

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97600 / May 26, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-63

In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending the denial of the whistleblower award claim jointly submitted by Redacted and Redacted (“Claimants”) in connection with the above-referenced covered action (the “Covered Action”). The Claimants filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimants’ award claim is denied.¹

I. Background

A. The Covered Action

On Redacted the Commission filed a complaint in federal district court (“District Court”) against Redacted

the Commission’s complaint Redacted According to

Redacted

The Commission charged ***

¹ The CRS also preliminarily determined to recommend that the award applications of two 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).

Redacted

The District Court issued partial final judgments against Redacted and issued final judgments against Redacted. The defendants were each enjoined from violating Sections Redacted. The final judgments also ordered each defendant to disgorge Redacted. The defendants were ordered to pay disgorgement, penalties, and prejudgment interest totaling over Redacted.

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. Claimants filed a timely whistleblower award claim.

B. The Preliminary Determination

On Redacted the CRS issued a Preliminary Determination recommending that Claimants’ claim be denied because Claimants did not provide information that led 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. The CRS preliminarily determined that 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 Claimants’ 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. The CRS preliminarily determined that investigative staff responsible for the Covered Action never received any information from, or had any communications with Claimants before or during the Investigation. Further, neither of the Claimants provided any information that was used in or that contributed to the success of the investigation or the Covered Action. The CRS also denied Claimants’ request for any related action awards on the grounds that because Claimants were not eligible for an award in the Covered Action, they are not eligible for an award in connection with any related action.²

C. Claimants’ Response to the Preliminary Determination

Claimants submitted a timely written response contesting the Preliminary Determination (the “Response”).³ First, Claimants contend in the Response that they likely filed their tips before the Commission commenced its investigation that led to the Covered Action, so their tips likely led to and/or significantly aided the Commission’s investigation that resulted in the

² See 15 U.S.C. § 78u-6(b); Exchange Act Rule 21F-3(b), (b)(1); Rule 21F-4(g) and (f); Rule 21F-11(a); *see also* Order Determining Whistleblower Award Claim, Release No. 34-86902 (Sept. 9, 2019).

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

Covered Action. Claimants argue that their three Form TCRs, submitted on ^{Redacted} ^{Redacted} must have contributed to the opening of the Commission’s investigation. Second, Claimants’ Response takes issue with the sufficiency of the record relied upon by the CRS in denying their claim for award. Claimants argue that, “[n]owhere in the Declaration or elsewhere in the SEC’s record supporting the Preliminary Determination is it stated or shown that any of the SEC investigators in the [Covered] Action did not review the Claimants’ TCRs (which concerned the ^{Redacted} alleged in the [Covered] Action).” In particular, Claimants take issue that the CRS relied upon a declaration from someone overseeing the investigation instead of “enforcement staff or investigators directly engaged in the investigation...” Finally, Claimants contend that they did not receive the entirety of the record because the declaration from Division of Enforcement (“Enforcement”) staff contained certain redactions.

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 enforcement of a covered action.⁴ Among other things, to be considered original information the submission must be provided to the Commission for the first time after July 21, 2010.⁵ Additionally, and as relevant here, original information will be deemed to lead 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 action based in whole or in part on conduct that was the subject of the original information;⁶ or (ii) the conduct was already under examination or investigation, and the original information “significantly contributed to the success of the action.”⁷

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.⁸ 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.⁹ For the reasons discussed below, Claimants’ information does not merit a whistleblower award in the Covered Action.

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

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

⁶ See Exchange Act Rule 21F-4(c)(1), 17 C.F.R. § 240.21F-4(c)(1).

⁷ See Exchange Act Rule 21-F-4(c)(2), 17 C.F.R § 240.21F-4(c)(2).

⁸ 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 (same).

⁹ Exchange Act Rel. No. 85412 at 8-9.

First, Claimants' information did not cause the staff to open the investigation that led to the Covered Action (the "Investigation"). Here, the Commission opened the Investigation when staff in the ^{Redacted} identified a pattern of ^{Redacted}

^{Redacted} Based on this information, a matter under inquiry was opened on ^{Redacted} Although some of Claimants' information was submitted prior to the opening of the Investigation, there is nothing in the record to suggest that any of Claimants' information was used or considered by Enforcement staff assigned to the Investigation in connection with the opening of the Investigation. Likewise, the record does not demonstrate that Claimants' information significantly contributed to the success of the Covered Action or caused the staff to inquire into different conduct that was later the subject of a successful Commission enforcement action. Indeed, sworn declarations from Enforcement staff assigned to the Investigation confirm that Claimants did not provide any information that was used in the Investigation or Covered Action.¹⁰ Accordingly, Claimants cannot be credited with causing the staff to open an investigation or inquire into different conduct, or with significantly contributing to the success of the Covered Action.

Second, Claimants take issue with the sufficiency of the record relied upon by the CRS in denying their claim given that the record included a declaration from a supervisor instead of line investigative staff. In issuing its Preliminary Determination, the CRS relied in part on a declaration from an Assistant Regional Director assigned to the Investigation. The Assistant Regional Director stated that neither of the Claimants provided any information that was used in or that contributed to the success of the Investigation or Action. Although the Assistant Regional Director provided a sworn declaration that Claimants' information was not used, Claimants took issue with his "managerial" or "supervisory" status and wrote that "[n]owhere in the Declaration or elsewhere in the SEC's record supporting the Preliminary Determination is it stated or shown that any of the *SEC investigators in the [Covered] Action did not review the Claimants' TCRs* (which concerned the ^{Redacted} alleged in the [Covered] Action)." (*ital. added*).

A supplemental declaration, which we credit, from the investigative staff who was assigned to the Investigation, affirms that none of Claimants' information was received, reviewed, or used in the Investigation or Covered Action. Further, this supplemental declaration directly refutes Claimants' argument that their Form TCRs may have contributed to the opening of the Investigation because the information was received prior to the opening of the Investigation or because staff assigned to the Investigation may have searched the TCR system. Indeed, the investigative staff that conducted the Investigation specified that, "I do not recall receiving, reviewing or using any Form TCRs, or any other information, submitted by [Claimants], or submitted on their behalf by legal counsel¹¹, in connection with the Investigation or Action." We find that the record is sufficient to support a finding that Claimants' information did not lead to the success of the Covered Action.

Lastly, Claimants take issue with certain redactions made to the declaration when they were provided the record materials. In their Response, Claimants wrote that the declaration had been redacted in a way that appears to remove explanatory information regarding the staff's

¹⁰ Claimants' contention that staff must have used the information in Claimants' TCRs because the Enforcement manual requires investigative staff to periodically search the TCR system is not relevant in light of staff's declaration that they neither received nor reviewed Claimants' information.

¹¹ The investigative staff's declaration specifies Claimants' legal counsel by name and firm.

determination that Claimants did not cause or contribute to the Covered Action. This concern is misplaced. Claimants received the record materials as defined under Rule 21F-12. As reflected by the Confidentiality Agreement that Claimants (and their legal counsel) signed – “a claimant is authorized to receive only the materials listed in Rule 21F-12 that formed the basis for the determination with respect to his or her own award application.” Further, the agreement explains that “OWB may redact any information therein that relates to another claimant’s award application.” As further explained by OWB staff by email to the Claimants, and referenced by Claimants in their Response, “[t]he redacted portions of the declaration relate only to other claimants who applied for an award on this matter.” Based on our review, we note that Claimants received the record materials defined under Rule 21F-12 related to their own award application.

For these reasons, Claimants are not entitled to a whistleblower award in connection with the Covered Action.

III. Conclusion

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

By the Commission.

J. Lynn Taylor
Assistant Secretary