

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 84503 / October 30, 2018

WHISTLEBLOWER AWARD PROCEEDING

File No. 2019-2

In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

For the reasons discussed below, we deny the whistleblower award application that has been submitted by Redacted (“Claimant”) in connection with the above-referenced Notice of Covered Action.¹ See Section 21F(b) and (c) of the Securities Exchange Act of 1934 (“Exchange Act”); Exchange Act Rule 21F-10, 17 C.F.R. § 240.21F-10.

A. Background

In approximately Redacted the Commission learned that Redacted (the “Company”) had potentially committed certain securities-law violations. The Commission learned this from Redacted

Redacted and which was itself already under investigation for similar violations. The Redacted learned of the potential violations as part of Redacted. After the Company Redacted

Redacted and reported its further findings of potential securities violations to the Enforcement staff. Following the Redacted

¹ Three other individuals also submitted award applications in connection with the Notice of Covered Action. However, these individuals did not timely contest the preliminary denial of their claims and, as such, the Preliminary Determination with respect to their award claims became the Final Order of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

Redacted undertook a global internal investigation of the Company's operations.

While Redacted internal investigation of the Company was ongoing, the Claimant, on Redacted made a whistleblower submission to the Commission. This submission was followed by a supplemental submission from the Claimant on Redacted

In Redacted reported the results of its internal investigation of the Company to the Enforcement staff. Thereafter the Enforcement staff and the Redacted reached agreement on a proposed settlement regarding the Company's violations for the Commission's consideration. That proposal was adopted by the Commission and resulted in a settled action being filed against the Company on Redacted. The above-referenced self-reporting disclosures by Redacted formed the principal basis of the claims in the settled Covered Action.

Following the successful resolution of the Covered Action, the Office of the Whistleblower posted the Notice of Covered Action to commence the 90-day period for interested individuals to file award applications. *See* Exchange Act Rule 21F-10(b), 17 C.F.R. § 240.21F-10(b). The Claimant made a timely award application based on the above-mentioned whistleblower submissions.

After reviewing the award application and the relevant record as compiled by the Office of the Whistleblower, the Claims Review Staff ("CRS") issued a Preliminary Determination recommending a denial. As the Preliminary Determination explained, none of the information provided by the Claimant led to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Exchange Act Rules 21F-3(a)(3), 17 C.F.R. § 240.21F-3(a)(3), and 21F-4(c), 17 C.F.R. § 240.21F-4(c).² In reaching this preliminary recommendation, the CRS relied on a declaration from one of the principal staff attorneys responsible for both the investigation and the settlement discussions; this declaration, which was signed under penalty of perjury, explains that given the extensive information the staff had already received from the Redacted by Redacted through the above-referenced self-reporting disclosures, the staff determined that the Claimant's information did not warrant additional investigation. For this reason, as the declaration explains, the Redacted submissions were not used in connection with the Covered Action.

² As relevant here, information leads to the success of a covered action if it: (1) causes the Commission 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 under Rule 21F-4(c)(1) of the Exchange Act; or (2) significantly contributes to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

The Claimant subsequently filed a timely written response contesting the Preliminary Determination. The Claimant's response expressly requested that the Commission supplement the administrative record to address "whether there were [staff-Company] communications about our client's information and, if so, what they were." The response went on to state that, "if there were no such communications, we would be inclined to agree with the [CRS's] Preliminary Determination[.]" The response did not raise any other factual or legal arguments to challenge the Preliminary Determination.

B. Analysis

After careful consideration of the administrative record, including the Claimant's written responses and a supplemental declaration from the above-referenced staff attorney, we have determined to deny the Claimant's award application.³ The record demonstrates that the Claimant's submissions did not cause the opening of the investigation that resulted in the Covered Action, nor did the information cause the Enforcement staff to inquire into different conduct as part of an ongoing investigation. *See* Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1). Further, we find that the supplemental declaration provided by the staff attorney demonstrates that the Claimant's information did not significantly contribute to the success of the Covered Action, as the Claimant's information was not used in the investigation, including in the settlement discussions that ultimately resulted in the successful enforcement of the Covered Action. *See* Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

Further, the supplemental declaration directly addresses the "very specific factual point" that had been the sole basis of the Claimant's objection to the Preliminary Determination. Based on the explanation of events as set forth therein, we find that any communications that may have occurred with the ^{Redacted} concerning the Claimant's submissions to the Commission or ^{Redacted} _{Redacted} had no effect on (nor otherwise influenced in any way) the investigation, the settlement negotiations, the charges brought by the Commission, or the relief ultimately obtained in the Covered Action.

In light of the foregoing, we conclude that the Claimant is not entitled to an award because the Claimant's information did not lead to the successful enforcement of the Covered Action.

³ We credit as true the statements in the original declaration and the supplemental declaration from the staff attorney and adopt the statements therein as our findings of fact.

C. Conclusion

Accordingly, it is hereby ORDERED that the Claimant's claim for award is denied.⁴

By the Commission.

Brent J. Fields
Secretary

⁴ Pursuant to Exchange Act Rule 21F-11, 17 C.F.R. § 240.21F-11, Claimant seeks an award in connection with a potential related action. The related-action award application is denied. The Commission may make an award to a whistleblower in connection with a related action *only if* the Commission has determined that the whistleblower is entitled to an award for a Commission covered action. *See* Rule 21F-11(a); *see also* Rule 21F-3(b)(1).