

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98219 / August 25, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-79

In the Matter of the Claims for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations in connection with the above-referenced Covered Action (the “Covered Action”) recommending that ^{Redacted} ^{***} (“Claimant 1”) receive a whistleblower award of over \$18 million, which represents ^{***} percent (^{***} %) of the monetary sanctions collected in the Covered Action, and that the award application submitted by ^{Redacted} (“Claimant 2”) be denied. Claimant 1 provided written notice of Claimant 1’s decision not to contest the Preliminary Determination. Claimant 2 filed a response contesting the Preliminary Determination. For the reasons discussed below, the CRS’s recommendations are adopted with respect to Claimants 1 and 2.

I. Background

A. The Covered Action

On ^{Redacted}, the Commission instituted an administrative proceeding against ^{Redacted} (the “Company”) and ^{Redacted}, the Company’s ^{Redacted}. The Order found that from ^{Redacted} ^{Redacted} ^{Redacted}. The Order imposed monetary sanctions totaling ^{Redacted} more than ^{Redacted}. Also on ^{Redacted}, the Commission filed a separate action, (the “Additional Action”), against ^{Redacted}

Redacted, the Company's Redacted, for Redacted. On Redacted, a final judgment was entered Redacted ordering a Redacted civil penalty. We find that the Additional Action arose out of the same nucleus of operative facts as the Covered Action and should be treated as part of the Covered Action for purposes of making a whistleblower award under Exchange Act Rule 21F-4(d)(1).¹

On Redacted, the Office of the Whistleblower posted the Notice of Covered Action on the Commission's public website inviting claimants to submit whistleblower award applications within 90 days, by Redacted.² Claimants 1 and 2 filed whistleblower award applications.

B. The Preliminary Determinations

The CRS issued Preliminary Determinations³ recommending that Claimant 1 receive a whistleblower award in the amount of *** percent (***) of the monetary sanctions collected and that Claimant 2's award application be denied. The Preliminary Determination found that Claimant 2's information did not lead to the success of the Covered Action because Claimant 2 submitted information after the Covered Action was filed and settled and none of the investigative staff recall receiving or reviewing any information from Claimant 2 nor communicating with Claimant 2. In addition, the Preliminary Determination found that Claimant 2 failed to submit his/her claim for award to the Office of the Whistleblower within ninety days of the date of the Notice of Covered Action, as required under Rule 21F-10 of the Exchange Act.⁴

C. Claimant 2's Response to the Preliminary Determination

Claimant 2 submitted a written response contesting the Preliminary Determination.⁵ In

¹ See Exchange Act Rule 21F-4(d)(1), 17 C.F.R. § 240.21F-4(d)(1).

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

³ See Exchange Act Rule 21F-10(d), 17 C.F.R. § 240.21F-10(d).

⁴ Exchange Act Rules 21F-10(a) ("A claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim for an award based on that action, or the claim will be barred") and 21F-10(b)(1) ("All claim forms, including any attachments, must be received by the Office of the Whistleblower within ninety (90) calendar days of the date of the Notice of Covered Action in order to be considered for an award"). 17 C.F.R. §§ 240.21F-10(a) and 240.21F-10(b)(1). As further discussed below, because Claimant 2's information did not lead to the successful enforcement of the Covered Action, the Commission finds it unnecessary to address whether or not Claimant 2 submitted a timely award application.

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

the reconsideration request, Claimant 2 principally argues that Claimant 2 is the source of the original information that led to the opening of the Covered Action investigation, the subpoena to the Company, and the bases for the charges in the Covered Action. Claimant 2 also argues that Claimant 2 triggered and influenced the Company's internal investigation and that the Company's officers told Claimant 2 to report internally and not to the Commission. In this regard, Claimant 2 argues that if the Commission did not receive any of Claimant 2's information from the internal investigation, there is evidence that the Company intended to obstruct the investigation. Claimant 2 also admits to "procedural deficiencies" and argues that there are extraordinary circumstances for the Commission to waive eligibility procedures.

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.⁶ Accordingly, Claimant 1 is eligible for a whistleblower award.

Applying the award criteria in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed award amount is appropriate.⁷ In reaching this determination, we positively assessed the following facts: (i) Claimant 1 submitted a Form TCR that prompted Enforcement staff to open the Covered Action investigation; (ii) Claimant 1 provided additional helpful information and substantial, continuing assistance that saved Commission time and resources during the Covered Action investigation; (iii) Claimant 1's information was closely related to the charges brought by the Commission; and (iv) Claimant 1 internally reported.

B. Claimant 2

To qualify for an award under Section 21F of the Securities Exchange Act of 1934 ("Exchange Act"), a whistleblower must voluntarily provide the Commission with original

⁶ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1); Exchange Act Rule 21F-3(a), 17 C.F.R. § 240.21F-3(a).

⁷ In assessing the appropriate award amount, Exchange Act Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems. 17 C.F.R. § 240.21F-6.

information that leads to the successful enforcement of a covered action.⁸

Claimant 2's arguments that he/she is the source of the original information that led to the opening of the Covered Action investigation, led to the Commission issuing a subpoena to the Company, and led to the charges in the Covered Action are not supported by the record. The record, which includes declarations from the Enforcement staff responsible for the Covered Action, which we credit, shows that Claimant 1's TCR prompted Enforcement staff to open the Covered Action investigation. In addition, it was Claimant 1's information, not Claimant 2's information, that put Enforcement staff on the correct path, and staff used Claimant 1's information to, among other things, establish wrongdoing and craft subpoena document production requests. As Claimant 2 admits in the reconsideration request, Claimant 2 never communicated with Enforcement staff, and the Enforcement staff declarations confirm that investigative staff did not receive or review information from Claimant 2. As such, Claimant 2's information did not cause the staff to open the Covered Action investigation or to inquire into different conduct once it was open, and did not significantly contribute to the success of the Covered Action.⁹

Liberally construed, Claimant 2's reconsideration request appears to assert eligibility based on internal reporting under Rule 21F-4(c)(3). However, there is insufficient evidence to conclude that the Company forwarded Claimant 2's information to the Commission. Enforcement staff explained in a supplemental declaration, which we credit, that although counsel for the Company did make presentations to the staff, the Company refused to provide the report resulting from its internal investigation and refused to provide any witness summaries or notes compiled during the internal investigation. The supplemental declaration also indicates that the staff does not recall the Company referencing Claimant 2's information in its presentations. Moreover, Claimant 2 does not satisfy Rule 21F-4(c)(3), as Claimant 2 did not submit information to the Commission within 120 days of reporting it to the Company.¹⁰ Claimant 2 submitted information to the Commission after the Covered Action was filed and settled, after the Notice of Covered Action was posted, and years after the Company initiated an internal investigation. Specifically, the Covered Action was filed on ^{Redacted}, but Claimant never contacted the Commission until ^{Redacted}, when he/she submitted a TCR. Even if Claimant 2 provided helpful information internally, and the Company relayed that information to the Commission, Claimant 2 did not provide that information *to the Commission* until well beyond 120 days, under any plausible calculation. We therefore conclude that Claimant 2's information did not lead to the successful enforcement of the Covered Action.

⁸ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁹ See Exchange Act Rules 21F-4(c)(1) and 21F-4(c)(2), 17 C.F.R. §§ 240.21F-4(c)(1) and 240.21F-4(c)(2).

¹⁰ Exchange Act Rule 21F-4(c)(3), 17 C.F.R. § 240.21F-4(c)(3).

Claimant 2's arguments about the Company impeding him/her from submitting a TCR earlier and intending to obstruct the investigation, whether or not true, do not overcome Claimant 2's eligibility hurdles. While Rule 21F-8(a) provides that "the Commission may, in its sole discretion, waive any of these procedures upon a showing of extraordinary circumstances,"¹¹ submitting information to the Commission that leads to the successful enforcement of the Covered Action is not a procedural requirement, but an important cornerstone of the Commission's whistleblower award program, which Claimant 2 does not meet.

IV. Conclusion

Accordingly, it is ORDERED that Claimant 1 shall receive an award of *** percent (** %) of the monetary sanctions collected in the Covered Action and that Claimant 2's award application be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary

¹¹ Exchange Act Rule 21F-8(a), 17 C.F.R. § 240.21F-8(a).