UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97803 / June 27, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-68

In the Matter of the Claim for an Award

in connection with

Redacted

Notice of Covered Action Redacted

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Claims Review Staff ("CRS") issued Preliminary Determinations recommending the denial of the whistleblower award claim submitted by joint claimants Redacted ("Claimant 2") and Redacted ("Claimant 3," and collectively "Claimants") in connection with the above-referenced covered action (the "Covered Action"). 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 instituted settled administrative and cease-and-desist proceedings against Redacted (the "Company") alleging that *** Redacted

Redacted The

[1] The CRS also recommended the denial of the award application from Claimant 1, who did not contest the Preliminary Determinations. Accordingly, the Preliminary Determination with respect to Claimant 1's award claim became the Final Order of the Commission through operation of Exchange Act Rule 21F-10(f), 17 C.F.R. § 240.21F-10(f).

Commission charged the Company with violations of Redacted The Company agreed to pay a civil monetary penalty of Redacted 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 Determinations

The CRS issued Preliminary Determinations recommending that Claimants' claims 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 stated 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 Claimants provided information approximately two years after the investigation that led to the Covered Action (the "Investigation") had begun, and that Claimants' information was either duplicative of information that the staff already knew or was not relevant to the charges brought by the Commission in the Covered Action.

C. Claimants' Response to the Preliminary Determinations

Claimants submitted a timely written response contesting the Preliminary Determinations.[2] Claimants principally argue that "the information provided to [Enforcement staff] in the TCR, subsequent phone calls, and emails could only have been obtained by us over 10 years of direct correspondence and intimate knowledge of the processes and procedures at [the Company] . . . If [Enforcement staff] had all the information . . . required why the 3 subsequent phone calls? [Enforcement staff] must have needed more clarity or did not completely understand the data we provided or the data already in the Commission's possession." Claimants further argue that they were "integral in helping formulate the determinations made by the SEC." Claimants also contend that they provided information which may have been used to negotiate the Commission's settlement with the Company and that their information was not duplicative but instead "immeasurably additive and aided in the successful outcome of the case."

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

[2] *See* Exchange Act Rule 21F-10(e), 17 C.F.R. § 240.21F-10(e).

enforcement of a covered action.[3] As relevant here, under Exchange Act Rules 21F-4(c)(1) and (2), respectively, the Commission will consider a claimant to have provided original information that led to the successful enforcement of a covered 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;[4] or (ii) the conduct was already under examination or investigation, and the original information "significantly contributed to the success of the action."[5]

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.[6] 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.[7]

Claimants do not qualify for a whistleblower award in this matter because their information did not cause the staff to open the Investigation, nor did their information cause the staff to inquire into different conduct in or significantly contribute to the ongoing Investigation. First, the record demonstrates that the Investigation was opened based upon information developed by Commission staff in an earlier investigation approximately two years before Claimants submitted their TCR.

The record also shows that Claimants did not cause the staff to inquire into different conduct as part of an ongoing investigation, nor did the Claimants' information significantly contribute to the success of the Investigation. While staff assigned to the Investigation reviewed Claimants' TCR and spoke with Claimants on three occasions, to the extent that Claimants' information was relevant to the Investigation, that information was already known to the staff. By the time that Claimants submitted their TCR, the Investigation had been ongoing for nearly two years, and the staff had received over 250,000 documents and taken testimony from six witnesses. The facts underlying Claimants' allegations were already familiar to the staff assigned to the Investigation.

Although Claimants contend in their response that their information may have assisted the staff during settlement discussions with the Company, the record does not support this argument. A supplemental declaration from staff assigned to the Investigation, which we credit,

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

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

[5] *See* Exchange Act Rule 21F-4(c)(2), 17 C.F.R. § 240.21F-4(c)(2).

[6] 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.

[7] Exchange Act Rel. No. 85412 at 8-9.

confirms that the staff did not rely upon Claimants' information during settlement discussions. The supplemental declaration also confirms that the staff was already aware of Claimants' information.[8] As a result, Claimants' information did not assist with settlement discussions or otherwise advance the Investigation.

Accordingly, Claimants' are not eligible for a whistleblower award.[9]

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary

[8] Claimants' response also notes that the staff spoke with Claimants on three occasions, asking "if [Enforcement staff] had all the information . . . why the 3 subsequent phone calls?" This contention is not persuasive. As noted in the staff's initial declaration, the staff first spoke with Claimants in Redacted to discuss their TCR and determine if Claimants had any information beyond their written submission. The second call, in Redacted was a follow-up call to determine if Claimants' information might be relevant to a separate investigation relating to a different entity. Finally, the third call, in Redacted approximately two weeks before the Covered Action was filed, was initiated in response to an email from one of the Claimants to determine if Claimants had any additional information that might impact the Covered Action. However, to the extent the information provided by Claimants during these calls was relevant to the Investigation, it was already known to the staff through other investigatory sources.

[9] Claimants contend that the time frame of their TCR submission and the time period covered by the Covered Action "perfectly align" and that the Covered Action was filed a certain amount of time after the submission of their TCR "which [Claimants] believe is the typical timeframe for such an investigation and conclusion." We do not find merit in this argument. As noted above, the record shows that the Investigation was opened years before the submission of Claimants' TCR and that Claimants' information was already known to the staff.