

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 91808 / May 10, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-45

In the Matter of the Claims for an Award

in connection with

Redacted

Redacted

Notice of Covered Action Redacted

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued Preliminary Determinations recommending that Redacted (“Claimant 1”) receive a whistleblower award of nearly \$18 million, which represents Redacted percent Redacted of the monetary sanctions collected in each of the above-referenced Covered Actions (the “Covered Actions”). The CRS further recommended that Redacted (“Claimant 2”) receive a whistleblower award of more than \$4 million, which represents *** percent Redacted of the monetary sanctions collected in each of the Covered Actions.¹ Both Claimant 1 and Claimant 2 contested the award percentages recommended in the Preliminary Determinations in both Covered Actions. After reviewing both Claimants’ arguments and an additional staff declaration provided in response to Claimants’ arguments, the CRS confirmed its original award recommendations that Claimant 1 and Claimant 2 receive *** and *** respectively, of the monetary sanctions collected in both Covered Actions. For the reasons discussed below, the CRS’s recommendations are adopted.

¹ The CRS also preliminarily determined to recommend that the award applications of three other claimants be denied. None of these claimants submitted a request for reconsideration and, as such, the Preliminary Determinations with respect to their award claims became the Final Order of the Commission, pursuant to Rule 21F-10(f).

I. Background

A. The Commission’s Enforcement Actions

1. [Redacted] Covered Action

On [Redacted] the Commission instituted settled public administrative and cease-and-desist proceedings against [Redacted] a financial services firm that, among other things, serves as [Redacted] , finding that [Redacted] violated [Redacted] In its order, the Commission found that, between [Redacted]

relief, [Redacted] was ordered to pay [Redacted] Among other all of which has been collected.

2. [Redacted] Covered Action

Also on [Redacted] the Commission instituted settled public administrative and cease-and-desist proceedings against [Redacted] finding that [Redacted] violated [Redacted] In its order, the Commission found that, between [Redacted] [Redacted] [Redacted] [Redacted]

[Redacted] Among other relief, [Redacted] was ordered to pay [Redacted] all of which has been collected.

3. Posting of Covered Actions

On [Redacted] the Office of the Whistleblower posted Notices of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.² Claimants 1 and 2 filed timely whistleblower award claims.

B. The Preliminary Determinations

On [Redacted] the CRS issued Preliminary Determinations recommending that

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

Claimant 1 and 2 receive whistleblower awards of *** and *** respectively, of the monetary sanctions collected in each of the Covered Actions. In recommending that Claimant 1 receive a significantly larger award than Claimant 2, the CRS determined that Claimant 1's information was more important to the investigation because Claimant 1's information was received by the Commission several years before Claimant 2's information. The CRS also recommended that Claimant 2's award be reduced for unreasonable reporting delay.

C. Claimants' Responses to the Preliminary Determinations

Claimant 1 asserts that Claimant 2 should not receive any award and that Claimant 1 should receive a maximum 30% award. Claimant 1 makes two principal objections to the award recommendation for Claimant 2:

- Claimant 1 states that Claimant 2 did not provide new, original information that led to the success of the enforcement action, but instead only confirmed what Claimant 1 had already told the Commission, thus rendering Claimant 2 ineligible for an award. Claimant 1 further contends that Claimant 1, not Claimant 2, was the first to inform the SEC about Redacted and provides in support of this contention Redacted copies of three emails Claimant 1 had sent the staff in Redacted, prior to the submission of Claimant 2's tip to the Commission.
- Claimant 1 asserts that Claimant 2's award recommendation should be reduced because Claimant 2 Redacted. Claimant 1 maintains that it is Redacted.

Claimant 2, in contrast, contends that the CRS failed to properly weigh the value of Claimant 2's contribution to the investigation relative to Claimant 1's, arguing that much of the information for which the CRS credited Claimant 1 was, in actuality, information Claimant 1 had received from Claimant 2. Claimant 2 asserts, moreover, that the information Claimant 2 provided was more valuable to the investigation than Claimant 1's in that Claimant 2, unlike Claimant 1, had current, first-hand knowledge of Redacted. Claimant 2 further maintains that it was Claimant 2, not Claimant 1, who provided the staff with information about the fact that Redacted which Claimant 2 characterizes as a "much graver issue" than the issues related to the information Claimant 1 provided. Finally, Claimant 2 disputes the CRS's finding that Claimant 2 unreasonably delayed reporting *** information to the Commission.

III. Analysis

Applying the award criteria in Rule 21F-6 of the Securities Exchange Act of 1934 to the specific facts and circumstances here, we find the proposed award amounts are appropriate and reject both Claimant 1's and Claimant 2's arguments for different award percentage allocations.³ In response to the assertions made by the Claimants in their responses, the Office of the Whistleblower obtained an additional declaration from a member of the Enforcement staff, which we credit in resolving the conflicting contentions of the Claimants.

We find that Claimant 1 contributed substantially more to the success of the Covered Actions than Claimant 2. In reaching our award determinations, we positively assessed the following facts: (1) Claimant 1's tip was the initial source of the underlying investigation; (2) Claimant 1's tip ^{Redacted}; (3) Claimant 1 provided Enforcement staff with extensive and ongoing assistance during the course of the investigation, including identifying witnesses and helping staff understand complex fact patterns and issues related to the matters under investigation; (4) the Commission used information Claimant 1 provided to devise an investigative plan and to craft its initial document requests; (5) Claimant 1 made persistent efforts to remedy the issues, while suffering hardships; (6) Claimant 2 was a valuable first-hand witness who also provided helpful information relevant to the practices engaged in by the respondents in the Covered Actions, albeit several years after the Commission had received Claimant 1's information; (7) Claimant 2 provided information and documents, participated in staff interviews, and provided clear explanations to the staff regarding the issues that Claimant 2 brought to the staff's attention; (8) Claimant 2's information gave the staff a more complete picture of how events from an earlier period impacted the respondents' practices and put the respondents on notice that ^{Redacted} were likely not complying with ^{Redacted} which the staff was able to use in settlement discussions with the respondents' counsel; and (9) while Claimant 2 was a helpful whistleblower, Claimant 1 was the main source of information.

With regard to Claimant 2's contentions, we find no support in the record, other than Claimant 2's general assertion, that much of the information Claimant 1 provided to the Commission came originally from information Claimant 2 had provided to Claimant 1; rather the only information that the record shows Claimant 2 gave to Claimant 1 was a single email ^{Redacted} indicating that

Finally, with respect to Claimant 2's assertion that Claimant 2, not Claimant 1, first provided the staff with information about ^{Redacted} the record shows that Claimant 1 did, in fact, advise the staff at least a year before Claimant 2 submitted ^{Redacted} tip to the Commission that ^{Redacted}

³ 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.

Redacted

However, contrary to Claimant 1’s assertion, the staff did not conclude that Claimant 2 was the original source of information that

Rather, the staff noted that Claimant 2 had made some crucial original contributions beyond that basic fact -- namely that Claimant 2 was the first witness who was able to tell the staff that

The staff further emphasized that, as a recent insider, Claimant 2 provided important information as a percipient witness which helped establish liability, with factual details on those topics that went beyond what Claimant 1 had been able to provide.

We further reject Claimant 1’s contention that Claimant 2’s award percentage should be reduced because of Claimant’s 2’s participation in

While Claimant 2 did participate there is no evidence that Claimant 2 engaged in any culpable activity in connection with the specific transactions that are the subject of the Covered Actions. Accordingly, we do not believe Claimant 2’s award percentage should be reduced as a result of Claimant 2’s participation in

Finally, we note that, in contrast to Claimant 1, who persistently alerted the Commission to the ongoing practices for a number of years before the investigation was opened, Claimant 2 delayed reporting to the Commission for several years after becoming aware of the wrongdoing. Accordingly, we find that Claimant 2 unreasonably delayed reporting to the Commission and that a reduction in Claimant 2’s award percentage is appropriate.⁴

IV. Conclusion

Accordingly, it is hereby ORDERED that Claimant 1 shall receive an award of *** percent of the monetary sanctions collected or to be collected in both Covered Actions and Claimant 2 shall receive an award of *** percent of the monetary sanctions collected or to be collected in both Covered Actions.

By the Commission.

Vanessa A. Countryman
Secretary

⁴ We have chosen to reduce the award by a smaller amount than we otherwise might have because we believe that part of this delay is mitigated by the fact that Claimant 2 provided Claimant 1 with information indicating

knowing that Claimant 1 was forwarding this information to the Commission staff.