

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 93233 / October 1, 2021

WHISTLEBLOWER AWARD PROCEEDING
File No. 2022-1

In the Matter of the Claims for Award

in connection with

Redacted

Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that ^{Redacted} (“Claimant 1”) receive a whistleblower award of more than \$1.7 million, equal to ^{***} percent (^{***} %) of the monetary sanctions collected or to be collected in the above-referenced Covered Action and that the award claim of ^{Redacted} (“Claimant 2”) be denied. Claimant 2 submitted a timely request for reconsideration. For the reasons set forth below, the CRS’s recommendations are adopted.

I. Background

A. The Covered Action

On ^{Redacted} the Commission filed an enforcement action in ^{Redacted}
^{Redacted} The Commission
alleged in its complaint that the Defendants ^{Redacted}

^{Redacted} On the same day, the court ^{Redacted}
^{Redacted} On ^{Redacted} the court entered a final
judgment against ^{Redacted} in favor of the Commission. Among other relief, the court ordered
that ^{Redacted}

Redacted On Redacted the court entered a final judgment against Redacted
Redacted The court found Redacted

Redacted On Redacted the Court approved the Redacted
Redacted

B. The Preliminary Determinations

The CRS issued Preliminary Determinations² recommending that Claimant 1 receive a whistleblower award in the amount of *** percent (** %) of the monetary sanctions collected or to be collected in the Covered Action and that Claimant 2's claim be denied. The Preliminary Determination explained that Claimant 2's information did not cause the opening of the investigation or identify any new issues or areas of investigation that subsequently became part of the Commission's Covered Action. In addition, Claimant 2's information and supporting materials were duplicative of information Enforcement staff already had in its possession. As such, Claimant 2's information did not lead to the successful enforcement of the Covered Action.

C. Claimants' Responses to the Preliminary Determinations

Claimant 1 provided written notice of Claimant 1's decision not to contest the Preliminary Determination.

After receiving a copy of the record, Claimant 2 submitted a timely written response contesting the Preliminary Determination.³ Claimant 2 was Redacted
Redacted

Claimant 2 submitted a tip to the Commission dated Redacted which discussed Redacted
Redacted
Redacted

Claimant 2 argues in response to the Preliminary Determination that there are additional facts that must be considered regarding when Claimant 2's cooperation with Enforcement staff began. Specifically, Claimant 2 states that Claimant 2 first reached out to Redacted
Redacted and subsequently participated in a telephonic interview with Redacted prior to filing a TCR

Redacted

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

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

with the Commission in ^{Redacted} Claimant 2 asserts that the information Claimant 2 provided during ^{Redacted} was used in examining one of the defendants in the Covered Action, ^{Redacted} during investigative testimony that took place in ^{Redacted} Claimant 2 also claims to have provided extensive documentation to ^{Redacted} which documentation Claimant 2 asserts SEC staff used ^{Redacted} ^{Redacted} a witness who was not charged in the Covered Action.

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. Accordingly, Claimant 1 qualifies for a whistleblower award.

^{Redacted}

^{Redacted}

^{Redacted} Claimant 1 provided new, detailed, and highly valuable information that prompted the opening of the investigation and provided substantial assistance during the course of the investigation. Claimant 1 met with staff multiple times, provided sworn testimony that was critical to the investigation, provided information that formed part of the Commission's charges in the Covered Action, and helped the court-appointed Receiver secure millions of dollars which were returned to harmed investors. ^{Redacted}

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.⁴ As relevant here, information will be deemed to have led to a successful enforcement action if it was “sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation . . . or to inquire concerning different conduct as part of a current . . . investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of [this] information.”⁵ Alternatively, information will be deemed to have led to a successful enforcement action where the information was “about conduct that was already under examination or investigation by the Commission” and the “submission significantly contributed to the success of the action.”⁶ In determining whether the information “significantly contributed” to the success of the action, the Commission will consider whether the information was “meaningful” in that it “made a substantial and important contribution” to the success of the covered action.⁷

Claimant 2’s information does not satisfy Exchange Act Rule 21F-4(c)(1) because it did not cause the Covered Action investigation to be opened or cause staff to inquire into different conduct in the Covered Action investigation. The record reflects that the investigation was opened based on information received from Claimant 1 approximately ^{Redacted} before Claimant 2 asserts that he/she contacted ^{Redacted} and nearly one year before Claimant 2 communicated with Commission staff. In addition, Enforcement staff was pursuing the ^{Redacted} angle prior to receiving Claimant 2’s tip.

Claimant 2’s information also does not satisfy Exchange Act Rule 21F-4(c)(2) because it did not significantly contribute to the success of Covered Action. According to a declaration and supplemental declaration provided by the relevant investigative staff, which we credit, prior to the ^{Redacted} timeframe when Claimant 2 asserts that he/she began communicating with ^{Redacted} Enforcement staff had already identified the anticipated defendants in the investigation and obtained evidence showing the ^{Redacted} by the eventual defendants based on information Claimant 1 provided. Enforcement staff was also already aware by ^{Redacted}

^{Redacted}

The information Claimant 2 provided about

^{Redacted}

⁴ See Exchange Act Section 21F(b)(1), 15 U.S.C. § 78u-6(b)(1).

⁵ Exchange Act Rule 21F-4(c)(1).

⁶ Exchange Act Rule 21F-4(c)(2).

⁷ See *Order Determining Whistleblower Award*, Whistleblower File No. 2019-4, at 9, 2019 SEC LEXIS 615 at *16 (Mar. 26, 2019); see also *Securities Whistleblower Incentives & Protections*, 76 Fed. Reg. 34300, 34325 (June 13, 2011) (in determining whether information significantly contributed to an enforcement action, the Commission will consider whether the information allowed the agency to bring the action in significantly less time or with significantly fewer resources, additional successful claims, or successful claims against additional individuals or entities).

^{Redacted} was not helpful to the investigation because Claimant 2's information did not identify any new issues or areas of investigation that subsequently became part of the Commission's Covered Action. The information Claimant 2 provided consisted of additional examples of conduct by parties that had already been identified by the Commission staff prior to receiving Claimant 2's information and who were not charged in connection with the Covered Action. The information Claimant 2 provided did not prompt the staff to take the testimony of any of the anticipated defendants and Claimant 2's information was not used by the staff during such testimony. Based on information Claimant 1 provided, Enforcement staff had been investigating the ^{Redacted} aspect of the case before Claimant 2 provided ^{***} information.⁸ As such, Claimant 2's information did not provide the basis for any of the charges in the Covered Action and did not otherwise contribute to the success of the enforcement action.

IV. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

^{Redacted}