

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97598 / May 26, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-61

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 Preliminary Determinations recommending that ^{Redacted} (“Claimant 1”) receive a whistleblower award of about \$2 million, which represents ^{Redacted} percent (^{***}) of the monetary sanctions collected in the Covered Action and that ^{Redacted} (“Claimant 2”) receive a whistleblower award of about \$500,000, which represents ^{***} percent (^{***}) of the monetary sanctions collected in the Covered Action. Claimant 2 has contested the Preliminary Determinations. For the reasons discussed below, the CRS’s recommendations are adopted.¹

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

I. Background

A. The Covered Action

On ^{Redacted} the Commission instituted a settled public administrative and cease-
and-desist proceeding against ^{Redacted} (the "Firm"), ^{Redacted}
^{Redacted} finding that the Firm violated ^{Redacted}. Specifically, the
Commission found that, from ^{Redacted} the
Firm was ^{Redacted} ^{Redacted} ^{Redacted} the

^{Redacted} The Firm was
also found to have ^{Redacted}

Among other relief, the Firm was ordered to pay
disgorgement of ^{Redacted} prejudgment interest ^{Redacted} and a civil money penalty
of ^{Redacted}. The amount of the monetary sanctions in the Covered Action has been fully
collected.

The Office of the Whistleblower posted a Notice of Covered Action on the Commission’s
public website inviting claimants to submit whistleblower award applications for the Covered
Action within 90 days.² Claimants 1 and 2 filed timely whistleblower award claims.

B. The Preliminary Determinations

The CRS issued Preliminary Determinations recommending that Claimant 1 and 2
receive whistleblower awards of ^{***} and ^{***} respectively, of the monetary sanctions collected
in the Covered Action. In recommending that Claimant 1 receive ^{Redacted} larger award
than Claimant 2, the CRS reasoned that Claimant 1’s information was more important to the
investigation because Claimant 1’s information was received by the Commission several years
before Claimant 2’s information. The CRS also recommended that Claimant 2’s award be
decreased due to unreasonable reporting delay.

C. Claimant 2’s Response to the Preliminary Determinations

Claimant 2 makes a number of arguments on reconsideration. First, Claimant 2 contends
that the CRS failed to properly weigh the value of Claimant 2’s contribution to the investigation
relative to Claimant 1’s, arguing that much of the information for which the CRS credited

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

Claimant 1 was, in actuality, information Claimant 1 had received from Claimant 2.³ Second, Claimant 2 contends that the CRS should have taken into account the fact that Claimant 2 was the one who provided certain information to Claimant 1 about ^{Redacted}

^{Redacted} Third, Claimant 2 appears to dispute the CRS's determination that Claimant 2 unreasonably delayed reporting his/her information to the Commission.⁴ Fourth, Claimant 2 contends that Claimant 1 did not fully understand all the intricacies of ^{Redacted} and that the CRS should have taken this into account in recommending an award percentage. Fifth, Claimant 2 asserts that the Preliminary Determination's award allocation to him/her "underestimated" Claimant 2's value to the staff as a live witness to the events they investigated, Claimant 2's willingness to testify at trial, and the value Claimant 2's information provided to the staff in its settlement negotiations with the Firm's counsel.

Finally, Claimant 2 asserts that the Preliminary Determination he/she received contained redactions which, Claimant 2 believes, would have shown that key evidence credited as having been provided to the Commission by Claimant 1 was, in fact, evidence that Claimant 2 had given to Claimant 1 with the understanding that Claimant 1 would then forward it to the Commission. Claimant 2 argues that these redactions were "inappropriate given the voluntary waiver of [Claimant 1] of [his/her] anonymous status generally in the context of being a whistleblower but in particular as it pertains to [Claimant 2]."

II. Analysis

The record demonstrates that Claimant 1 and Claimant 2 each voluntarily provided original information to the Commission that led to the successful enforcement of the Covered Action.⁵

^{Redacted}

³ Claimant 2 states that "[b]ut for [Claimant 2] giving [Claimant 1] the specific and credible information and instructing [Claimant 1] persistently to alert the Commission to ^{Redacted} for a number of years before the investigation was opened, there may well not have been an investigation." This constitutes, according to Claimant 2, "punish[ing] [Claimant 2] unfairly while praising [Claimant 1] who was [Claimant 2]'s proxy, under the 'but for' cause in the opening of the investigation while failing to accord [Claimant 2] the same credit."

⁴ While Claimant 2 does not explicitly state in his/her response that Claimant 2 believed the CRS erred in determining that he/she had unreasonably delayed reporting his/her information to the Commission, this argument is clearly implied by Claimant 2's contention that, in the years before Claimant 2 filed his/her own TCR, he/she was providing important information to Claimant 1 with the understanding that Claimant 1 would then forward it to the Commission.

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

We adopt the CRS's recommendations on award allocations. In reaching our award determinations, we positively assessed the following facts in support of Claimant 1's larger award: (1) Claimant 1's tip was the initial source of the underlying investigation; (2) Claimant 1's tip including at the Firm, that would have been difficult to detect without Claimant 1's information; (3) Claimant 1 provided Enforcement staff with extensive and ongoing assistance during the course of the investigation, including identifying witnesses and helping staff understand complex fact patterns and issues related to the matters under investigation; (4) the Commission used information Claimant 1 provided to devise an investigative plan and to craft its initial document requests; (5) Claimant 1 made persistent efforts to remedy the issues, while suffering hardships; and (6) Claimant 1 was the main source of information for the investigation and an important source of information for the Covered Action.

In assessing Claimant 2's important, but lesser, contribution to the success of the Investigation, the Commission notes that Claimant 2 was the first witness who was able to tell the staff that the Firm knew or should have known key facts about including that Claimant 2 provided important information as a percipient witness which helped with factual details on those topics that went beyond what Claimant 1 had been able to provide. In addition, Claimant 2 provided information and documents, participated in staff interviews, and provided clear explanations to the staff

Redacted

Redacted

Redacted

Redacted

regarding the issues that Claimant 2 brought to the staff's attention. Claimant 2's information gave the staff a more complete picture of how

Redacted which the staff was able to use in settlement discussions with the Firm's counsel Redacted Finally, Claimant 2 suffered hardship as a result of his/her efforts to Redacted

Contrary to what Claimant 2 states in his/her reconsideration response, Claimant 2's assertion as to the importance to the Commission's investigation of Claimant 2's information about Redacted was, in fact, considered by the CRS and recognized in the Preliminary Determination. Further, there is no support in the record for Claimant 2's assertion that, with the exception of information Claimant 2 provided to Claimant 1 about Redacted

-- a fact which Claimant 1 had acknowledged to the staff -- the information Claimant 1 provided to the Commission came originally from information Claimant 2 had provided to Claimant 1. Indeed, most of the documentation Claimant 2 offered to support his/her contentions consisted of emails that Claimant 2 was copied on or forwarded in which Claimant 1 communicated with Commission Redacted staff; emails Claimant 1 wrote to Claimant 2 and others discussing Claimant 1's thoughts about, or news concerning, the Commission's ongoing investigation; and Claimant 1's efforts to reach out to others to inquire about Redacted While the staff acknowledged, as Claimant 2 notes, that it did not inquire about what specific information Claimant 2 had given to Claimant 1 beyond Redacted

Claimant 2's response does not contain evidence of other specific information Claimant 2 gave to Claimant 1. Redacted Regarding Claimant 2's assertion that Claimant 1 did not fully comprehend Redacted when Claimant 1 reported to the Commission, this does not change the fact that the Commission first learned about the underlying misconduct from Claimant 1 and that it was Claimant 1's tips that caused the Commission to open the investigation and informed the investigation's initial steps. Moreover, Claimant 2's argument does not change the fact that Commission staff found Claimant 1's information and assistance helpful during the course of its investigation.

We also find no merit in Claimant 2's assertion that the redactions made in the Preliminary Determination he/she received may have shown that information the CRS credited as having been provided to the Commission by Claimant 1 was, in fact, evidence that Claimant 2 had given to Claimant 1 with the understanding that Claimant 1 would then forward it to the Commission. The redacted Preliminary Determination received by Claimant 2 did not redact any information about Claimant 1 other than Claimant 1's name; the balance of the redactions concerned the other four whistleblowers who did not contest the Preliminary Determinations.¹¹ There is similarly no merit in Claimant 2's contention that the redactions made in the Preliminary Determination as to Claimant 1 were improper or inappropriate because Claimant 1

Redacted

¹¹ See *supra* note 1.

had publicly disclosed his/her identity. Regardless of whether a whistleblower chooses to publicly disclose his/her identity as a whistleblower, the Commission has a legal obligation under Exchange Act Sec. 21F(h)(2) to “not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower,” except in certain limited circumstances not applicable here. Thus, the redaction of Claimant 1’s name in Claimant 2’s Preliminary Determination is a mandatory requirement under the law, not a discretionary decision by the CRS.¹²

Contrary to Claimant 2’s contention that the award allocation in the Preliminary Determination “underestimated” his/her value to the staff as a live witness, Claimant 2’s willingness to testify at trial, and the value Claimant 2’s information provided to the staff in its settlement negotiations with the Firm’s counsel, our order, in fact, discusses in detail and clearly recognizes the value to the Commission of Claimant 2 being a witness to key events and the usefulness of his/her information in settlement negotiations. With regard to Claimant 2’s contention about the potential but unrealized value of his/her testimony at trial, the Commission’s award determinations under Rule 21F-6 are based on whistleblowers’ actual contributions, not hypothetical ones.

Finally, we note that, in contrast to Claimant 1, who persistently alerted the Commission ^{Redacted} for a number of years before the investigation was opened, Claimant 2 delayed reporting to the Commission for several years. While Claimant 2 states that he/she was aware as early as ^{Redacted}

*** Claimant 2 did not report to the Commission until ^{Redacted} – at least five years after Claimant 2 was aware of the possible illegal nature of these transactions and four years after Claimant 2 left his/her former employer. During this period, the harm continued to investors who were unaware of the violative conduct. Accordingly, we find that Claimant 2 unreasonably delayed reporting to the Commission and that Claimant 2’s award percentage should be set at ^{Redacted} ¹³

¹² Claimant 2 also faults Claimant 1 for indicating that Claimant 2 would share in the whistleblower awards Claimant 1 expected to receive from the Commission and then not fulfilling his/her commitment to Claimant 2. However, Claimant 1’s supposed commitment is irrelevant to our analysis of the respective award percentages that each should receive.

¹³ In setting the award percentage at ^{Redacted} we took into consideration certain facts in the record relevant to the issue of delay. Although the record demonstrates that Claimant 2 unreasonably delayed, we considered that Claimant 2 provided Claimant 1 with information ^{Redacted}

^{Redacted} knowing that Claimant 1 was forwarding this information to the Commission staff.

III. Conclusion

Accordingly, it is hereby ORDERED that (1) Claimant 1 receive an award of ^{Redacted} percent (^{***}) of the monetary sanctions collected in the Covered Action; and (2) Claimant 2 receive an award of ^{***} percent (^{***}) of the monetary sanctions collected in the Covered Action.

By the Commission.

J. Lynn Taylor
Assistant Secretary