

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 82562 / January 22, 2018

WHISTLEBLOWER AWARD PROCEEDING

File No. 2018- 4

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In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action <sup>Redacted</sup>

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**ORDER DETERMINING WHISTLEBLOWER AWARD CLAIM**

The Claims Review Staff (“CRS”) issued a Preliminary Determination recommending that the claim submitted by <sup>Redacted</sup> (“Claimant”) in connection with Notice of Covered Action <sup>Redacted</sup> (“Covered Action”) be denied. Claimant subsequently filed a timely written response contesting the Preliminary Determination.

After careful consideration of the administrative record, including Claimant’s written response, we deny Claimant’s award claim.

**A. Background**

On <sup>Redacted</sup>, Enforcement staff opened a Matter Under Inquiry (“MUI”), which was elevated to a formal investigation <sup>Redacted</sup>, that resulted in the Covered Action. Enforcement staff opened the investigation based on <sup>Redacted</sup>

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after the investigation was initiated <sup>Redacted</sup>

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, Claimant submitted a letter and accompanying documentation, which was subsequently uploaded to the Commission’s Tips, Complaints, and Referrals Intake and Resolution System (“TCR system”). After reviewing Claimant’s



responsible for the Covered Action confirmed that they never received any information from the Claimant, had no communications with Claimant, and did not use Claimant's information or materials in the investigation or prosecution of the Covered Action.

After receiving the record, per Claimant's request, Claimant submitted a timely written request for reconsideration. According to Claimant, Claimant's motivation in submitting the response is more of an effort to apprise the Commission of what is actually contained in the files Claimant submitted. Claimant questions whether the Commission is aware of what Claimant's files contain as they were not made available to the investigative team responsible for the Covered Action. Because the materials were not provided to the relevant Enforcement staff, Claimant assumes that the files must have been misplaced.

Rather than trying to establish a nexus between the information Claimant submitted to the Commission and the misconduct charged in the underlying Covered Action, Claimant describes at length what Claimant believes Claimant's submissions to the Commission show, which relate to alleged decades-old misconduct and include allegations of misconduct not charged in the underlying Covered Action.<sup>4</sup>

### **C. Analysis**

After careful consideration of the record, including the Claimant's request for reconsideration, we are denying the Claimant's award claim.

First, the tip submitted by Claimant in <sup>Redacted</sup> pre-dated the Dodd-Frank Act, and as such, does not constitute "original information."<sup>5</sup> Furthermore, to the extent Claimant's Response implies that Claimant provided materials to the Commission as early as 2000, but that those materials were "misplaced" or "lost," those materials likewise pre-dated the Dodd-Frank Act and would not qualify as "original information."

Second, the record conclusively shows that any information that Claimant submitted after the enactment of the Dodd-Frank Act did not lead to the success of the Covered Action. The investigation that led to the Covered Action was opened <sup>Redacted</sup> years before Claimant made Claimant's submission in <sup>Redacted</sup>. As such, Claimant's information could not have caused the staff to open the investigation. Furthermore, the record shows that Claimant's information could not have significantly contributed to the success of the Covered Action because Claimant's tip

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<sup>4</sup> Claimant notes a meeting with the SEC in <sup>Redacted</sup> to discuss the issues raised in Claimant's submissions. That meeting, however, occurred approximately <sup>Redacted</sup> months after Final Judgment was entered in the underlying Covered Action, and was not with the investigative staff responsible for the Covered Action.

<sup>5</sup> See *Stryker v. SEC*, 780 F.3d 163 (2d Cir. 2015).

was closed with an NFA disposition by OMI in <sup>Redacted</sup> and Enforcement staff on the Covered Action confirmed that they never received any information from Claimant or had any communications with Claimant.

Contrary to Claimant's supposition that Claimant's files were lost or misplaced, Commission staff received Claimant's <sup>Redacted</sup> submission and uploaded it to the TCR system. OMI staff reviewed Claimant's information, and also spoke to Claimant in <sup>Redacted</sup>. It was after reviewing and considering Claimant's information, and speaking with Claimant, that OMI staff determined to close the tip with an NFA disposition. That Claimant's information was not forwarded to the Enforcement staff on the Covered Action does not mean that the information was "misplaced" or that the information was not appropriately reviewed. Rather, the record shows that Claimant's information was received and reviewed, but that OMI staff determined that it did not warrant being forwarded on to investigative staff for further action or follow-up.

Additionally, claimants are required to show that the information they provided to the Commission led to the successful enforcement of the particular Covered Action for which they are applying for an award. Here, Claimant argues at length that Claimant provided information and supporting documentation concerning misconduct by the Company <sup>Redacted</sup>

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does not establish that Claimant's information led to the successful enforcement of the resulting Covered Action. Rather, the record is clear that the investigation opened <sup>Redacted</sup> years before any tip from Claimant and that none of Claimant's information was received by, much less used in, the investigation or prosecution of the Covered Action.

Accordingly, it is ORDERED that Claimant's whistleblower award claim be, and hereby is, denied.

By the Commission.

Brent J. Fields  
Secretary