

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
SECURITIES EXCHANGE ACT OF 1934
Release No. 76338 / November 4, 2015
WHISTLEBLOWER AWARD PROCEEDING
File No. 2016-1

In the Matter of the Claim for Award

in connection with

Redacted

Notice of Covered Action ^{Redacted}

On July 13, 2015, the Claims Review Staff issued a Preliminary Determination for Notice of Covered Action ^{Redacted}. The Preliminary Determination recommended that ^{Redacted} (“Claimant”) receive a whistleblower award of ^{Redacted} of the monetary sanctions collected in the Covered Action, pursuant to Section 21F(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78u-6(b)(1), and Rule 21F-3(a) thereunder, 17 C.F.R. § 240.21F-3(a).

Based on a consideration of the factors specified in Rule 21F-6, the Claims Review Staff considered the significance of the information provided by the Claimant, the assistance that the Claimant provided, and the law-enforcement interests at issue. The Claims Review Staff also considered the Claimant’s delay in reporting the violations, which, under the circumstances, was found to be unreasonable. Although the Claimant’s delay was limited in duration, it occurred entirely after the creation of the Commission’s whistleblower program under the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹ Furthermore, during the period of delay, the violations continued and the respondents in the underlying action obtained additional ill-gotten gains, with a resulting increase in the monetary sanctions upon which the Claimant’s award is based.

On September 10, 2015, Claimant, through counsel, requested an increase in award percentage, arguing that the Claims Review Staff had weighed too heavily the Claimant’s reporting delay in assessing the award percentage. The reconsideration request argued that the personal and professional risks faced by whistleblowers in reporting to the Commission had not

¹ See Pub. L. No. 111-203, § 922, 124 Stat 1841 (2010).

been adequately considered, that early and prompt reporting may lead to poor quality tips, and that the Claims Review Staff had improperly assessed Claimant's failure to report the misconduct internally in determining the award percentage.

We are not persuaded by Claimant's arguments and the recommendation by the Claims Review Staff that the Claimant receive an award of Redacted is hereby adopted. Given the monetary sanctions collected, the award should yield a payment of over \$325,000.

Contrary to the Claimant's contentions, we have given due consideration to the personal and professional risks faced by whistleblowers in reporting their information to the Commission, and find it significant that the delay here occurred entirely after implementation of the whistleblower program under the Dodd-Frank Act. In considering two prior whistleblower award claims where the period of delay straddled the Dodd-Frank Act, we determined, in our discretion, to give less weight to the unreasonable reporting delay than we "otherwise might have done had the delay occurred entirely after the [whistleblower] program's creation."²

This distinction reflects our understanding that the Dodd-Frank Act changed the landscape for whistleblowers. Before the enactment of Section 21F, individuals faced strong disincentives to report violations while still employed at the entity where misconduct was occurring. Congress's establishment of the whistleblower program in the Dodd-Frank Act, however, provided new whistleblower incentives and protections to overcome those powerful disincentives to reporting. Thus, we considered this award, involving a post-Section 21F reporting delay, against the backdrop of Congress's principal purpose "to motivate those with insider knowledge [of securities violations] to come forward" and "take the enormous risk of blowing the whistle in calling attention to fraud."³

We also have emphasized that the whistleblower rules "should incentivize the prompt and early submission of high-quality, credible tips."⁴ Section 21F provided whistleblowers with confidentiality protections, including the right of whistleblowers to report to the Commission anonymously and to remain anonymous until the time that an award is to be paid.⁵ Indeed, Claimant took advantage of these provisions and submitted the Form TCR to the Commission anonymously through counsel. As such, although the duration of the delay was relatively limited, we believe that the delay was unreasonable in light of the incentives and protections now afforded to whistleblowers under the Commission's whistleblower program. Where the period

² See *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 75477, at 2 n.3 (July 17, 2015); *Order Determining Whistleblower Award Claim*, Exchange Act Release No. 73174, at 3 n.5 (Sept. 22, 2014).

³ S. Rep. 111-176 at 110-11 (Apr. 30, 2010).

⁴ *Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934*, Release No. 34-64545, at 217 (Aug. 12, 2011).

⁵ Exchange Act Section 21F(d)(2), 15 U.S.C. § 78u-6(d)(2); Rule 21F-7, 17 C.F.R. § 240.21F-7.

of delay occurs entirely after the creation of the Commission's whistleblower program, we will weigh the delay more heavily in assessing the appropriate award percentage.

We are not persuaded by Claimant's general policy contention that, by encouraging prompt reporting, we may be encouraging the submission of lower-quality tips and complaints. First, this particular case is not one where a whistleblower either took, or reasonably needed to take, additional time to gather more information in order to understand that violations had occurred or to appreciate the scope of the misconduct. More generally we note that whistleblowers are free to, and often do, supplement their initial tips with additional information or materials after making their first submission to the Commission. Additionally, we believe it would undermine our objective of leveraging whistleblower tips to help detect fraud early and thereby prevent investor harm if whistleblowers could unreasonably delay reporting and receive greater awards due to the continued accrual of wrongful profits.⁶

Finally, in determining the award percentage, we did not give negative weight to the fact that Claimant declined to report the violations internally. In assessing the reasonableness of Claimant's delay, we considered the fact that Claimant failed promptly to report the wrongdoing to the Commission, to any other regulator, or through internal reporting mechanisms, and instead waited until after leaving ^{Redacted} employer to contact the Commission. We did not decrease Claimant's award percentage because ^{Redacted} declined to report internally, but because after becoming aware of the wrongdoing, ^{Redacted} did nothing to report the information and did nothing to try to stop the violations from continuing to occur, which under the facts and circumstances, we find unreasonable.⁷

Accordingly, upon due consideration under Rules 21F-10(g) and (h), 17 C.F.R. §§ 240.21F-10(g) and (h), it is hereby ORDERED that the Claimant shall receive an award of ^{Redacted} of the monetary sanctions collected and to be collected in the Covered Action.

By the Commission.

Brent J. Fields
Secretary

⁶ Here, the great majority of the total disgorgement ordered in the underlying enforcement matter was attributable to the misconduct that occurred after Claimant learned about the ^{Redacted} and before Claimant retained counsel or reported to the Commission, with a resulting increase in the monetary sanctions upon which Claimant's award is based.

⁷ We also considered factors that mitigated the unreasonableness of the Claimant's reporting delay. In addition to the limited duration of the delay, we considered the fact that Claimant witnessed a single violation and was unaware of the full extent of the fraud.