

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 91854 / May 12, 2021
WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-46

In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that Redacted (“Claimant 1”) receive a whistleblower award of approximately \$3.6 million, equal to Redacted percent (*** %) of the monetary sanctions collected in the above-referenced Covered Action. The CRS also recommended the denial of the award application from Redacted (“Claimant 2”). Claimant 1 did not contest the Preliminary Determination and Claimant 2 filed a timely response contesting the Preliminary Determinations.¹ For the reasons discussed below, the CRS’s recommendation is adopted with respect to both Claimant 1 and Claimant 2.

I. Background

A. The Covered Action

On Redacted the Commission instituted settled administrative and cease-and-desist proceedings against Redacted (collectively, the “Company”), finding that the Company Redacted

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¹ A third claimant (“Claimant 3”) did not contest the Preliminary Determination. Accordingly, the Preliminary Determination with respect to Claimant 3’s award claim became the Final Order of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. §240.21F-10(f).

Company paid a ^{Redacted} Pursuant to the settlement, the ^{Redacted} civil monetary penalty to the Commission.

On ^{Redacted} the Office of the Whistleblower (“OWB”) posted the above-referenced Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.² Claimants 1 and 2 filed timely whistleblower award claims.

B. The Preliminary Determinations

The CRS³ issued Preliminary Determinations⁴ recommending that (1) Claimant 1 receive an award of % of the monetary sanctions collected in the Covered Action; and (2) the award claim of Claimant 2 in the Covered Action be denied. The CRS recommended that Claimant 2’s award claim be denied on the grounds that Claimant 2 did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. Enforcement staff responsible for the Covered Action did not rely upon the information provided by Claimant 2, nor did they have any communications with Claimant 2 before or during the investigation.

C. Claimant 2’s Response to the Preliminary Determinations

Claimant 2 submitted a timely written response contesting the Preliminary Determinations.⁵ Claimant 2 contends in response to the Preliminary Determinations that the information Claimant 2 provided to the staff was related to violations by the Company. Claimant 2 further claims that Claimant 2 provided a flash drive of information to Commission staff during a meeting in ^{Redacted} and that the contents of the drive were directly relevant to the allegations in the Covered Action. Claimant 2 did not retain a copy of this flash drive, and requests access to the Commission’s investigative file or the contents of the flash drive in order to substantiate Claimant 2’s claim. Claimant 2 also argues that discussions Claimant 2 had with representatives of OWB in ^{Redacted} may have contributed to the success of the Covered Action. Lastly, in the event that the information provided was not utilized by the staff, Claimant 2 requests the Commission find that Claimant 2 “constructively” provided information that led to a successful enforcement action and therefore Claimant 2 is eligible for an award.

² See Exchange Act Rule 21F-10(a), 17 C.F.R. § 240.21F-10(a).

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 these rules.” 17 C.F.R. § 240.21F-10(d).

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

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

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. Accordingly, Claimant 1 qualifies for a whistleblower award.

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Claimant 1 provided new information to the staff that caused the staff to open a new investigation, and Claimant 1 provided ongoing assistance to the staff during the course of its investigation. The charges brought by the staff against the Company were directly based on the information Claimant 1 provided.

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B. Claimant 2

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.⁹ Under the whistleblower rules, an individual's original information leads to the success of an action where it causes staff to (i) commence an examination, (ii) open or reopen an investigation, or (iii) inquire into different conduct as part of a current Commission examination or investigation, and the Commission brings a successful judicial or administrative action based in whole or in part on conduct that was the subject of the

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⁹ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

individual’s original information, under Rule 21F-4(c)(1) of the Exchange Act; or alternatively, where in the context of an existing investigation, the individual’s original information significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act. In determining whether an individual’s information significantly contributed to an action, we consider factors such as whether the information allowed us to bring the action in significantly less time or with significantly fewer resources, additional successful claims, or successful claims against additional individuals or entities. The individual’s information must have been “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.¹⁰

The record on reconsideration demonstrates that Claimant 2’s information does not satisfy Exchange Act Rule 21F-4(c)(1) as the investigation was opened based on information provided by Claimant 1, not Claimant 2. The information submitted by Claimant 2 also did not significantly contribute to the success of the Covered Action pursuant to Exchange Act Rule 21F-4(c)(2).¹¹ First, the record reflects that Claimant 2’s submission of information through the Commission’s TCR system related to alleged violations of Redacted and not the subject matter of the Covered Action Redacted

Redacted Accordingly, the information Claimant 2 submitted though the TCR system was not used by the Enforcement staff assigned to the investigation that led to the Covered Action. Second, the Enforcement staff assigned to the investigation that led to the Covered Action confirmed that it did not review the materials Claimant 2 submitted on a flash drive. Commission staff from the Division of Examinations (“Examinations”), formerly known as the Office of Compliance Inspections and Examinations, investigated Redacted Redacted based upon Claimant 2’s TCR submissions. In Redacted Examinations staff met with Claimant 2 and Claimant 2 provided Examinations staff with a flash drive. Examinations staff referred Redacted to the Division of Enforcement in Redacted Enforcement staff declined to open an investigation based upon the

¹⁰ Whistleblower Award Proceeding File No. 2018-6, Rel. No. 34-82897 (Mar. 19, 2018); Whistleblower Award Proceeding File No. 2016-9, Rel. No. 34-77833 (May 13, 2016).

¹¹ In the course of reviewing Claimant 2’s response to the Preliminary Determinations, facts came to light indicating that Claimant 2 learned of the information Claimant 2 provided to the Commission Redacted

Redacted Nevertheless, we do not rely upon Redacted as a basis for the denial of Claimant 2’s claim, the grounds for which are set forth above.

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Examinations referral.¹⁴ The ^{Redacted} identified in the Examinations referral were not relevant to the Covered Action, and the information in the Examinations referral did not contribute to the success of the Covered Action. Nor did any discussions between Examinations staff and Enforcement staff regarding the referral contribute to the success of the Covered Action. In short, the information Claimant 2 submitted on the flash drive did not contribute to the investigation. Third, Enforcement staff confirmed that they did not discuss any information provided by Claimant 2 with representatives from OWB prior to Claimant 2's submission of Claimant 2's application for a whistleblower award ^{Redacted}, after the Covered Action was complete. Claimant 2's alternative argument that the information provided should be viewed as "constructively" contributing to the success of the Covered Action is without merit and contrary to the plain language of the whistleblower rules.¹⁵

Finally, Claimant 2's request for access to the Commission's investigative files is denied. The whistleblower rules permit an award claimant to request and receive a copy of the materials that form the basis of the Preliminary Determinations as to that claimant.¹⁶ Claimant 2 made such a request and received a copy of those materials. But the whistleblower rules do not entitle access to the Commission's investigative file.¹⁷ Moreover, as already stated above, the declarations provided by the staff are clear that Claimant 2's information neither caused the staff to open its investigation nor significantly contributed to the success of the Covered Action.¹⁸ Thus, we deny Claimant 2's request for access to this information.¹⁹

¹⁴ Enforcement staff subsequently referred the potential deficiencies raised in the Examinations referral to the ^{Redacted} for any further action. ***

¹⁵ See Exchange Act Rule 21F-4(c), 17 C.F.R. § 240.21F-4(c); see also *In the Matter of Claim for Award* ^{Redacted} at 2, 2015 WL 5000113, Securities Exchange Act Release No. 75752 (Aug. 24, 2015) (finding that claimant's information had not led to success of an enforcement action because, among other reasons, "the investigative team did not receive, review, or use any information" from the claimant, "nor did the team otherwise have any contact" with the claimant).

¹⁶ See Exchange Act Rule 21F-10(e)(1)(i), 17 C.F.R. § 240.21F-10(e)(1)(i).

¹⁷ See *id.*, Exchange Act Rule 21F-12(b), 17 C.F.R. § 240.21F-12(b) (noting that the whistleblower rules "do not entitle claimants to obtain from the Commission any materials (including any pre-decisional or internal deliberative process materials that are prepared exclusively to assist the Commission in deciding the claim) other than those listed in paragraph (a) of this section").

¹⁸ See *Doe v. SEC*, 729 F. App'x 1, 3 (D.C. Cir. 2018) (rejecting claimant's appeal on grounds that substantial evidence supported Commission's determination that the investigative staff "either never had access to [claimant's] information, or had access but never used the information.")

¹⁹ In Claimant 2's reconsideration request, Claimant 2 also seeks an award based upon an enforcement action brought by ^{Redacted}. However, a related action award may be made only if, among other things, the claimant satisfies the eligibility criteria for an award for the applicable covered action in the first instance. See 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b)(1) and Rule 21F-11(a); Order Determining Whistleblower Award Claims, Release No. 34-84506 (Oct. 30, 2018); Order Determining Whistleblower Award

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

Claims, Release No. 34-84503 (Oct. 30, 2018). Further, Claimant 2 first raised the request for a related action award in Claimant 2's reconsideration request, and thus did not submit ^{***} claim for award on Form WB-APP within the time allowed pursuant to Rule 21F-11(b)(2).