

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 99670 / March 5, 2024

WHISTLEBLOWER AWARD PROCEEDING

File No. 2024-10

In the Matter of the Claims for an Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claims submitted by joint claimants Redacted (“Claimant 1”) and Redacted (“Claimant 2”) (collectively “Claimants”) in connection with the above-referenced covered action (the “Covered Action”). Claimant 1 and Claimant 2 filed timely responses contesting the preliminary denials. For the reasons discussed below, Claimant 1 and Claimant 2’s award claims are denied.

I. Background

A. The Covered Action

On Redacted, the Securities and Exchange Commission (“Commission”) charged Redacted individuals, including Redacted, with defrauding investors Redacted (“the Company”), whose shares once traded on Redacted. The Commission’s complaint charged Redacted, along with Redacted and Redacted (collectively “Defendants”).

According to the Commission’s complaint, Redacted

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Redacted illicit profits. On Redacted, the Commission entered final judgments against the Defendants of more than one million dollars.

On Redacted, the Office of the Whistleblower (“OWB”) posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Claimants filed timely whistleblower award claims.

B. The Preliminary Determination

The CRS issued a Preliminary Determination recommending that the Claimants’ award claims be denied because their information did not lead to the success of the Covered Action. According to a declaration by Enforcement staff in support of the Preliminary Determination (“Initial Declaration”), the investigation which led to the Covered Action (the “First Investigation”) was opened on Redacted, based upon a referral from staff in the Division of Corporation Finance (“Corp Fin”) and not based on any information provided by Claimant 1 or Claimant 2. Further, Enforcement staff began investigating the conduct underlying the Covered Action as part of another investigation (“Second Investigation”), which was not opened based on information from Claimant 1 or Claimant 2. The CRS also preliminarily determined that Claimant 1 and Claimant 2 did not provide information that caused Enforcement staff responsible for the Covered Action to inquire into new conduct or that substantially advanced the Covered Action investigations. Claimant 1 also was denied because they did not provide original information, as staff was already aware of the information provided by Claimant 1 from prior investigative efforts.

C. Claimants’ Responses to the Preliminary Determination

Claimants 1 and 2 submitted timely written responses contesting the Preliminary Determination.¹

In their request for reconsideration, Claimant 1 argues, among other things, that (1) the First and Second Investigations do not appear to relate to the actual conduct underlying the Covered Action and contend that their information has a closer factual nexus to the charges in the Covered Action; (2) the denial was based on a single declaration from an Enforcement accountant who did not lead or supervise the Covered Action; (3) the declaration failed to explain when staff responsible for the Covered Action reviewed Claimant 1’s information; and (4) that Claimant 1 emailed their information to Corp Fin staff on Redacted, the same day that they Redacted, and the Corp Fin staff could have shared the information with Enforcement staff on the First or Second Investigation.²

Claimant 2’s request for reconsideration principally argues the following: (1) the staff declaration upon which the Preliminary Determination was based was cursory and failed to

¹ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

² Claimant 1’s information was submitted to the Commission prior to the adoption of the SEC’s whistleblower program rules, which require that whistleblowers submit their information to the Commission on Form TCR or through the on-line TCR portal in order to be eligible for an award. See Exchange Act Rule 21F-9.

identify how and on what date staff uncovered the conduct that formed the basis of the Covered Action; (2) Claimant 2's information, which was submitted to Commission staff on ^{Redacted},³ caused staff to look into the conduct that formed the basis of the Covered Action; (3) there was no declaration from any SEC employees with whom Claimant 2 communicated; (4) the SEC staff responsible for the Covered Action could have obtained Claimant 2's information from other Commission staff without the other Commission staff attributing the information as having been received from Claimant 2; and (5) the SEC staff responsible for the Covered Action could have obtained Claimant 2's information through the ^{Redacted} ("Other Agency Staff") which conducted a parallel investigation.

II. Analysis

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.⁴ Additionally, and as relevant here, original information will be deemed to lead to a successful enforcement action if either: (i) the original information caused the staff to "commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current examination or investigation" and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information;⁵ or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."⁶

In determining whether the information "significantly contributed" to the success of the action, the Commission will consider whether the information was "meaningful" in that it "made a substantial and important contribution" to the success of the covered action.⁷ For example, the Commission will consider a claimant's information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.⁸

As an initial matter, we note that the record now includes four declarations from the Enforcement staff (three of which were obtained after the Preliminary Determination and in response to the Claimants' requests for reconsideration), which we credit, including the Initial

³ Claimant 2's information also was submitted to the Commission prior to the adoption of the SEC's whistleblower program rules. Whistleblowers who submitted information after July 21, 2010 and before August 12, 2011 satisfied the Rule 21F-9 procedural requirements by submitting the information to the Commission "in writing." *See* Exchange Act Rule 21F-9(d).

⁴ Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁵ *See* Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁶ *See* Exchange Act Rule 21-F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁷ Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9 (same).

⁸ Exchange Act Rel. No. 85412 at 8-9.

Declaration, which was prepared by an Enforcement accountant who was one of the primary staff responsible for the Covered Action; a supplemental declaration from the Enforcement accountant primarily responsible for the Covered Action (“Supplemental Declaration”); a declaration provided by the Assistant Regional Director who supervised the First and Second Investigations (“Supervisor Declaration”); and a declaration from an Assistant Regional Director of another regional office (“Other Regional Office”) ^{Redacted} (“Other Investigation”).⁹ Based on our review of the record, including the multiple declarations, neither Claimant 1 nor Claimant 2 provided information that led to the success of the Covered Action.

A. Claimant 1

First, Claimant 1 did not provide information that caused Enforcement staff to open either the First or Second Investigation. The First Investigation was opened on ^{Redacted} as a result of a referral from Corp Fin, and not because of information provided by Claimant 1. Further, as explained in more detail in the Supplemental and Supervisor Declarations, the Second Investigation was opened on ^{Redacted}, as a result of a referral to the staff by the criminal authorities based on allegations in a civil complaint captioned ^{Redacted} filed in ^{Redacted}. As such, Claimant 1 did not provide information that caused the opening of the Second Investigation.

Second, the record reflects that Claimant 1’s information did not cause Enforcement staff to inquire into different conduct or significantly contribute to the First or Second Investigations. On ^{Redacted}, Claimant 1 emailed their information to staff in Corp Fin. On that same day, Claimant 1’s email was forwarded to staff in the Other Regional Office in connection with the Other Investigation. The Enforcement staff responsible for the Covered Action did not receive Claimant 1’s information from Corp Fin staff. Neither the Other Regional Office staff, nor the Enforcement staff responsible for the Covered Action, spoke with Claimant 1. After extensive investigative efforts, on ^{Redacted}, approximately two years after the Other Investigation was opened, the Other Regional Office staff closed the Other Investigation without enforcement action. The Supplemental Declaration and Supervisor Declaration clarify that they began looking into the Defendants’ ^{Redacted} based on their own investigative work, including reviewing trading records, and not from information provided by Claimant 1, or from information received from Corp Fin staff, Other Regional Office staff, or other Commission staff. Finally, by the time Enforcement staff responsible for the Covered Action reviewed Claimant 1’s ^{Redacted}, they were already looking into the Defendants’ ^{Redacted} based on their own investigative work.¹⁰

⁹ Both Claimant 1 and Claimant 2 argue that the Initial Declaration was insufficient to support the denial of their award claims. We reject their contention, particularly in light of the multiple declarations, which we credit, that support the conclusion that their information did not lead to the success of the Covered Action.

¹⁰ Even if Enforcement staff responsible for the Covered Action had begun inquiring into the Defendants’ ^{Redacted} Claimant 1, that would not entitle Claimant 1 to an award. This is because the record does not support a conclusion that Claimant 1’s submission of information to the Commission led to the successful enforcement of the Covered Action.

B. Claimant 2

First, Claimant 2 did not provide information that caused the First or Second Investigations to open. As explained above, the First Investigation was opened on ^{Redacted} ^{Redacted}, based on a referral from Corp Fin, and the Second Investigation was opened on ^{Redacted}, based on a referral from the criminal authorities stemming from the filing of a civil complaint.

Second, the record, including the Initial Declaration, the Supplemental Declaration and the Supervisor Declaration, support the conclusion that Claimant 2's information did not cause Enforcement staff responsible for the Covered Action to inquire into different conduct or significantly contribute to the First or Second Investigations. Claimant 2's information was assigned to staff in the Other Regional Office, which prompted the opening of the Other Investigation. The declaration from Staff who supervised the Other Investigation¹¹ confirms that the Other Investigation was closed without enforcement action, in part, because they could not corroborate Claimant 2's information.

Claimant 2's argument that the record is insufficient because it does not identify the date when staff began inquiring into the conduct that formed the charges in the Covered Action is unavailing; Claimant 2 is not entitled to internal investigative information. Moreover, the record otherwise supports the conclusion that the Enforcement staff responsible for the Covered Action did not start investigating the Defendants' ^{Redacted} based on information submitted by Claimant 2, but through their own investigative work. Further, the multiple declarations support the conclusion that Enforcement staff responsible for the Covered Action did not begin investigating the underlying Covered Action conduct because of information provided by the Other Regional Office staff, Corp Fin staff, or other Commission staff. The declarations further support the conclusion that Enforcement staff responsible for the Covered Action did not begin investigating the underlying conduct charged in the Covered Action based on information from Other Agency staff.

Finally, both Claimant 1 and Claimant 2 suggest that because their information had a factual nexus to the charges in the Covered Action, their information must have been used in some way by the responsible Enforcement staff. However, the standard for award eligibility is not what the staff would have or could have done in hypothetical circumstances, but, rather, what impact a claimant's information has on the investigation.¹² That Claimant 1's or Claimant 2's information bears some factual nexus to the charges in the Covered Action does not mean that their information "led to" the success of the Covered Action. Rather, the record supports the conclusion that Claimant 1 and Claimant 2 did not provide information to the Commission that caused the Enforcement staff responsible for the Covered Action to open the First or Second

¹¹ The record also includes three declarations from staff responsible for the Covered Action.

¹² See Order Determining Whistleblower Award Claim, Release No. 34-98655 (Sept. 29, 2023); Order Determining Whistleblower Award Claim, Release No. 34-97408 (May 1, 2023); Order Determining Whistleblower Award Claim, Release No. 34-96657 (Jan. 13, 2023).

Investigations, to inquire into the conduct underlying the Covered Action, or significantly contributed to the success of the Covered Action.

For these reasons, Claimant 1's and Claimant 2's information did not lead to the successful enforcement of the Covered Action.¹³

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award applications of Claimant 1 and Claimant 2 in connection with the Covered Action be, and it hereby are, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹³ Because Claimant 1 and Claimant 2 are not eligible for an award in an SEC Covered Action, they also are not eligible for an award in any related action.