

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96366 / November 21, 2022

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-16

In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Office of the Whistleblower (“OWB”) issued a Preliminary Summary Disposition¹ recommending the denial of the joint whistleblower award claim submitted by Redacted
Redacted (collectively, “Joint Claimants”) in connection with the above-referenced covered action (the “Covered Action”). Joint Claimants filed a timely response contesting the preliminary denial. For the reasons discussed below, Joint Claimants’ award claim is denied.²

I. Background

A. The Covered Action

On Redacted the Commission instituted settled administrative and cease-and-desist proceedings in the Covered Action, Redacted
Redacted (collectively, “Respondents”) with Redacted

Redacted

Specifically, the Commission alleged that

¹ See Exchange Act Rule 21F-18, 17 C.F.R. § 240.21F-18.

² OWB also preliminarily denied the award claim of two other claimants. These claimants did not seek reconsideration of the Preliminary Summary Dispositions, and therefore the denials of their claims were deemed to be the Final Orders of the Commission under Exchange Act Rule 21F-18(b)(4).

Respondents

Redacted

Pursuant to the settlement, Respondents agreed to pay Redacted in disgorgement and prejudgment interest to resolve the charges.

On Redacted the Office of the Whistleblower (“OWB”) posted the Notice for the Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days. Joint Claimants filed a timely whistleblower award claim.

B. The Preliminary Summary Disposition

On Redacted OWB issued a Preliminary Summary Disposition recommending that Joint Claimants’ claim be denied because Enforcement staff assigned to the investigation that led to the Covered Action (the “Investigation”) never received any information from Joint Claimants or had any communication with Joint Claimants. Therefore, Joint Claimants’ information did not lead to the successful enforcement of the Covered Action within the meaning of Section 21F(b)(1) of the Exchange Act and Rules 21F-3(a)(3) and 21F-4(c) thereunder. OWB determined that with respect to the Covered Action, Joint Claimants’ information did not either (1) cause the Commission to (a) commence an examination, open or reopen an investigation, or inquire into different conduct as part of a current Commission examination or investigation, and (b) thereafter bring an action based, in whole or in part, on conduct that was the subject of claimant’s information, pursuant to Rule 21F-4(c)(1); or (2) significantly contribute to the success of a Commission judicial or administrative enforcement action under Rule 21F-4(c)(2) of the Exchange Act.

C. Joint Claimants’ Response to the Preliminary Summary Disposition

Joint Claimants submitted a timely written response contesting the Preliminary Summary Disposition (the “Response”).³ Joint Claimants principally argue that Joint Claimants are entitled to an award because Joint Claimants provided significant and relevant information to the Commission “well in advance of the enforcement action and before [Respondents] Redacted and because [Joint Claimants] provided extensive and ongoing assistance to the Commission in the form of disclosures and interviews.” In support of their argument, Joint Claimants provided approximately fifty pages of email correspondence between Joint Claimants’ counsel and Commission staff who were not assigned to the Investigation from the period Redacted through Redacted. Joint Claimants also stated that they were interviewed by a law firm conducting an investigation of the Respondents.

II. Analysis

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

³ See Exchange Act Rule 21F-18(b)(3), 17 C.F.R. § 240.21F-18(b)(3).

enforcement of a covered action.⁴ Additionally, and as relevant here, original information will be deemed to have led to a successful enforcement action if either: (i) the original information caused the staff to 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 [the] original information”;⁵ or (ii) the conduct was already under examination or investigation by the Commission, and the original information “significantly contributed to the success of the action.”⁶

In determining whether 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 For example, the Commission will consider a claimant’s information to have significantly contributed to the success of an enforcement action if it allowed the Commission to bring the action in significantly less time or with significantly fewer resources, or to bring additional successful claims or successful claims against additional individuals or entities.⁸ For the reasons discussed below, Joint Claimants’ information does not merit a whistleblower award in the Covered Action.

The record shows that Joint Claimants’ information did not cause the staff to open the Investigation. Enforcement staff assigned to the Investigation (the “Investigation Staff”) confirmed that the Investigation was opened based upon ^{Redacted} from the Respondents following ^{Redacted} Joint Claimants’ information did not cause the Investigation Staff to open the Investigation.

The record also demonstrates that Joint Claimants did not cause the Commission to inquire into different conduct as part of the Investigation and did not significantly contribute to the success of the Covered Action. Investigation Staff did not recall communicating with Joint Claimants or receiving any information from Joint Claimants. Further, the email correspondence which Joint Claimants attached to the Response does not bolster their case: Investigation Staff confirmed, in a supplemental declaration, which we credit, that the Commission staff involved in that email correspondence were not assigned to the Investigation and did not contribute to it. Investigation Staff also confirmed that Investigation Staff did not receive or review any information from the Commission staff involved in the email correspondence about the subject matter of the Investigation, nor did Investigation Staff discuss the Investigation with the staff involved in the email correspondence. Accordingly, Joint Claimants’ information did not cause

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

⁵ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁶ See Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

⁷ Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 90922 (Jan. 14, 2021) at 4; *see also* Order Determining Whistleblower Award Claims, Exchange Act Rel. No. 85412 (Mar. 26, 2019) at 9.

⁸ Exchange Act Rel. No. 85412 at 8-9.

the Investigation Staff to inquire into different conduct or significantly contribute to the success of the Covered Action.⁹

For these reasons, we deny Joint Claimants' whistleblower award claim.

III. Conclusion

Accordingly, it is hereby ORDERED that the whistleblower award application of Joint Claimants in connection with the Covered Action be, and it hereby is, denied.

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary

⁹ Joint Claimants also support their claim for an award by stating that they were interviewed in **Redacted** by a law firm retained to perform an audit and investigation of the Respondents. Investigation Staff confirmed, in the supplemental declaration, that they never received or reviewed any information from the law firm. Accordingly, whatever information Joint Claimants provided to the law firm did not lead to the success of the Covered Action.