

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 94860 / May 6, 2022
WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-55

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 Preliminary Determinations recommending that joint claimants Redacted (collectively, “Claimant 1”)¹ receive a whistleblower award of approximately \$3.5 million, equal to Redacted percent (^{***} %) of the monetary sanctions collected in the above-referenced Covered Action and in a separate action brought by the Redacted (the “Other Agency”). The CRS recommended the denial of the award application from Redacted (“Claimant 2”). Claimant 1 provided written notice of Claimant 1’s decision not to contest the Preliminary Determinations, and Claimant 2 submitted a timely notice contesting the preliminary denial of Claimant 2’s award claim.

After review of Claimant 2’s reconsideration request and the new evidence provided therein, the CRS found Claimant 2 eligible for an award for the Covered Action. After

¹ A joint award is appropriate as Claimant 1 jointly submitted their tip and Forms WB-APP. *See* Securities Exchange Act of 1934 (“Exchange Act”) Section 21F(a)(6) (defining “whistleblower” to mean, as relevant here, “2 or more individuals acting jointly who provide[] information relating to a violation of the securities laws to the Commission...”).

reviewing the Rule 21F-6 award factors,² the CRS determined on reconsideration that, regarding the Covered Action, a ^{Redacted} percent (^{***} %) award to Claimant 1 and a ^{Redacted} percent (^{***} %) award to Claimant 2 is appropriate. The CRS on reconsideration also maintained its ^{Redacted} percent (^{***} %) related action award recommendation for Claimant 1 in the separate action brought by the Other Agency (the “Other Agency Action”)³ and recommended denying Claimant 2’s application for award relating to the Other Agency Action.

For the reasons discussed below, we agree. We therefore award Claimant 1 ^{Redacted} percent of the monetary sanctions collected in the Covered Action and ^{Redacted} percent of the monetary sanctions collected in the Other Agency Action, equal in aggregate to more than \$2.8 million. We award Claimant 2 ^{Redacted} percent of the monetary sanctions collected in the Covered Action, equal to more than \$600,000, and we deny Claimant 2’s application for award in the Other Agency Action.⁴

I. Background

A. The Covered Action

The Commission opened the investigation into ^{Redacted} (the “Company”) that culminated in the Covered Action in ^{Redacted} (the “Commission Investigation”) following receipt of information provided by Claimant 1. On ^{Redacted}, the Commission filed a complaint alleging that the Company violated ^{Redacted}. ^{Redacted} The court

² See Exchange Act Rule 21F-6, 17 C.F.R. § 240.21F-6.

³ The Other Agency Action is ^{Redacted}

⁴ We deny Claimant 2’s applications for awards arising from the following other actions: ^{Redacted}

entered final judgment on ^{Redacted} ordering the Company to pay a penalty of ^{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.⁵ Claimants 1 and 2 filed timely whistleblower award claims.

B. The Other Agency Action

On ^{Redacted} the Other Agency brought an action against the Company based in part upon the same original information that Claimant 1 provided to the Commission and which caused the Commission to open the Commission Investigation. On ^{Redacted} the court entered judgment ordering the Company to pay ^{Redacted}

The Commission may pay an award based on amounts collected in a related action that is based on the same original information that the whistleblower voluntarily provided to the Commission and that led the Commission to obtain monetary sanctions totaling more than \$1 million.⁶ The Commission finds that the Other Agency Action constitutes a “related action” within the meaning of Exchange Act Rule 21F-3(b).

C. The Preliminary Determinations

The CRS⁷ issued Preliminary Determinations⁸ recommending that: (1) Claimant 1 receive an award of ^{***}% of the monetary sanctions collected in the Covered Action and the Other Agency Action, and (2) the award claim of Claimant 2 be denied with regard to the Covered Action and the Other Agency Action.

While the record showed that Enforcement staff issued a supplemental subpoena to the Company focusing ^{Redacted} among other things, based upon Claimant 2’s information, the CRS recommended that Claimant 2’s award claim be denied on the grounds that Claimant 2 did not provide original information that led to the successful enforcement of the

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

⁶ Exchange Act Rule 21F-3(b), 17 C.F.R. § 240.21F-3(b).

⁷ 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.” 17 C.F.R. § 240.21F-10(d); see also Rule 21F-11(d).

⁸ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d); Exchange Act Rule 21F-11(d), 17 C.F.R. § 240.21F-11(d).

Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act. The record showed that Claimant 2's information was either already known to the Commission or was not derived from (1) Claimant 2's independent knowledge, as defined by Rule 21F-4(b)(2), because Claimant 2's information was derived from publicly available sources, or (2) Claimant 2's independent analysis, as defined by Rule 21F-4(b)(3), because the information did not include an examination and evaluation of information that reveals information that is not generally known or available to the public. To the extent Claimant 2 provided information related to the charges in the Covered Action, Claimant 2 provided publicly available information, quoting from public documents and referring to changes in the price of the Company's stock.

D. Claimant 2's Response to the Preliminary Determination

Claimant 2 submitted a timely written response contesting the CRS's Preliminary Determination that Claimant 2's award claim be denied.⁹ Among other things, Claimant 2 contends that the information provided regarding the ^{Redacted} constituted "independent analysis" and was the result of considerable time and effort. Claimant 2 argues that his/her information "indisputably" led to the success of the Covered Action. Claimant 2 also alleges that other information he/she provided in separate submissions regarding the Company's ^{Redacted} among other things, may have significantly contributed to the success of the Covered Action.

Claimant 2 also provided additional evidence showing that Claimant spent more than seven weeks performing the analysis that led to Claimant 2's submissions to the Commission. Claimant states that his/her analysis involved research and review of many documents, including the Company's public filings, research reports, earnings call transcripts, and other material related to ^{Redacted} all of which Claimant 2 distilled into allegations that were submitted to the Commission.

II. Analysis

^{Redacted}

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

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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 and the Other Agency Action. Accordingly, Claimant 1 qualifies for a whistleblower award. Based on the specific facts and circumstances here, we find that an award of ^{Redacted} percent (^{***} %) is appropriate. In reaching that determination, we assessed the following facts: (1) there were no negative factors at issue in Claimant 1's submission; (2) Claimant 1 supplied information that caused Enforcement staff to open the investigation that led to the Covered Action; (3) Claimant 1 ^{Redacted} before contacting the Commission; and (4) Claimant 1 alleged retaliation and other hardships as a result of Claimant 1's reporting.

Claimant 1 also provided the same information to the Other Agency and caused the Other Agency to open the investigation that resulted in the Other Agency Action. For the reasons

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discussed herein, we find that an award to Claimant 1 of ^{Redacted} percent (^{***} %) of the monetary sanctions collected or to be collected in the Other Agency Action is appropriate.

B. Claimant 2

The record on reconsideration demonstrates that Claimant 2 voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action. Claimant 2, an outsider unaffiliated with the Company, provided new evidence showing that his/her information constituted “original information” by showing that it was derived from “independent analysis.”¹⁵ Claimant 2’s information was the result of unusual effort and intensive research over the course of many weeks, and developed through a detailed analysis of publicly-available information.¹⁶ Claimant 2’s information revealed allegations that were not previously known to Commission staff. Accordingly, Claimant 2 qualifies for a whistleblower award.

Based on the specific facts and circumstances here, we find that an award of ^{Redacted} percent (^{***} %) for the Covered Action is appropriate. In reaching that determination, we assessed the following facts: (1) there were no negative factors at issue in Claimant 2’s submission; (2) Claimant 2’s information focused Enforcement staff’s investigation on new allegations that led to the Covered Action; and (3) Claimant 2’s information was provided approximately fifteen months after the investigation was opened, based upon information provided by Claimant 1.

We deny a related action award to Claimant 2 for the Other Agency Action. The record shows that the investigation that resulted in the Other Agency Action was opened based upon information provided by Claimant 1. The record also shows that Claimant 2’s information did

¹⁵ To be credited with providing “independent analysis,” the whistleblower’s examination and evaluation should contribute significant independent information that “bridges the gap” between the publicly available information and the possible securities violations. “[I]n each case, the touchstone is whether the whistleblower’s submission is revelatory in utilizing publicly available information in a way that goes beyond the information itself and affords the Commission with important insights or information about possible violations.” Adopting Release for Amendments to Whistleblower Rules, Release No. 34-89963 (Sept. 23, 2020) at 112-13.

¹⁶ As stated in our interpretive guidance, “the Commission may determine that a whistleblower’s examination and evaluation of publicly available information reveals information that is ‘not generally known or available to the public’—and therefore is ‘analysis’ within the meaning of Rule 21F-4(b)(3)—where: (1) The whistleblower’s conclusion of possible securities violations derives from multiple sources, including sources that, although publicly available, are not readily identified and accessed by a member of the public without specialized knowledge, unusual effort, or substantial cost; and (2) these sources collectively raise a strong inference of a potential securities law violation that is not reasonably inferable by the Commission from any of the sources individually.” *Id.* at 119; *see also* Order Determining Whistleblower Award Claim, Release No. 92780 (Aug. 27, 2021) (granting award to claimant whose information was the “product of unusual effort and expertise developed over many years”).

not significantly contribute to the Other Agency Action. Accordingly, Claimant 2 is not entitled to a related action award for the Other Agency Action.

III. Conclusion

Accordingly, it is hereby ORDERED that (1) Claimant 1¹⁷ shall receive an award equal to ^{Redacted} percent (^{***} %) of the monetary sanctions collected, or to be collected, in the Covered Action, (2) Claimant 1 shall also receive an award equal to ^{Redacted} percent (^{***} %) of the monetary sanctions collected, or to be collected, in the Other Agency Action, (3) Claimant 2 shall receive an award equal to ^{Redacted} percent (^{***} %) of the monetary sanctions collected, or to be collected, in the Covered Action; and (4) Claimant 2's award applications for the Other Agency Action and the Other Actions are denied.

By the Commission.

Eduardo A. Aleman
Deputy Secretary

¹⁷ Unless the members of Claimant 1 within ten (10) calendar days of the issuance of this Order make a joint request, in writing, for a different allocation of the award among them, the Office of the Whistleblower is directed to pay the joint award in equal shares to each member of Claimant 1.