

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of Claims for Award by:
Redacted ("Claimant 1"),
Redacted ; and
Redacted ("Claimant 2"),
Redacted
In Connection with
Notice of Covered Action No. Redacted
CFTC Whistleblower Award
Determination No. 24-WB-03

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

On Redacted, the CRS issued a Preliminary Determination recommending that Claimant 1 receive an award of * % on the Covered Action, which would result in an award of \$4,247.22, based on the monetary sanctions collected to date, and * % on the Related Action. This recommended award percentage would yield a payment of *, based on the total amount collected in both the Covered Action and Related Action to date.1 The Preliminary Determination also recommended denying the other award claim because Claimant 2 did not contribute to the Covered Action.

For the reasons set forth below, the CRS' determination is adopted.

I. BACKGROUND

The Covered Action arose out of a complaint from Claimant 1's attorney who emailed staff of the Commission's Division of Enforcement ("Division") on behalf of Claimant 1. The email alleged that Claimant 1 is a victim of fraudulent activities committed by Redacted Redacted ("collectively, Defendants").

As part of the complaint, Claimant 1's attorney Redacted

1 The order in the Covered Action imposed monetary sanctions totaling \$ * of which \$ * has so far been collected. The Redacted administrative fine of * , plus restitution, Redacted collected to date. imposed an

Redacted The letter described the alleged violations. Based on Claimant 1's complaint, the Division opened an investigation into Defendants' Redacted .

On Redacted , the Commission filed a complaint with the Redacted . On Redacted , the district court granted Summary Judgment to the Commission. The court found that Redacted

On Redacted , the court entered Final Judgment against Defendants Redacted violations of the CEA. The court's Final Judgment ordered the Defendants, Redac civil penalty. It also Redacted Redacted from further violations of the CEA and Redacted on the Defendants.

On Redacted , Defendants Redacted

So far, the Commission has collected \$ * of the monetary sanctions that the district court imposed in the Covered Action.

Meanwhile, on Redacted . The complaint alleged that Redacted

On Redacted The order imposed an administrative fine of * and restitution Redacted . Redacted

II. PRELIMINARY DETERMINATION

On Redacted , the CRS issued a Preliminary Determination recommending that the Commission grant an award of * % to Claimant 1 on the Covered Action, and an award of * % to Claimant 1 on the Related Action. The CRS recommended denying Claimant 2's application in its entirety because his/her information did not lead to the successful enforcement of the Covered Action.

Notice of the Preliminary Determination was provided to both claimants. Claimants did not respond to the Preliminary Determination. As a result, pursuant to Rule 165.7(h), 17 C.F.R. § 165.7(h), the Preliminary Determination became the Proposed Final Determination. Claimants are prohibited from pursuing an appeal under Rule 165.13, 17 C.F.R. § 165.13, because they did not exhaust administrative remedies.

III. 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) (2018). We find that the record demonstrates that Claimant 1 voluntarily provided the Commission with original information that led to the successful enforcement of a covered action.

The CRS determined that Claimant 1 has met all eligibility requirements for an award, and we concur. See 17 C.F.R. §§ 165.5(b), 165.6. Claimant 1 voluntarily provided original information that led to a successful enforcement action and filed a Commission Form TCR.

Claimant 1 timely filed a Form WB-APP in response to a Notice of Covered Action, and provided explanations and assistance to Division staff. Further, Claimant 1 does not fall into any of the categories of individuals ineligible for an award, as set forth in Rule 165.6(a), 17 C.F.R. § 165.6(a).

The CRS recommended that Claimant 1 receives an award amounting to * % of the total monetary sanctions collected in the Covered Action and * % of the total monetary sanctions collected in the Related Action. We agree with this determination. So far, * has been collected, resulting in a payment of payment of \$4,247.22, as well as * % of any future amounts collected. If the Commission does eventually collect Redacted this would result in a payment of \$ * to Claimant 1. To date, R the Related Action, resulting in a payment of zero^{ed} dollars. If the full Redacted fine of \$ * is collected, then Claimant 1 would receive a payment of \$ * . If Redacted, Claimant 1 would receive the prorated award amount. Claimant 1 will not need to file additional claims for any future amounts collected.

In arriving at these award percentages, the CRS 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. Rule 165.9(b) provides a list of factors that may increase the award amount, and Rule 165.9(c) provides a list of factors that may decrease the award amount. However, 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 documents containing direct evidence of violations 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 sufficiently specific, credible, and timely to cause Division staff to open an investigation into the Covered Action. Claimant 1's information was highly significant given that the Commission was unaware of the violations before Claimant 1 first approached the Commission with the information. Had Claimant 1 not provided this information, the Commission may have not opened an investigation.

After causing the Commission to open an investigation, Claimant 1 provided Division staff with extensive and ongoing assistance and was truthful, forthcoming and cooperative. The Commission brought a successful covered action based in part on the conduct that was the subject of Claimant 1's original information. The information Claimant 1 provided significantly contributed to both the opening and the ultimate success of the Covered Action.

The documents provided by Claimant 1 and his/her interview with Division staff formed the basis of the investigation and were significant and highly informative. According to Division staff, Redacted

The Related Action was heavily based on information from Claimant 1 that led to the success of the Covered Action. Notably, Redacted

. As
such, Claimant's information significantly contributed to the success of the Related Action.

The CRS has also determined to recommend that the Commission deny the award application of Claimant 2 because Claimant 2 failed to meet the requirements of Section 23 of the Act and the Rules. We agree with this determination. Claimant 2 did voluntarily submit information to the Commission on a Form TCR. However, the information Claimant 2 provided was unrelated to the Covered Action. Claimant 2 played no role in the Commission's successful enforcement action, and no information he/she provided was used in the investigation. Division staff had not heard of Claimant 2 until the WBO informed them of his/her award claim.

Accordingly, the information provided by Claimant 2 was not useful to the Commission's investigation and, therefore, did not lead to the successful enforcement of the Covered Action.

IV. CONCLUSION

It is hereby ORDERED that Claimant 1 shall receive an award of * % of monetary sanctions collected in the Covered Action, and an award of * % of the monetary sanctions collected in the Related Action. It is further ORDERED that Claimant 2's whistleblower award be, and hereby is, denied.

By the Commission.

A handwritten signature in black ink that reads "Robert Sidman". The signature is written in a cursive style with a horizontal line underneath it.

Robert Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: January 4, 2024