

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 77530 / April 5, 2016

WHISTLEBLOWER AWARD PROCEEDING

File No. 2016-7

In the Matter of the Claim for Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

On September 30, 2015, the Claims Review Staff (“CRS”) issued a Preliminary Determination related to Notice of Covered Action Redacted. The Preliminary Determination recommended that Claimant 1 (“Claimant 1”) receive an award of Redacted percent Redacted of the monetary sanctions collected Redacted (“Covered Action”) and Redacted percent Redacted of the monetary sanctions collected in a related criminal action, Redacted (“Related Criminal Action”). The Preliminary Determination also recommended that the award application submitted by Claimant 2 (“Claimant 2”) be denied. Only Claimant 2 contested the Preliminary Determination.

For the reasons stated below, we adopt the recommendations in the Preliminary Determination with respect to both claimants.

I. Background

On Redacted the Commission filed a complaint in federal district court in Redacted concerning Redacted

Redacted

On

Redacted

Redacted

Redacted In the complaint, the Commission alleged that

Redacted

Redacted . The Commission also alleged that Redacted
Redacted . On Redacted a judgment was
entered Redacted
Redacted
On Redacted , Redacted brought a criminal action against Redacted . On
Redacted
Redacted

On Redacted the Office of the Whistleblower (“OWB”) posted Notice of Covered
Action Redacted for the Covered Action. All claimants filed timely whistleblower award claims.

II. Claimant 1’s Claim is Approved

Upon due consideration of the administrative record, it is hereby ORDERED that for the reasons set forth in the Preliminary Determination Claimant 1 shall receive Redacted percent Redacted of the monetary sanctions collected in the Covered Action and Redacted percent Redacted of the monetary sanctions collected in the Related Criminal Action. Claimant 1’s award will total more than \$275,000 based on the monetary sanctions collected in the Covered Action and the Related Criminal Action thus far and shall be offset as described more fully below.¹

Claimant 1’s award shall be subject to an offset for any monetary obligations (including disgorgement, prejudgment interest, and penalty amounts) that, as of the date of this order, remain unpaid from the Final Judgment entered against Claimant 1 in Redacted Redacted (estimated to be Redacted as of this date). Claimant 1 was advised of the potential offset in the Preliminary Determination and did not file an objection. Accordingly, Claimant 1 is deemed to have consented to the offset and to have waived any opposition.

III. Claimant 2’s Claim Is Denied

A. Preliminary Determination and Claimant’s Response

¹ Monetary sanctions collected by the Commission in the Covered Action or by the Redacted in the Related Criminal Action that are either deemed to satisfy or are in fact used to satisfy any payment obligations of the defendants in the other action shall not be double counted for purposes of paying an award; further, for purposes of calculating an award payment, any monetary sanctions collected in the manner just described shall be attributed, first, to the Commission's Covered Action up to the full amount of monetary sanctions ordered in the Covered Action, with any remaining amounts attributed to the Related Criminal Action.

In its Preliminary Determination, the CRS recommended that Claimant 2's award application be denied because the record demonstrated that Claimant 2 did not provide any information that led to the successful enforcement of the Covered Action. *See* Section 21F(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a). Claimant 2 timely submitted a response contesting the Preliminary Determination (hereinafter, "Response").

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 judicial or administrative action or related action. 15 U.S.C. § 78u-6(b)(1). As relevant here, original information "leads to" a successful enforcement action if either: (i) the original information caused the staff to open an investigation, reopen an investigation, or inquire into different conduct as part of a current investigation, and the Commission brought a successful action based in whole or in part on conduct that was the subject of the original information; or (ii) the conduct was already under examination or investigation, and the original information significantly contributed to the success of the action. Rule 21F-4(c)(1)-(2), 17 C.F.R. § 240.21F-4(c)(1)-(2).

Based on our review of the record, we find that none of the information Claimant 2 submitted led to the successful enforcement of the Covered Action. *First*, none of the tips identified by Claimant 2 in Claimant 2's award application was provided to the staff responsible for the Covered Action. The record conclusively demonstrates that each of the tips was designated for "no further action" by the Commission's Office of Market Intelligence – the Commission office that is responsible for the initial intake review of whistleblower tips – and were not provided to investigative staff for further inquiry or for use in connection with *any* Commission investigation. *Second*, the record demonstrates that at no point prior to the settlement of the Covered Action did the staff members responsible for the Covered Action have any contact with, or receive any information from, Claimant 2.

Because the record demonstrates that Claimant 2's information did not lead to the successful enforcement of the Covered Action and Claimant 2 has not shown otherwise in Claimant 2's request for reconsideration of the Preliminary Determination, we deny Claimant 2's application for an award.²

² In the Response, Claimant 2 challenges OWB's decision not to provide Claimant 2 with the record materials underlying the Preliminary Determination. Under Exchange Act Rules 21F-8(b)(4) and 12(b), 17 C.F.R. § 240.21F-8(b)(4) and 12(b), claimants requesting the administrative record in order to challenge a preliminary determination may be required by OWB to sign a confidentiality agreement in a form acceptable to OWB as a prerequisite to receiving a copy of the record. In accordance with these rules, it is standard practice of OWB to require all

IV. Conclusion

Accordingly, it is ORDERED that Claimant 1 shall receive an award of ^{Redacted} percent ^{Redacted} of the monetary sanctions collected in the Covered Action and an award of ^{Redacted} percent ^{Redacted} of the monetary sanctions collected in the Related Criminal Action subject to an offset as described above for any monetary obligations that remain unpaid from the Final Judgment entered against Claimant 1. It is further ORDERED that Claimant 2's whistleblower award claim is denied.

By the Commission.

Brent J. Fields
Secretary

claimants seeking copies of the record to sign a confidentiality agreement in order to prevent the disclosure of non-public information. Claimant 2 failed to sign the confidentiality agreement within the deadline set by OWB. Several weeks after that deadline, Claimant 2 returned a signed copy of a substantially modified version of the confidentiality agreement that included various material, objectionable provisions, including a provision that would have required the Commission to provide Claimant 2 with counsel and to pay for Claimant 2's legal costs and expenses in connection with Claimant 2's challenge of the Preliminary Determination. We find that given these objectionable modifications, OWB appropriately declined to counter-sign the confidentiality agreement, and, in accordance with Rules 21F-8(b)(4) and 12(b), OWB appropriately declined to provide Claimant 2 with the record.