

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 34-90284 / October 29, 2020

WHISTLEBLOWER AWARD

PROCEEDING

File No. 2021-3

In the Matter of the Claims for 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 over \$10,000,000, equal to *** percent (*** %) of the monetary sanctions collected in the above referenced Covered Action (“the Covered Action”), and that the award applications submitted by Redacted (“Claimant 2”) and Redacted (“Claimant 3”) be denied. Claimant 1 provided written notice of Claimant 1’s decision not to contest the Preliminary Determination, and Claimants 2 and 3 submitted timely notices contesting the preliminary denial of their award claims. For the reasons discussed below, the recommendations of the CRS are adopted.

I. Background

A. The Covered Action

On Redacted, the Commission instituted and simultaneously settled administrative and cease-and-desist proceedings (“OIP”) against Redacted (“the Company”), pursuant to which the Company consented to the entry of an Order Redacted

In addition, the Company was ordered to pay Redacted, which has been fully collected.

According to the OIP, from [Redacted], the Company committed violations of the federal securities laws and regulations arising from [Redacted].

The Company also [Redacted]

On [Redacted], the Office of the Whistleblower posted the above-referenced Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.¹ Claimants 1, 2, and 3 all filed timely whistleblower award claims.

B. The [Redacted] Action

On [Redacted] (“Other Agency”) filed a state civil complaint against the Company alleging, among other things, that the Company [Redacted].² The Other Agency filed [Redacted]. In [Redacted], the Company entered into a settlement to resolve the Other Agency’s action. The allegations contained in the Other Agency’s settlement with the Company are substantially identical to the Commission’s charges in the Covered Action. According to staff of the Division of Enforcement responsible for the Covered Action (“Responsible Investigative Staff”), prior to the Other Agency’s complaint being filed in [Redacted], they were aware of the conduct underlying every charge subsequently brought by the Commission against the Company in the Commission’s OIP.

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

²

[Redacted]

(“Other Action”).

C. The Preliminary Determinations

The Claims Review Staff (“CRS”)³ issued Preliminary Determinations⁴ recommending that: (1) Claimant 1 receive an award of more than \$10 million, equal to *** % of the monetary sanctions collected in the Covered Action; (2) the award claims of Claimant 2 and Claimant 3 in the Covered Action be denied; and (3) the related action award claims of Claimant 2 and Claimant 3 in connection with the Other Action brought by the Other Agency be denied.⁵ The CRS recommended that Claimant 2’s and Claimant 3’s award claims in the Covered Action be denied because their information did not lead to the success of the Covered Action as required under Exchange Act Rule 21F-4(c).⁶ Claimant 2 submitted a tip more than fourteen months after the Responsible Investigative Staff opened the Covered Action investigation (“Investigation”). While Responsible Investigative Staff received and reviewed Claimant 2’s information during the Investigation, the information was generally unrelated to the Investigation. Furthermore, Responsible Investigative Staff was not able to corroborate Claimant 2’s allegations, and Claimant 2’s information was not used in and had no impact on the Covered Action. Responsible Investigative Staff had no communications with, and received no information from, Claimant 3.

The CRS also found that Claimants 2 and 3 were not eligible for an award in the Other Action, because: (1) they are not eligible for an award in the Covered Action; and (2) the Other

³ Rule 21F-10(d) under the Exchange Act provides that the CRS will “evaluate all timely whistleblower award claims submitted on Form WB-APP in accordance with the criteria set forth in the rules.”

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

⁵ The CRS also recommended that the award claims of four other individuals be denied. Because they did not request reconsideration, the preliminary denial of their claims is now deemed to be the Final Order of the Commission pursuant to Exchange Act Rule 21F-10(h).

⁶ As relevant here, information will be deemed to have led to a successful enforcement action if it was (1) “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;” or (2) the information “significantly contributes” to the success of the enforcement action. Exchange Act Rules 21F-4(c)(1) & (2). In determining whether information significantly contributed to an enforcement action, we consider “whether the information allowed us to bring: (1) Our successful action in significantly less time or with significantly fewer resources; (2) additional successful claims; or (3) successful claims against additional individuals or entities.” *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011). In other words, “[t]he individual’s information must have been ‘meaningful’ in that it ‘made a substantial and important contribution’ to the success of the covered action.” *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 85412, 2018 SEC LEXIS 615, at *16 (Mar. 26, 2019); *Order Determining Whistleblower Award Claims*, Exch. Act Rel. No. 82897, 2018 SEC LEXIS 750, at *16 (Mar. 19, 2018).

Action was a state civil action and therefore does not qualify as a related action under the Commission's whistleblower rules.⁷

D. Claimant 2's Response to the Preliminary Determination

Claimant 2 submitted a timely written response contesting the Preliminary Determination.⁸ Claimant 2's request does not dispute that Claimant's tip was submitted more than fourteen months after the Responsible Investigative Staff opened its Investigation. Rather, Claimant 2 contends that his/her information helped exert pressure on the Company to enter into a global settlement with the Commission and the Other Agency. Claimant 2 states that in ^{***} , after learning of the Other Agency's ^{Redacted} complaint, Claimant 2 contacted the Other Agency with significant information that ^{Redacted} the Other Action. Claimant 2 adds that after providing information to the Other Agency, the Other Agency then filed ^{Redacted} against the Company and later confirmed to Claimant 2 that the information he/she provided was helpful. Specifically, Claimant 2 states that Claimant 2's information rebutted the Company's ^{Redacted}

In addition, Claimant 2 asserts that Claimant 2's evidence was purportedly important in proving that the Company was ^{Redacted} . As a result, Claimant 2 asserts, the Company could not risk litigating with either the Other Agency or the Commission without exposing its falsehoods. In short, Claimant 2 maintains Claimant 2 should receive an award for Claimant 2's role in "bringing [the Company] to the table in the Commission's Covered Action." In addition, Claimant 2 argues that the scope of the conduct charged in the Covered Action does not lessen the impact of Claimant 2's evidence in significantly contributing to the global settlement that the Company entered into with the Other Agency and the Commission. Specifically, Claimant 2 argues that this "cause and effect" is not "undone" simply because the Commission ^{Redacted} ultimately brought charges that were narrower than those in the Other Agency's

E. Claimant 3's Response to the Preliminary Determination

Claimant 3 submitted a timely written response contesting the Preliminary Determination. Claimant 3 argues that Claimant 3 shared specific and detailed information with Commission staff members regarding ^{Redacted} and showed the Commission that ^{Redacted}

Claimant 3 acknowledges having not communicated directly with the Responsible Investigative Staff. Nevertheless, Claimant 3 identifies various Commission staff in the Home

⁷ Rules 21F-3(b)(1) and 21F-11(a). *See, e.g., Order Determining Whistleblower Award Claims*, Exchange Act Release No. 34-86902 (Sept. 9, 2019).

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

Office and ^{Redacted} Regional Office (collectively, “Other Enforcement Staff”) with whom he/she spoke and believes that the Other Enforcement Staff may have relayed his/her information to the Responsible Investigative Staff. Claimant 3 also surmises that the Responsible Investigative Staff learned of certain terms used in the Covered Action, such as ^{Redacted} from information provided by Claimant 3.

II. Analysis

A. Claimant 1

The record demonstrates that Claimant 1, a whistleblower, voluntarily provided original information to the Commission that caused the Responsible Investigative Staff to open the Investigation and led to the successful enforcement of the Covered Action.⁹ Accordingly, Claimant 1 qualifies for a whistleblower award.

Applying the award criteria specified in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed award amount is appropriate.¹⁰ In reaching that determination, we positively assessed the following facts: (1) Claimant 1’s information caused the Responsible Investigative Staff to open the Investigation; (2) it was Claimant 1’s information and ongoing assistance that led directly to almost every factual finding and charge against the Company; (3) Claimant 1 provided substantial assistance to the Responsible Investigative Staff, providing them with key evidence, communicating over a dozen times with the Responsible Investigative Staff, helping to decipher communications and distill complex issues, and saving significant Commission time and resources; (4) Claimant 1 raised concerns about the Company’s conduct internally, and, after determining the Company would not remedy the problem, reported Claimant 1’s concerns to the Commission; and (5) the law enforcement interests are very high.

B. Claimant 2

Claimant 2’s information does not satisfy Rule 21F-4(c)(1) as the Investigation was opened based on Claimant 1’s information, and not Claimant 2’s information, which was submitted fourteen months after the Investigation was opened. Claimant 2’s information also does not satisfy Rule 21F-4(c)(2) because, as explained below, his/her information did not significantly contribute to the success of the Covered Action.

First, according to the Responsible Investigative Staff, several months prior to receiving information from Claimant 2 or Claimant 2 providing information to the Other Agency,

⁹ See Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

¹⁰ In assessing the appropriate award amount, Exchange Act Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems. 17 C.F.R. § 240.21F-6.

Responsible Investigative Staff was aware of the conduct underlying every charge subsequently brought by the Commission against the Company in the Commission's OIP. Second, none of Claimant 2's information was used in the Commission's case against the Company. Responsible Investigative Staff confirmed that Claimant 2's information was not directly relevant to what they were investigating. Moreover, Responsible Investigative Staff looked into Claimant 2's allegations and was not able to substantiate his/her allegations. Third, even assuming, for the sake of argument, that Claimant 2's information contributed to the Other Agency's ^{Redacted}, that would not show that his/her information significantly contributed to the success of the Covered Action. This is because a claimant's information must meaningfully advance the Commission's investigation and resulting enforcement action, not another government agency's investigation. Furthermore, Claimant 2's information did not influence the Commission's settlement with the Company. A primary member of the Responsible Investigative Staff confirmed in a supplemental declaration ("Supplemental Declaration"), which we credit, that Claimant 2's information did not help settle the charges on more favorable terms. This is because Claimant 2's information did not relate to the issues the Responsible Investigative Staff was investigating in the Investigation; nor could they substantiate Claimant 2's allegations. In sum, the lack of any nexus between Claimant 2's information and the Commission's charges in the Covered Action is fatal to Claimant 2's award claim.

C. Claimant 3

Claimant 3's information does not satisfy Rule 21F-4(c)(1) as the Investigation was opened based on Claimant 1's information, and not Claimant 3's. Claimant 3's information also does not satisfy Rule 21F-4(c)(2) because his/her information did not significantly contribute to the success of the Covered Action. Responsible Investigative Staff received no information from, nor had any communications with, Claimant 3.

In response to Claimant 3's reconsideration request, a primary member of the Responsible Investigative Staff confirmed in a Supplemental Declaration, which we credit, that while he spoke with the Other Enforcement Staff identified by Claimant 3 in his/her request for reconsideration, the Other Enforcement Staff did not provide him with any information that they may have received from Claimant 3. One of the attorneys in the ^{Redacted} Regional Office identified by Claimant 3 in his/her request for reconsideration also provided a declaration affirming that she did not provide any information that she received from Claimant 3, which related to entities other than the Covered Action Company, to the Responsible Investigative Staff.¹¹

Finally, other than pointing to general terms or concepts in his/her reconsideration request, Claimant 3 fails to identify any information that he/she provided that relates specifically to possible violations by the Company. Claimant 3's award application and reconsideration request make clear that Claimant 3's information related to alleged securities violations at other

¹¹ Additionally, in connection with a prior, separate award claim by Claimant 3 for Covered Action ^{Redacted}, the Home Office Enforcement staff responsible for that matter affirmed that while they received Claimant 3's information, after meeting with Claimant 3, they determined that Claimant 3's information did not relate to their investigation and referred Claimant 3 to staff in the ^{Redacted} Regional Office.

entities (such as ^{Redacted}). Furthermore, with respect to the general terms and concepts identified by Claimant 3 in his/her request for reconsideration, a primary member of the Responsible Investigative Staff affirmed that he developed his knowledge and understanding of these terms (*e.g.*, ^{Redacted}) through his past investigative work and not because of any information from Claimant 3. In sum, Claimant 3 fails to identify any new information that he/she provided that meaningfully advanced the Investigation or resulting Covered Action.¹²

III. Conclusion

Accordingly, it is hereby ORDERED that: (1) Claimant 1 shall receive an award of over \$10 million, which is equal to ^{***} percent (^{***} %) of the monetary sanctions collected, or to be collected, in the Covered Action; (2) Claimant 2's and 3's whistleblower award applications in the Covered Action are denied; and (3) Claimant 2's and 3's whistleblower award applications in the Other Action are denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹² Claimant 2's and Claimant 3's related action award claims are also denied. This is because (1) they are not eligible for an award in the Commission's Covered Action and (2) the Other Action was a state civil action and therefore does not qualify as a related action under the Commission's whistleblower rules. Rules 21F-3(b)(1) and 21F-11(a). *See, e.g., Order Determining Whistleblower Award Claims*, Exchange Act Release No. 86902 (Sept. 9, 2019).