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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allowed the Commission to devise an investigative plan and to craft its initial document requests from the Firm and other entities. Finally, Claimant 1 was an important source of specific information for the Covered Action.

B. Claimant 2

The requirement that claimants file whistleblower award claims within ninety days of the posting of a Notice of Covered Action (“NoCA”), set forth in Exchange Act Rule 21F-10, serves important programmatic functions. The deadline ensures fairness to potential claimants by giving all an equal opportunity to have their competing claims evaluated at the same time. The deadline also brings finality to the claims process so that the Commission can make timely awards to meritorious whistleblowers.⁹

Claimant 2 does not dispute that his/her award claim was submitted after the deadline specified in the Notice of Covered Action. Rather, as noted, Claimant 2 argues that the Commission should exercise its authority under Exchange Act Rule 21F-8(a) to waive the ninety-day filing requirement for the Covered Action. Rule 21F-8(a) provides that “the Commission may, in its sole discretion, waive any of the [information submission and claim making] procedures upon a showing of extraordinary circumstances.”¹⁰ We have explained that the “extraordinary circumstances” exception is “narrowly construed” and requires an untimely claimant to show that “the reason for the failure to timely file was beyond the claimant’s control.”¹¹ Further, we have identified “attorney misconduct or serious illness” that prevented a timely filing as two examples of the “demanding showing” that an applicant must make before we will consider exercising our discretionary authority to excuse an untimely filing.¹² The critical question is whether the facts and circumstances that gave rise to the late-filing or other procedural deficiency were sufficiently beyond the control of the claimant to support an exercise of our discretionary authority under Rule 21F-8(a) to excuse the untimeliness.¹³ Moreover, “[e]ven when circumstances beyond the applicant’s control give rise to the delay . . . an applicant must also demonstrate that he or she promptly arranged for the filing . . . as soon as reasonably practical thereafter.”¹⁴

⁹ See *Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Release No. 64545, 76 Fed. Reg. 34300, 34300. See also *Order Determining Whistleblower Award Claim*, Exchange Act Rel. No. 96765 at 4 (Jan. 30, 2023); and *Order Determining Whistleblower Award Claim*, Exchange Act Rel. No. 95711 at 2-3 (Sept. 9, 2022).

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

¹¹ *Order Determining Whistleblower Award Claim*, Exchange Act Rel. No. 96765 at 4 (Jan. 30, 2023) (internal citations omitted); *Order Determining Whistleblower Award Claim*, Exchange Act Rel. No. 95711 at 3 (Sept. 9, 2022) (internal citations omitted).

¹² *Id.*

¹³ *Id.*

¹⁴ *Order Determining Whistleblower Award Claim*, Exchange Act Rel. No. 96765 at 4 (January 30, 2023) (internal citations omitted).

Claimant 2 has failed to meet the demanding standard for showing that there were extraordinary circumstances beyond Claimant 2's control that caused the failure to file his/her award claim by the deadline. Claimant 2's stated belief that a claimant can only be eligible for an award if his or her tip or testimony to the Commission specifically mentioned the subject of the covered action does not excuse Claimant 2's failure to file by the deadline. "[A] lack of awareness about the [whistleblower award] program does not . . . rise to the level of an extraordinary circumstance as a general matter [since] potential claimants bear the ultimate responsibility to learn about the program and to take the appropriate steps to perfect their award applications."¹⁵ Claimant 2's limited understanding of the whistleblower rules is not an "extraordinary circumstance[]" that should trigger the Commission's discretion to excuse the fact that Claimant 2 submitted his/her award application more than a year after the deadline. Further, while Claimant 2 was unrepresented at the time of the deadline for submitting his/her Form WB-APP, he/she still waited nearly a year after obtaining representation to file his/her award application. Accordingly, we do not believe it is appropriate here to exercise our discretionary authority under Rule 21F-8(a) to excuse Claimant 2's untimely filing.

III. Conclusion

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award of ^{Redacted} percent (^{***}) of the monetary sanctions collected in the Covered Action. It is further hereby ORDERED that the whistleblower award application of Claimant 2 in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

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Id. at 5.