

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 97205 / March 27, 2023

WHISTLEBLOWER AWARD PROCEEDING

File No. 2023-43

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 whistleblower award claim submitted by Redacted (“Claimant 2”) in connection with the above-referenced covered action (the “Covered Action”). Claimant 2 filed a timely response contesting the preliminary denial. For the reasons discussed below, Claimant 2’s 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, charging Redacted (the “Company”) with violating Redacted

Redacted The Commission’s order alleged that the Company Redacted

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

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

Redacted The Company agreed to pay a civil penalty of Redacted to settle 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. Claimant 2 filed a timely whistleblower award claim.

B. The Preliminary Summary Disposition

On Redacted OWB issued a Preliminary Summary Disposition recommending that Claimant 2’s claim be denied because Claimant 2’s information was not provided to or used by Enforcement staff assigned to the investigation that led to the Covered Action (the “Investigation”) and therefore 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 Claimant 2’s 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. OWB stated that staff assigned to the Investigation never received any information from Claimant 2 or had any communication with Claimant 2, and as such Claimant 2’s information was not used in and had no impact on the Investigation or the Covered Action.

C. Claimant 2’s Response to the Preliminary Summary Disposition

Claimant 2 submitted a timely written response contesting the Preliminary Summary Disposition (the “Response”).³ Claimant 2 principally argues that Claimant 2 provided information to Redacted (the “Other Organization”) by telephone on or about Redacted approximately six months before the staff opened the Investigation. Claimant 2 states that *** requested that the Other Organization investigate the Company “for several reasons such as lack of supervision, potential Ponzi scheme, and suspicious activity.” Claimant 2 argues that his/her communications with the Other Organization were shared with Commission staff and led to the successful enforcement of the Covered Action.

Claimant 2 also argues that while he/she did not submit a TCR to the Commission at the time of his/her telephone call to the Other Organization, Claimant 2 was not aware of the TCR filing requirements. Among other things, Claimant 2 contends that the 2020 whistleblower rule

³ See Exchange Act Rule 21F-18(b)(3), 17 C.F.R. § 240.21F-18(b)(3). Claimant 2 also made several submissions to the Commission after the deadline to contest the Preliminary Summary Disposition had passed. See Exchange Act Rule 21F-18(b)(3), 17 C.F.R. § 240.21F-18(b)(3) (requiring claimant to submit a response to the Commission within thirty days of the date of the Preliminary Summary Disposition or the date OWB sends the staff declaration to the claimant.) Because those submissions were untimely, they were not considered by the Commission.

amendments permit the Commission to waive compliance with the filing requirements of Exchange Act Rule 21F-9 in certain circumstances, and Claimant 2 also states that the Commission has discretionary exemptive authority under Exchange Act Rule 21F-8(a) and Exchange Act Section 36(a).

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 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 commence an examination or open an investigation “or to inquire concerning different conduct as part of a current examination or 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, 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, Claimant’s information does not merit a whistleblower award in the Covered Action.

First, the record shows that Claimant 2 did not provide the Commission with information that caused the staff to open an examination or investigation or caused the staff to inquire into different conduct. According to a supplemental staff declaration, the Investigation was opened by Enforcement staff in ^{Redacted} based upon an ^{Redacted} referral (the “Referral”) from the Commission’s Office of Compliance Inspections and Examinations, now the Division of Examinations, and not based upon any information from Claimant 2. Commission staff have confirmed, in a supplemental declaration, which we credit, that the Referral was based on an examination (the “Exam”) begun in ^{Redacted} approximately five months before Claimant 2 contacted the Other Organization. The supplemental declaration also confirms that the Exam was initiated based on information from sources within the Commission. And while the Referral

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.

indicates that staff assigned to the Exam communicated with Other Organization staff prior to commencing the Exam in ^{Redacted} those communications occurred at least five months before Claimant 2 contacted Other Organization with his/her information. Accordingly, the record demonstrates that Claimant 2's information did not cause Commission staff to commence an examination or open the Investigation.

In addition, the record shows that Claimant 2's information did not significantly contribute to the Exam or to the Investigation or cause Commission staff to inquire into different conduct. Enforcement staff assigned to the Investigation did not receive any information provided by Claimant 2, nor did they communicate with Claimant 2 before or during the Investigation. In addition, Enforcement staff confirm in a supplemental declaration that they did not receive any new information from the Other Organization that materially advanced the Investigation or assisted the staff in bringing the charges in the Covered Action. Staff assigned to the Exam also confirmed that they did not receive any information from the Other Organization in or after ^{Redacted} the time of Claimant 2's communication with the Other Organization—that assisted with their examination or caused them to look into other conduct.⁹

For these reasons, we deny Claimant's whistleblower award claim.

⁹ Claimant 2 contends on reconsideration that the Commission should grant *** a waiver of the TCR requirement pursuant to its authority under either Rule 21F-8(a) or Section 36(a) of the Exchange Act. We construe this as an argument for waiving the requirements of both Rule 21F-4(b)(7) and Rule 21F-9, which together stand for the proposition that a claimant who provides information to "Congress, any other authority of the Federal government, a state Attorney General or securities regulatory authority, any self-regulatory organization, or the Public Company Accounting Oversight Board," among other entities, *see* Rule 21F-4(b)(7), must provide the same information to the Commission within 120 days in accordance with the TCR requirements. Because Claimant 2 does not meet the "led-to" criteria for an award, we find that Claimant 2's arguments regarding his/her TCR submission are moot. In addition, we decline to exercise our discretionary exemptive authority under Section 36(a). Section 36(a) grants the Commission the authority in certain circumstances to "exempt any person . . . from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." However, "the broad objective of the whistleblower program is to enhance the Commission's law enforcement operations . . . [by incentivizing whistleblowers] to provide the Commission with timely, useful information that the Commission might not otherwise have received." Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34326 (June 13, 2011). Granting an exemption under circumstances where the record does not show the whistleblower provided information that led to the success of a covered action is contrary to the purpose of the whistleblower program, the public interest, and the protection of investors. As a result, we find that Claimant 2 has not met his/her burden to demonstrate any considerations that would satisfy the requirements for us to exercise our Section 36(a) authority. Similarly, to the extent that Claimant 2 asks the Commission to waive requirements using its discretionary authority under Rule 21F-8(a), Claimant 2 has not met the burden of showing the "extraordinary circumstances" necessary for such relief.

III. Conclusion

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

By the Commission.

Vanessa A. Countryman
Secretary