

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97229 / March 31, 2023

WHISTLEBLOWER AWARD PROCEEDING
File No. 2023-48

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 over \$9 million, which represents ^{Redacted} percent (^{***}) of the monetary sanctions collected in the Covered Action and that ^{Redacted} (“Claimant 2”) receive a whistleblower award of more than \$3 million, which represents ^{Redacted} percent (^{***}) of the monetary sanctions collected in the Covered Action.¹ Claimant 2 has contested the Preliminary Determinations. For the reasons discussed below, the CRS’s recommendations are adopted.²

¹ The investigation that gave rise to the Covered Actions also produced another related enforcement action ^{Redacted} (the “Other Action”) — that was not posted as a covered action because the monetary sanctions in that matter did not exceed \$1 million. The Commission considers the Other Action to be part of the Covered Action under Securities Exchange Act of 1934 (“Exchange Act”) Rule 21F-4(d)(1) for purposes of determining the award amount because the Other Action arose from the same nucleus of operative facts as the Covered Action.

² The CRS also preliminarily determined to recommend that the award applications of three 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 settled public administrative proceedings against ^{Redacted} (the “Firm”), a registered broker-dealer, finding that the Firm violated ^{Redacted} In its enforcement action, the Commission found that, from ^{Redacted} the Firm ^{Redacted}

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

^{Redacted} Among other relief, the Firm was ordered to pay disgorgement of ^{Redacted} prejudgment interest of ^{Redacted} and a civil money penalty of ^{Redacted}

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On ^{Redacted} the Office of the Whistleblower posted a Notice of Covered Action on the Commission’s public website inviting claimants to submit whistleblower award applications within 90 days.⁴ 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

³ The amount ordered in the Other Action was a civil money penalty of ^{Redacted}

⁴ 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. 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 contends that the CRS should have considered the specific and credible information Claimant 2 provided about an officer at the Firm, which was relevant to the Other Action filed by the Commission. Fourth, Claimant 2 asserts that this other officer ^{Redacted} Fifth, Claimant 2 disputes the CRS's determination that Claimant 2 unreasonably delayed reporting his/her information to the Commission. Sixth, Claimant 2 contends that Claimant 1 did not fully understand all the intricacies ^{Redacted} and that the CRS should have taken this into account in recommending an award percentage.

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 requests that he/she be provided with an unredacted copy of the Preliminary Determination to see whether this is, in fact, the case.

II. Analysis

Applying the award criteria in Rule 21F-6 of the Exchange Act to the specific facts and circumstances here, we find the proposed award amounts are appropriate.⁵

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 exposed ^{Redacted} 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; and (5) Claimant 1 made persistent efforts to remedy the issues, while suffering hardships.

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 ^{Redacted} knew or should have ^{Redacted} known key facts about ^{Redacted} including that ^{Redacted} Claimant 2 provided important information as a percipient witness which helped

⁵ In assessing the appropriate award amount, Exchange Act Rule 21F-6 provides that the Commission consider: (1) the significance of information provided to the Commission; (2) the assistance provided in the Commission action; (3) law enforcement interest in deterring violations by granting awards; (4) participation in internal compliance systems; (5) culpability; (6) unreasonable reporting delay; and (7) interference with internal compliance and reporting systems. 17 C.F.R. § 240.21F-6.

establish ^{Redacted} liability, 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 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}

^{Redacted} which the staff was able to use in settlement discussions with the Firm's counsel ^{Redacted}

Contrary to what Claimant 2 states in his/her reconsideration response, two of Claimant 2's objections were, in fact, considered by the CRS and recognized in the PD: (1) the importance to the Commission's investigation of Claimant 2's information about ^{Redacted} and (2) the specific importance to the success of the Covered Action of Claimant 2's information about the Firm and the respondent in the Other Action.

Further, there is no support in the record for Claimant 2's assertion that, with the exception of information ^{Redacted} Claimant 2 provided to Claimant 1 about ^{Redacted} – a fact which Claimant 1 had acknowledged to the staff and which the CRS noted in the PD -- 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 or ^{Redacted} 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}

^{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 the information about ^{Redacted} Claimant 2's response does not contain evidence of other specific information Claimant 2 gave to Claimant 1. Claimant 2's contention about the importance to the investigation and the Covered Action of his/her providing information about a second officer of the Firm is belied by the fact that the Commission did not charge that officer in connection with its investigation into the Firm's misconduct.⁷ With regard to Claimant 2's assertion that Claimant 1 did not fully comprehend ^{Redacted} 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.

^{Redacted}

⁷ To the extent that Claimant 2 is arguing that he/she should be awarded because of assistance provided to the other agency, this is without merit since Claimant 2 has not applied for a related action award in this matter.

We also find no merit in Claimant 2's assertion that he/she should be provided with an unredacted copy of the Preliminary Determination to examine whether the redactions in the copy he/she received might have contained key evidence that the CRS credited as having been provided to the Commission by Claimant 1 when it was possibly 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 three whistleblowers who did not contest the Preliminary Determination.⁸ 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 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 Section 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.⁹

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 ^{***} years after Claimant 2 was aware of the possible illegal nature ^{Redacted} and ^{***} 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} .¹⁰

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

⁸ See *supra* note 2.

⁹ 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. Finally, Claimant 2 requests that after the CRS had the opportunity to review Claimant 2's response, he/she "should be provided with further opportunity to make submissions to the Commission, in person or in writing." There is no provision under the rules for whistleblowers to continue to send reconsideration materials after submitting their reconsideration request and we, accordingly reject this request.

¹⁰ 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.

receive an award of ^{Redacted} percent (^{***}) of the monetary sanctions collected in the Covered Action.

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary