

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97227 / March 31, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-46

In the Matter of the Claim for an Award

in connection with

Redacted

Redacted

Notice of Covered Action ^{Redacted}

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim submitted by ^{Redacted} (“Claimant”) in connection with the above-referenced covered action (the “Covered Action”). Claimant filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant’s award claim is denied.

I. Background

A. The Covered Action

On ^{Redacted}, the Commission instituted a settled administrative action against ^{Redacted} (“Investment Adviser”), a registered investment adviser, and ^{Redacted} (the “Investment Adviser Officer”), its ^{Redacted}, in connection with ^{Redacted}.

^{Redacted}. The Commission found that ^{Redacted}.

^{Redacted}. Further, the Commission found that ^{Redacted} ***

Redacted
Commission found that Redacted . As a result of this conduct, the Redacted

Redacted
Redacted In addition, the Commission found that ***
Redacted

Redacted . Among other relief, the
Commission ordered the Investment Adviser and the Investment Adviser Officer to pay a total of Redacted
Redacted in disgorgement, prejudgment interest, and civil monetary penalties.¹

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

B. The Preliminary Determination

On Redacted , the CRS issued a Preliminary Determination recommending that Claimant’s award claim be denied because Claimant did not provide information that led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 21F-3(a)(3) and 21F-4(c) thereunder. The CRS preliminarily determined that Claimant’s information did not either (1) cause the Commission to (a) commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and (b) thereafter bring an action based, in whole or in part, on conduct that was the subject of Claimant’s information, under Exchange Act Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action, under Exchange Act Rule 21F-4(c)(2). The CRS preliminarily determined that Claimant’s information was not the impetus for opening the investigation that led to the Covered Action (“Investigation”) and that, while investigative staff responsible for the Covered Action met with Claimant, Claimant’s information was duplicative of information that the investigative staff had already received from staff in the Division of Examinations, formerly known as the Office of Compliance Investigations and Examinations (“OCIE”), pursuant to an examination of the Investment Adviser and other sources. In addition, the CRS preliminarily determined that Claimant provided information that ultimately was not part of the Investigation or Covered Action. Therefore, Claimant did not provide any information that helped advance the Investigation or was used in, or had any impact on, the charges brought by the Commission in the Covered Action. Finally, the CRS preliminarily determined that, because Claimant is not eligible for an award in connection with the Covered Action, she/he is also not eligible for an award in connection with any related action.

¹ There is a separate ongoing action against Redacted investigation.

Redacted

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that arose out of the same

C. Claimant's Response to the Preliminary Determination

Claimant submitted a timely written response (the "Response") contesting the Preliminary Determination.² In the Response, Claimant states that she/he had contacted Redacted ("Other Agency") in Redacted, immediately following Redacted, and had filed a TCR³ with the Commission after being instructed to do so by the Other Agency. The Response asserts that Claimant "synthesized and summarized" information for the Commission, including during an in-person meeting with Commission investigative staff, and was told that her/his leads were "very helpful." According to the Response, Claimant discussed with investigative staff a conversation relating to Redacted that Claimant had with Redacted and provided investigative staff with handwritten notes Redacted. The Response also states that Claimant discussed Redacted with investigative staff, and that, in addition to providing examples of Redacted at the request of Enforcement staff, Claimant highlighted how the Redacted, suggested various charges that could be brought, and outlined Redacted. Finally, the Response appears to suggest that information Claimant conveyed to the Other Agency may have contributed to the success of the Covered Action.

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 As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered action if either (1) the original information caused the staff to commence an examination, open an investigation, or inquire into 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 (2) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."⁶

In determining whether information "significantly contributed" to the success of the action, the Commission will consider whether the information was "meaningful" in that it "made

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

³ The TCR System is the Commission's electronic database which records and stores information received from whistleblowers and others about potential securities law violations and records staff action taken with regard to tips, complaints, and referrals ("TCRs") entered into the system.

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 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

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

Claimant does not qualify for an award under either of the above-described provisions. First, according to a declaration provided by the Enforcement staff responsible for the Covered Action, which we credit, Enforcement staff opened the Investigation as a Matter Under Inquiry on ^{Redacted} after staff review of a news article that discussed ^{Redacted} ^{Redacted}. On that same date, Enforcement staff and staff from OCIE jointly decided that OCIE staff would conduct an examination of, among others, the Investment Adviser. The Claimant’s tip was submitted over two months later, on ^{Redacted}. As such, neither the examination of the Investment Adviser nor the Investigation were opened based on information provided by Claimant. In addition, the record demonstrates that Claimant’s tip did not cause the Commission to inquire concerning different conduct as part of the ongoing examination or Investigation, as Enforcement staff and OCIE staff were already aware of the material facts alleged by Claimant by the time Claimant submitted the tip.

Second, the information provided by Claimant in the TCR and in subsequent contacts with Enforcement staff did not significantly contribute to the success of the Covered Action. While Claimant met with Enforcement staff on one occasion, contacted the staff numerous times via telephone and email, and provided a number of documents to staff at the in-person meeting and afterward, the record demonstrates that none of the information Claimant provided helped advance the Investigation or was used in, or had any impact on, the charges brought by the Commission in the Covered Action. The vast majority of the information Claimant provided was duplicative of information Enforcement staff had already received from OCIE staff and other sources, and the information Claimant provided that was not duplicative, such as ^{Redacted} notes, was not helpful to Enforcement staff and/or was not related to the issues being investigated.

The Response contends that Claimant aided the staff by synthesizing and summarizing information and providing ^{Redacted} at the request of Enforcement staff, and was told that her/his leads were “very helpful.” The Response may also suggest that information Claimant provided to the Other Agency may have contributed to the success of the Covered Action. We address each of these claims in turn.

First, to the extent that the assertion regarding synthesizing and summarizing information is intended to support an argument that the information Claimant provided would qualify as “independent analysis” under whistleblower program rules and therefore

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.

⁸ Exchange Act Rel. No. 85412 at 8-9.

satisfy the “original information” criterion for award eligibility,⁹ that argument is not relevant to the disposition of this claim. Even assuming, for argument’s sake, that Claimant’s information would qualify as “independent analysis,” the record is clear, as discussed above, that Claimant’s information did not lead to the success of the Covered Action.¹⁰

Second, Claimant’s argument that she/he assisted Enforcement staff by providing ^{Redacted} is unavailing for the same reason. Whether requested by Enforcement staff or not,¹¹ information provided by a whistleblower can only support award eligibility if the information provided leads to the successful enforcement of the Covered Action. As discussed above, the record is clear that none of the information or materials supplied by Claimant proved useful to Enforcement staff.

Third, as to statements from Enforcement staff regarding the helpfulness of Claimant’s tips, the record demonstrates that, while Enforcement staff stated in an email that Claimant’s tips were very helpful, that statement was an attempt to acknowledge and thank Claimant for Claimant’s willingness to attempt to assist the staff, not to convey any legal conclusion regarding Claimant’s eligibility for an award. As discussed above, notwithstanding this statement, the information Claimant provided did not help advance the Investigation and was not used in, and had no impact on, the charges brought by the Commission in the Covered Action.

Finally, to the extent the Response suggests that information Claimant provided to the Other Agency may have contributed to the success of the Covered Action, that argument is unavailing. As explained in the Supplemental Declaration, which we also credit, all of the documents the Commission received from the Other Agency came from sources other than Claimant. Based on this record, we conclude that none of the information Claimant provided was used in, or had any impact on, the charges brought by the Commission in the Covered Action, nor did any of Claimant’s information help advance the Investigation.

We therefore conclude that Claimant did not provide information that led to the successful enforcement of the above-referenced 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. As a result,

⁹ 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. *See* Rule 21F-4(b), 17 C.F.R. § 240.21F-4(b). “Independent analysis” means an “examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.” Rule 21F-4(b)(3), 17 C.F.R. § 240.21F-4(b)(3).

¹⁰ *See*, as relevant in this instance, Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

¹¹ In a supplemental declaration (“Supplemental Declaration”), Enforcement staff assigned to the Covered Action has stated that he does not recall specifically asking Claimant to provide ^{Redacted} but that, as a matter of standard practice, he encourages potential whistleblowers to submit to the staff any information they believe may be useful.

Claimant is not eligible for an award with respect to the Covered Action. Accordingly, Claimant is also not eligible for any related action award.¹²

III. Conclusion

Accordingly, it is hereby ORDERED that Claimant's whistleblower award application be, and hereby is, denied. It is further ORDERED that Claimant's whistleblower award application for a related action award be, and hereby is, denied.

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary

¹² On her/his whistleblower award application, Claimant applies for a related action award in connection with an enforcement action brought by the Other Agency. Because Claimant is not eligible for an award for the Covered Action, she/he is also not eligible for any related action award. *See* Exchange Act Section 21F(a)(5), 15 U.S.C. § 78u-6(a)(5); Exchange Act Rules 21F-3(b)(1) and 21F-11(a), 17 C.F.R. § 240.21F-3(b)(1) and 17 C.F.R. § 240.21F-11(a); *see also* Order Determining Whistleblower Award Claim, Release No. 34-86902 (Sept. 9, 2019). Moreover,

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