

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92037 / May 27, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2021-51

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 a Preliminary Determination in connection with the above-captioned Covered Action (the “Covered Action”) recommending that ^{Redacted} (“Claimant 1”) receive an award of ^{Redacted} percent (^{Redacted} %) of amounts collected in the Covered Action, and that the award claim submitted by ^{Redacted} (“Claimant 2”) be denied.¹ Claimant 1 did not submit a response contesting the Preliminary Determination, but Claimant 2 filed a timely response contesting the Preliminary Determination. ^{Redacted} Subsequent to issuing the Preliminary Determination, the Commission

As such, the CRS now recommends that Claimant 1 receive an award of \$4.2 million, equal to ^{Redacted} % of amounts collected in the Covered Action.

¹ The Preliminary Determination of the CRS also recommended denying the award claim of a third claimant, who has not filed a written response. Thus, the Preliminary Determination with respect to the third claimant has become the Final Order of the Commission under Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

I. Background

A. The Covered Action

On ^{Redacted}, the Commission instituted an administrating proceeding captioned ^{Redacted}

The Covered Action resulted from ^{***} separate investigations (the “Underlying Investigations”), and it related to ^{***} categories of misconduct ^{Redacted} One type of misconduct (as relevant to Claimant 1) stemmed from ^{Redacted}

^{Redacted} The Commission alleged that

^{Redacted} Another category involved ^{Redacted} The Covered Action alleged that, during

^{Redacted} the Commission ordered ^{Redacted}

B. The Preliminary Determination

The CRS ^{***} issued a Preliminary Determination² recommending that Claimant 1 receive an award equal to ^{***} percent (^{***} %) of the amounts collected in the Covered Action. The CRS subsequently recommended that Claimant 1 receive an award of \$4.2 million, equal to ^{Redacted} percent (^{***} %) of amounts collected in the Covered Action, ^{Redacted}

The CRS also preliminarily determined to recommend that Claimant 2’s claim be denied. The Preliminary Determination explained that Claimant 2 is ineligible for an award. Enforcement staff responsible for the Underlying Investigations confirmed in a sworn declaration that they received no information from, and had no communications with, Claimant 2. Thus, Claimant 2’s information did not lead to the success of the Covered Action, as required by Exchange Act Rules 21F-3(a)(3) and 21F-4(c).

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

C. Claimant 2's Response to the Preliminary Determination

Claimant 2 submitted a timely written response contesting the Preliminary Determination.³ Claimant 2 contends that the declaration provided by the Enforcement staff was impermissible “speculation” that the Commission should “throw[] out.” Claimant 2 argues that even if the Enforcement staff declarant did not receive Claimant 2’s information, others in the Commission may have. Claimant 2 argues that while he/she never spoke to the staff responsible for any of the *** Underlying Investigations, his/her information may have still contributed to the Covered Action. Claimant 2 points to a tip Claimant 2 submitted to the Commission on Redacted (submission number Redacted) that Claimant 2 claims related to one of the *** categories of misconduct discussed in the Covered Action – Redacted.⁴ Claimant 2 suggests that “people high up at the SEC” may have used the information to “assign” staff to perform an investigation related to his/her tip, without attributing the initiating information to Claimant 2. As evidence that Commission staff must have read his/her tip, Claimant 2 points to the use of the term Redacted (which also appeared in Claimant 2’s tip) in the Covered Action.

III. 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.⁵ Specifically, *** Claimant 1 provided detailed information that caused Enforcement staff to open one of the investigations that resulted in the Covered Action.

Redacted

³ Claimant 2 also timely filed an addendum to *** submission, as well as another document styled as a “Concluding Statement,” all of which were considered together.

⁴ Claimant 2’s tip was based on a highly-publicized Redacted that occurred about six months before Claimant 2’s tip.

⁵ 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).

Redacted

Redacted

The record reflects that Claimant 1 learned of the wrongdoing over time, and when Claimant 1 had gathered enough information, Claimant 1 made a detailed and credible report to the Commission. Claimant 1 also provided substantial assistance by meeting with investigative staff multiple times, identifying key players, and providing additional helpful information and documents. ^{Redacted}

Claimant 1 provided detailed and credible information that alerted the Commission to the alleged violations, prompting the opening of the investigation, and then continued to cooperate with the investigative staff.

B. Claimant 2

To qualify for an award under Section 21F of the Exchange Act, a whistleblower must voluntarily provide the Commission with original information that leads to the successful enforcement of a covered action.⁷ The record conclusively shows that Claimant 2 does not meet this standard because Claimant 2 failed to provide information that caused any of the Underlying Investigations to open or that significantly contributed to the Underlying Investigations or resulting Covered Action. Claimant 2 argues that he/she is eligible for an award because of the information he/she submitted to the Commission regarding ^{Redacted}

But, the staff's inquiry into ^{Redacted}

was opened more than five months before Claimant 2 submitted the tip. Further, the Enforcement staff responsible for the Underlying Investigations submitted a declaration averring that they did not communicate with, or use any information from, Claimant 2.

We credit the declaration provided by Enforcement staff responsible for the Covered Action. The declaration was not mere speculation. The declarant based his statement that Claimant 2 provided no information that was used in or otherwise contributed to the Covered Action not only on the declarant's own personal involvement with the investigation, but also on consultation with other members of the Enforcement teams responsible for each of the Underlying Investigations. The declarant's statement that Claimant 2's information neither "was used in" nor "otherwise contributed to" the action also forecloses the possibility of, as Claimant 2 suggests, senior officers or Commissioners having directed the staff to Claimant 2's information. Further, staff in the Office of the Whistleblower provided a declaration confirming that the tip that Claimant 2 relies on as the basis for the award claim was closed with a disposition of "No Further Action" (or "NFA") and not forwarded to Commission staff.

That the term ^{Redacted} appears in both Claimant 2's tip and the Order Instituting Proceedings in the Covered Action is a coincidence, as it is a common term. This term's coincidental use in both documents cannot overcome the conclusive evidence that

⁷ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

Enforcement staff responsible for the Underlying Investigations and Covered Action never received or used Claimant 2's information.

Claimant 2's other arguments fail because, while Claimant 2 correctly notes that the staff and members of the Commission discussed ^{Redacted} Claimant 2 cites no basis to link his/her tip with those statements, or to suggest that he/she provided any unique information or insight that would have influenced the Commission's views of a well-known, heavily analyzed ^{Redacted}.⁸ In fact, in his/her tip, Claimant 2 attributes the information to "common sense."

We therefore conclude that Claimant 2's information did not lead to the success of the Covered Action, as required by Exchange Act Rules 21F-3(a)(3) and 21F-4(c) and that, as a result, Claimant 2 is ineligible for an award with respect to the Covered Action.

IV. Conclusion

Accordingly, it is ORDERED that Claimant 1 shall receive an award of ^{Redacted} percent (^{***} %) of the monetary sanctions collected or to be collected in the Covered Action. It is further ORDERED that Claimant 2's whistleblower award application be, and hereby is, denied.

By the Commission.

Vanessa A. Countryman
Secretary