

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99890 / April 3, 2024

WHISTLEBLOWER AWARD PROCEEDING
File No. 2024-11

In the Matter of the Claims for an Award

in connection with

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Notice of Covered Action ^{Redacted}

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

^{Redacted} (“Claimant 1”) and ^{Redacted} (“Claimant 2”) filed timely award applications in response to the above-referenced covered action (the “Covered Action”). For the reasons discussed herein, we grant Claimant 1 a whistleblower award of more than \$2,000,000, which represents ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Covered Action. We also grant Claimant 2 a whistleblower award of more than \$400,000, which represents ^{***} percent (^{***} %) of the monetary sanctions collected in the Covered Action.

Further, we vacate our prior award determination order issued on December 2, 2022 in connection with the Covered Action.

I. Background

A. Covered Action

On ^{Redacted}, the Commission filed a settled civil action in federal district court relating to ^{***} (the “Company”). According to the complaint, the Company allegedly ^{Redacted}

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complaint further alleged that

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^{Redacted} In settlement, ^{Redacted} agreed to pay monetary sanctions totaling ^{Redacted}, which has been collected.

B. Award Proceedings before the Commission

Thereafter, Claimants 1 and 2 filed timely whistleblower award claims in response to the above-referenced Notice of Covered Action.¹ On December 2, 2022, the Commission issued a final order that granted Claimant 1’s award application but denied Claimant 2’s application.

In denying Claimant 2’s application, the Commission found that Claimant 2 did not qualify as a “whistleblower.”² The Commission determined that the information that Claimant 2 was relying on to support his whistleblower application—which had been submitted to the

¹ See Exchange Act Rule 21F-10(a); 17 C.F.R. § 240.21F-10(a). Neither Claimant 1 nor Claimant 2 submitted an award application for a potential related action within ninety (90) days of a final order imposing sanctions in a potential related action. See Exchange Act Rule 21F-11(b)(2); 17 C.F.R. § 240.21F-11(b)(2).

² See Exchange Act Section 21F(a)(6) (defining whistleblower as “any individual”); Rule 21F-2(a)(1); 17 C.F.R. § 240.21F-2(a)(1) (“[y]ou are a whistleblower... as of the time that, alone or jointly with others, you provided the Commission with information in writing that relates to a possible violation of the federal securities laws...”). See also Rule 21F-2(a)(2); 17 C.F.R. § 240.21F-2(a)(2) (“[a] whistleblower must be an individual. A company or other entity is not eligible to be a whistleblower.”).

Commission by the general counsel of an entity that Claimant 2 owned—had been submitted not on behalf of Claimant 2 in his personal capacity, but instead on behalf of the entity. The Commission explained that “there is no evidence that the general counsel or other entity representatives actually represented Claimant 2 in his individual capacity rather than the entity on the numerous occasions when they presented information to the SEC[.]”

The Commission also explained that it was denying Claimant 2’s application because Claimant 2 failed to submit a Form TCR within the time period allowed under the Commission’s rules.³ Further, the Commission declined to exercise its discretionary waiver authority under Section 36(a)(1) of the Exchange Act to excuse Claimant 2’s untimely TCR submission.⁴ The Commission stated that Claimant 2’s arguments did “not demonstrate[] a sufficient reason for not timely filing a TCR that reflects the type of limited circumstance supporting the Commission’s [prior] exercise” of exemptive relief.⁵ The Commission also observed that “[e]ven were we to waive non-compliance with the Form TCR requirement, Claimant 2 still does not qualify for an award because Claimant 2 did not submit information to the Commission in his/her individual capacity.”

Claimant 2 timely filed a petition for review of his denial in the Court of Appeals for the Fifth Circuit. In response to certain record evidence discussed in Claimant 2’s opening brief, the Commission sought and obtained a voluntary remand so that it could reconsider its determination that Claimant 2 was not a whistleblower.

On remand, the Commission requested additional information from Claimant 2 regarding Claimant 2’s assertion that the entity’s general counsel submitted information to the SEC on behalf of Claimant 2 in his personal capacity. In response, Claimant 2 submitted a new declaration from the entity’s general counsel that expressly states that the general counsel represented Claimant 2 in Claimant 2’s personal capacity throughout the process of providing information regarding the Company to the SEC.

³ The Commission stated that Claimant 2 did not file his TCR with the Commission within 30 days of the submission of information upon which Claimant 2’s award claim was based despite having constructive notice of the filing requirement. *See* Rule 21F-9(e)(2); 17 C.F.R. § 240.21F-9(e)(2).

⁴ Section 36(a)(1) provides that “the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person... from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. § 78mm(a)(1).

⁵ Claimant 2 asserted that his attorney failed to communicate with the SEC, failed to open messages from SEC staff, and failed to familiarize himself with the basic requirements of a whistleblower application, which caused Claimant 2 to file his Form TCR after the required deadline. Claimant 2 further asserted that his attorney was unaware that submitting the Form TCR late and jointly with the entity might impact his whistleblower eligibility.

II. Analysis

A. Award Eligibility

We find that the record supports an award for Claimant 1. Claimant 1 qualifies as a whistleblower and Claimant 1 voluntarily provided original information to the Commission that caused Enforcement staff to open an investigation that led to the successful enforcement of the Covered Action.

With respect to Claimant 2's award application, we find that Claimant 2 does in fact qualify as a whistleblower. We reach this determination based on the supplemental declaration that Claimant 2 submitted on remand. Further, we find that the record supports the conclusion that Claimant 2 voluntarily provided original information to the Commission that significantly contributed to the success of the Covered Action.

With respect to Claimant 2's untimely TCR, we have determined that it would be in the public interest and consistent with the protection of investors for the Commission to exercise our discretionary authority under Section 36(a) of the Exchange Act to waive the TCR filing requirements of Rules 21F-9(a) and (b). In reaching this determination, we acknowledge that we previously declined to exercise our waiver authority in this matter. At the time, we explained that the justifications asserted by Claimant 2 here did not fit within "the type of limited circumstances" for which we have previously exercised our waiver authority and that Claimant 2 did not otherwise qualify for an award. Upon further consideration and in light of the supplemental information provided by Claimant 2, we decline to follow that path again. We are now persuaded that the better course is to grant a waiver for an untimely TCR because Claimant 2 would be otherwise meritorious as he voluntarily provided original information to the Commission that significantly contributed to the success of the Covered Action.⁶

⁶ We have exercised our Section 36(a) exemptive authority in other cases where an otherwise meritorious claimant filed a Form TCR after first providing information to the Commission. *See, e.g.*, Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 94398 (Mar. 11, 2022); Order Determining Whistleblower Award Claim, Exchange Act Rel. No. 90721 (Dec. 18, 2020); Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90580 (Dec. 7, 2020). Claimants are advised, however, that outside of the Form TCR context, the Commission has consistently required a demonstration that extraordinary circumstances led to the failure to comply with a procedural requirement and nothing about the determination in this final order should be understood to alter that demanding approach.

B. Award Amount and Allocation

Turning to the award amount, we find as an initial matter that Claimant 1 and Claimant 2

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Further, we find that an award allocation of Redacted percent (*** %) to Claimant 1 and *** percent (*** %) to Claimant 2 is appropriate. Claimant 1’s contributions to the success of the Covered Action were significantly greater than the contributions of Claimant 2. Claimant 1’s information was significant in that it revealed fraudulent conduct and prompted the opening of the investigation. Additionally, Claimant 1’s assistance during the investigation, which included several interviews and production of documents, helped the staff with identifying witnesses and drafting subpoenas. We also find that the charges in the Covered Action were based in substantial measure on Claimant 1’s information. By contrast, we find that much of Claimant 2’s information was duplicative of information first provided by Claimant 1, who reported information to the Commission 15 months earlier.⁸ And while Claimant 2 provided some new information that was helpful in contradicting information in the Company’s public filings and supported certain allegations in the Covered Action, we find that this information was much more limited than the information provided by Claimant 1.⁹

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⁸ Our assessment of Claimant 2’s relative contributions to the success of the Covered Action is based on a supplemental sworn declaration from a Division of Enforcement attorney who was involved in the investigation that led to the Covered Action. We credit the factual assertions in that declaration.

⁹ We acknowledge that Claimant 2 provided assistance during the investigation, which included several meetings with the staff and production of certain materials that supported the allegations.

III. Conclusion

Accordingly, it is hereby ORDERED that the December 2, 2022 Order Determining Whistleblower Award Claims that the Commission previously issued in connection with this Covered Action is vacated.

It is further ORDERED that Claimant 1 shall receive an award equal to ^{Redacted} percent (^{***} %) of the monetary sanctions collected in the Covered Action.

Finally, it is ORDERED that Claimant 2 shall receive an award equal to ^{***} percent (^{***} %) of the monetary sanctions collected in the Covered Action.

By the Commission.

Vanessa A. Countryman
Secretary