
In the Matter of Claims for Award by:)
)
 Redacted)
)
 WB-APP Redacted ; and)
)
 Redacted) CFTC Whistleblower Award
) Determination No. 19-WB-04
 WB-APP Redacted)
)
 In Connection with)
 Notice of Covered Action No. Redacted)
)

ORDER DETERMINING WHISTLEBLOWER AWARD CLAIMS

The Commodity Futures Trading Commission (“Commission”) received whistleblower award applications from Claimant 1 and Claimant 2 in response to Notice of Covered Action Redacted Redacted

The underlying enforcement action is Redacted. The Claims Review Staff has evaluated the award applications in accordance with the Commission’s Whistleblower Rules (“Rules”), 17 C.F.R. pt. 165 (2018), promulgated pursuant to Section 23 of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 26 (2012). On Redacted, the Claims Review Staff issued a Preliminary Determination recommending that Claimant 1 receive a whistleblower award in the amount of***% of monetary sanctions collected in Redacted because Claimant 1 voluntarily provided original information to the Commission that led to the successful enforcement of a covered action. The Preliminary Determination also recommended denying the other award claim because Claimant 2 did not contribute to Redacted.

I. LEGAL ANALYSIS

Section 23(b)(1) of the CEA requires the Commission to pay an award to an individual who voluntarily provides the Commission with original information that leads to the successful enforcement of a covered or related action. 7 U.S.C. § 26(b)(1) (2012). The Claims Review Staff has determined that Claimant 1 voluntarily provided the Commission with original information that led to the successful enforcement of a covered action. Claimant 1, Redacted Redacted, is a whistleblower because Claimant 1 submitted information on a Form TCR regarding potential violations of the CEA Redacted Redacted. Claimant 1 provided the information voluntarily, as Claimant 1 was not under any legal obligation to report to the Commission. In addition, Claimant 1’s information was original. The information was previously unknown to the Commission and derived from Claimant 1’s Redacted. Lastly, Claimant 1’s information led the Commission to open an investigation and Redacted.

The Claim Review Staff recommended the award amount to be ***% of the amount of monetary sanctions collected in the covered action, which would result in a payment Redacted

We agree with this determination.¹ In arriving at this award amount, the Claims Review Staff applied the factors set forth in Rule 165.9, 17 C.F.R. § 165.9, in relation to the facts and circumstances of Claimant 1's award application. The determination of the appropriate percentage of a whistleblower award involves a highly individualized review of the facts and circumstances. Depending upon the facts and circumstances of each case, some factors may not be applicable or may deserve greater weight than others. The analytical framework in the Rules provides general principles without mandating a particular result. The criteria for determining the amount of an award in Rule 165.9, 17 C.F.R. § 165.9, are not listed in any order of importance and are not assigned relative importance. The Rules do not specify how much any factor in Rule 165.9(b) or (c) should increase or decrease the award percentage. Not satisfying any one of the positive factors does not mean that the award percentage must be less than 30%, and the converse is true. Not having any one of the negative factors does not mean the award percentage must be greater than 10%. These principles serve to prevent a vital whistleblower from being penalized for not satisfying the positive factors. For example, a whistleblower who provides the Commission with significant information and substantial assistance such as testifying at trial and producing smoking gun documents could receive 30% even if the whistleblower did not participate in any internal compliance systems. In contrast, in order to prevent a windfall, a whistleblower who provides some useful but partial information and limited assistance to the Commission may receive 10% even if none of the negative factors were present.

As applied, Claimant 1's information was significant. The Commission made numerous findings Redacted that were directly based on information Claimant 1 provided. Further, Claimant 1's information helped conserve the Commission's resources because Claimant 1 also reported the same information to Redacted which conducted its own investigation and shared its findings with the Commission. The Redacted findings significantly assisted the Commission Redacted. After causing the Division to open an investigation into Redacted Claimant 1 provided extensive and ongoing assistance to Division staff by identifying key relationships and explaining complex financial arrangements. The multiple interviews Claimant 1 gave and the numerous documents Claimant 1 provided were highly informative and the basis for the investigation. Lastly, no decreasing factors were found with respect to Claimant 1.

The Commission will not pay out an award on related actions. Redacted

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Redacted

Redacted

The Claims Review Staff also determined to recommend that the Commission deny Claimant 2's award claim because Claimant 2's information did not add to or impact the course of the Division's investigation into ^{Redacted} Claimant 2 did not file a Form TCR until a year after the Division's investigation had begun. By that time, Division staff had already made progress in its investigation, including reviewing several document productions, engaging in substantive discussions with ^{Redacted} and initiating discussions with ^{Redacted} regarding this matter. In light of this, Division staff investigating this matter did not contact or interview Claimant 2. Accordingly, Claimant 2's information did not lead to ^{Redacted}.

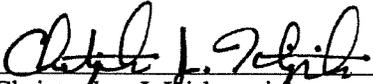
II. RESPONSE TO PRELIMINARY DETERMINATION

Neither Claimant 1 nor Claimant 2 responded to the Preliminary Determination. Accordingly, pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became the Proposed Final Determination of the Claims Review Staff with respect to Claimant 1. Pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became the Final Order of the Commission with respect to Claimant 2. Claimant 2's failure to submit a timely response contesting the Preliminary Determination constituted a failure to exhaust administrative remedies. Accordingly, Claimant 2 is prohibited from pursuing an appeal under Rule 165.13, 17 C.F.R. § 165.13.

III. CONCLUSION

It is hereby ORDERED that Claimant 1 shall receive ^{Redacted}***% of monetary sanctions collected in

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, DC 20581

Dated: July 1, 2019