

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

-----X

VICTOR HONG,

Petitioner,

v.

Docket No. 19-3886

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION, the UNITED  
STATES OF AMERICA, and UNITED  
STATES DEPARTMENT OF JUSTICE,

**AFFIDAVIT OF  
VICTOR HONG**

Respondents.

-----X

STATE OF NEW YORK        )  
  ) ss.:  
NEW YORK COUNTY         )

VICTOR HONG, being duly sworn deposes and says, under penalties of perjury:

1. I am the Petitioner in the above-captioned Petition for Review.
2. I am a finance professional specializing in valuation and risk in investment banking.
3. I am a former employee of RBS Greenwich Capital Markets, Inc. (“RBS Greenwich”), a wholly owned subsidiary of the Royal Bank of Scotland Group PLC (“RBS”).
4. On September 28, 2007, I began employment at RBS Greenwich as a Managing Director, and Head of Fixed-Income Independent Price Verification

("IPV") and Risk Management.

5. At RBS Greenwich, I was responsible for the IPV determinations for all securitized credit products, including Asset Backed Securities ("ABS"), Collateralized Debt Obligations ("CDOs"), Collateralized Loan Obligations ("CLOs"), leveraged loans, interest-rate products, and corporate credit products (such as credit default swaps), with a focus on CDOs and Commercial Mortgage Backed Securities ("CMBS"), commercial loans, and subprime Alternative A-paper ("Alt-A") and prime Residential Mortgage Backed Securities ("RMBS").

6. On November 9, 2007, I resigned from RBS Greenwich, primarily due to persistent discrepancies between trader marks or otherwise over-marked valuations as compared to the analytical fair market value of the securitized products for which I was responsible for IPV, and which my supervisors and RBS senior management refused to correct.

7. By Executive Order, on November 17, 2009, President Barrack Obama established the Financial Fraud Enforcement Task Force, which is comprised of member-agencies, including, among others, the United States Securities and Exchange Commission (the "Commission"), the Federal Housing Finance Agency ("FHFA"), and the Department of Justice ("DOJ"). Exec. Order No. 13519, Federal Register. Vol. 74, No. 222 (November 19, 2009).

8. On January 27, 2012, the Residential Mortgage-Backed Securities

Working Group (“RMBS Group”), in which the Commission, FHFA, and the DOJ are member agencies, was created within the Financial Fraud Enforcement Task Force. (Office of the Attorney General Memorandum annexed hereto as Exhibit “A”).

9. The RMBS Group solicited “RMBS insiders,” or “people who worked with RMBS in the financial industry and witnessed misconduct,” to come forward with information, announcing: “You may be eligible for a substantial reward” and “Substantial financial rewards may be available if you provide specific information that leads to a monetary recovery by the government. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the reward can amount to 10-30% of the government’s monetary recovery. For more detailed information, visit the SEC Office of the Whistleblower.” (RMBS Notice annexed hereto as Exhibit “B”) (emphasis in original).

10. On July 28, 2014, I filed a Tip, Complaint, and Referral form (“TCR”) with the Commission, assigned number TCR1406601219794 by the Commission (the “TCR”). (TCR annexed hereto as Exhibit “C”).

11. In the TCR, I voluntarily supplied original information to the Commission detailing securities law violations related to RMBS, and other securitized products, packaged, marketed, and sold by and through RBS. *Id.*

12. After submitting my TCR to the Commission, I did not contact or

submit tips to any other agency or organization regarding the subject of my TCR.

13. Referral of certain whistleblower tips to other regulatory or law enforcement agencies is part of the Commission's stated policy in processing whistleblower tips, as reported to the U.S. Congress, since the inception of the Commission's Office of the Whistleblower. U.S. Securities and Exchange Commission, Whistleblower Program, 2019 Annual Report to Congress, at 27 (2019) (<https://www.sec.gov/files/sec-2019-annual%20report-whistleblower%20program.pdf>) ("In certain instances, [the Office of Market Intelligence] or other Enforcement staff may determine it is more appropriate that a whistleblower's tip be investigated by another regulatory or law enforcement agency. When this occurs, the tip is referred to the other agency in accordance with the Exchange Act's whistleblower confidentiality requirements."); U.S. Securities and Exchange Commission, Whistleblower Program, 2018 Annual Report to Congress, at 25 (2018) (<https://www.sec.gov/files/sec-2018-annual-report-whistleblower-program.pdf>) (same); U.S. Securities and Exchange Commission, Whistleblower Program, 2017 Annual Report to Congress, at 27 (2017) (<https://www.sec.gov/files/sec-2017-annual-report-whistleblower-program.pdf>) (same); U.S. Securities and Exchange Commission, Whistleblower Program, 2016 Annual Report to Congress, at 27 (2016) (<https://www.sec.gov/files/owb-annual-report-2016.pdf>) (same); U.S. Securities and Exchange Commission, Whistleblower

Program, 2015 Annual Report to Congress, at 25 (2015) (<https://www.sec.gov/files/owb-annual-report-2015.pdf>) (same); U.S. Securities and Exchange Commission, Whistleblower Program, 2014 Annual Report to Congress, at 8, 24 (2014) ([https://www.sec.gov/files/owb-annual-report-2014\\_2.pdf](https://www.sec.gov/files/owb-annual-report-2014_2.pdf)) (“In particular, OWB [the Office of the Whistleblower] coordinates with Commission staff in making external referrals to other government agencies and responding to discovery requests consistent with the confidentiality provisions of the Dodd-Frank Act and the Commission’s whistleblower rules.”); (“In certain instances, OMI may determine it is more appropriate that a whistleblower’s tip be investigated by another regulatory or law enforcement agency. When this occurs, we refer the tip to the other agency in accordance with our confidentiality requirements under the statute.”); U.S. Securities and Exchange Commission, Whistleblower Program, 2013 Annual Report to Congress, at 7 (2013) (<https://www.sec.gov/files/annual-report-2013.pdf>) (“Coordinating with Commission staff in making external referrals to other government agencies consistent with the Dodd-Frank Act’s and the Final Rules’ confidentiality provisions”); U.S. Securities and Exchange Commission, Whistleblower Program, 2011 Annual Report to Congress, at 6 (2011) (<https://www.sec.gov/files/whistleblower-annual-report-2011.pdf>) (“During the triage process, several layers of staff in the Office of Market Intelligence examine

each submitted tip to identify those that are sufficiently specific, timely and credible to warrant the further allocation of Commission resources, or a referral to another law enforcement or regulatory agency. Complaints that relate to an existing investigation are generally forwarded to the staff assigned to the existing matter...When appropriate, complaints that fall within the jurisdiction of another federal or state agency are forwarded to the Commission contact at that agency, provided this can be done without violating the confidentiality of whistleblower-identifying information contained in the complaint”).

14. Consistent with the RMBS Group and the Commission’s referral policy, on or about November 13, 2014, I received a voicemail from FHFA Special Agent Jeffrey L. Fata, during which FHFA Special Agent Fata said, in full, “Yes. Good Afternoon. This message is for Victor Hong. My name is Jeff Fata. I am a Special Agent with the Federal Housing Finance Agency, Office of the Inspector General. And I am calling regarding the Complaint that you had filed. If you could, I would like to speak with you about it. Maybe, you could give me a call. Phone me at 973 Area Code 294-1895. Thank you.”

15. Prior to receiving Mr. Fata’s voicemail, I had only filed a TCR with the Commission and did not file a complaint with the FHFA.

16. I returned FHFA Special Agent Fata’s voicemail, and he explained that he contacted me regarding the TCR I filed with the Commission, and that he would

put me in touch with investigators to follow up on the tip in my TCR.

17. On November 18, 2014, I received an email from FHFA Special Agent Fata, confirming receipt of my TCR and describing that he intended coordinate with RMBS Group co-member, the Office of the U.S. Attorney for the District of Massachusetts (the “U.S. Attorney”), in connection with my TCR information. (November 18, 2014 Email annexed hereto as Exhibit “D”).

18. On or about November 25, 2014, Assistant U.S. Attorney (“AUSA”) Mary Murrane contacted my attorney by telephone regarding my TCR.

19. On November 25, 2014, AUSA Murrane emailed my attorney regarding the U.S. Attorney’s interest in talking with me and scheduling a meeting in Boston, Massachusetts regarding the subject of my TCR. (November 25, 2014 Email annexed hereto as Exhibit “E”).

20. After further discussions between AUSA Murrane and my attorney, the U.S. Attorney issued a subpoena dated December 11, 2014 (the “DOJ Subpoena”) for the production of documents related to the TCR I filed with the Commission. (Docket No. 19-3886, Document Number (“Doc.”) 29<sup>1</sup>, pp. 29-32).

21. On December 12, 2014, I attended, with my attorney, a meeting at the offices of the U.S. Attorney in Boston, Massachusetts, with FHFA Special Agent Fata, AUSA Sara Bloom, AUSA Justin O’Connell, and AUSA Brian LaMacchia.

---

<sup>1</sup> Doc. 29 is the partial administrative record filed by the Commission.

22. At the December 12, 2014 meeting and thereafter, in response to the DOJ Subpoena, I produced troves of documents and further information related to the tip I made in the TCR regarding securities law violations related to RMBS valuation and pricing falsifications at RBS.

23. Specifically, in response to the DOJ Subpoena, I produced hundreds of pages of emails, valuation research, reports, and compliance documents related to RMBS valuation and pricing falsifications at RBS. (Bates stamped document productions to DOJ, “VH00001-VH00523” and “VHS0617-VHS0655, annexed hereto as Exhibit “F”).

24. Upon the recommendation of AUSA Justin O’Connell, on December 17, 2014, I filed an amended TCR with the Commission, assigned number TCR1418585030083 by the Commission (the “Amended TCR”). (Doc. 29, pp. 33-39).

25. Upon information and belief, the information I produced in connection with my TCR and Amended TCR filed with the Commission was used by FHFA in *Federal Housing Finance Agency v. Royal Bank of Scotland Group PLC et al*, United States District Court for the District of Connecticut, 3:11-cv-01383 (AWT), in which discovery was ongoing at the time of my TCR, Amended TCR, and production.

26. For example, I produced significant evidence, including emails,



research, and reports demonstrating misrepresentations regarding the underlying loans and securitizations constituting the Soundview Home Equity 2007 RMBS.

27. Upon information and belief, *Federal Housing Finance Agency v. Royal Bank of Scotland Group PLC et al*, United States District Court for the District of Connecticut, 3:11-cv-01383 (AWT), resulted in a settlement and monetary sanctions, which exceeded \$1,000,000 (“FHFA Settlement”).

28. The Commission never posted a “Notice of Covered Action” in connection with the FHFA Settlement.

29. On December 28, 2015, I filed a Form WB-APP (“December 28, 2015 WB-APP”) application for a whistleblower award for original information submitted with the Commission, referring to *Federal Housing Finance Agency v. Royal Bank of Scotland Group PLC et al*, United States District Court for the District of Connecticut, 3:11-cv-01383 (AWT). (Doc. 29, pp. 8-40).

30. By letter dated February 8, 2016, the Commission, Office of the Whistleblower, refused to process my December 28, 2015 WB-APP, writing that, “Section D of Form WB-APP requires your client provide the case name and notice number for the Covered Action for which he seeks an award.” The Commission continued, writing that, “The Complete list of eligible Covered Actions can be found at <http://www.sec.gov/about/offices/owb/owb-awards.shtml>. The case name and number listed in Section D of the application does not correspond to any of the

Covered Actions we have posted. **Accordingly, your client has not submitted a properly filed whistleblower award application and we cannot consider his claim for an award at this time.**” The Commission concluded by requesting, “If the SEC has posted, or does post, a notice of Covered Action...please have your client re-file his application **listing the specific Covered Action to which it relates.**” (Doc. 29, p. 95) (emphasis in original).

31. On April 14, 2016, I provided a witness statement (“EWHC Witness Statement”) to the English High Court in *The RBS Rights Issue Litigation* [2016] EWHC 3161 (Ch). (Doc. 29, pp. 99-139).

32. By letter dated May 16, 2016, my attorney mailed a copy of the EWHC Witness Statement, VH0617-VH0657, to AUSA Murrane to supplement my previous productions in connection with my TCR and the related responses to the DOJ Subpoena. (See Exhibit “F,” VH0617-VH0657).

33. On July 19, 2016, my attorney also mailed a copy of the EWHC Witness Statement to the Commission’s Office of the Whistleblower, highlighting paragraphs showing a direct link from my productions related to my TCR and Amended TCR filed with the Commission to *Federal Housing Finance Agency v. Royal Bank of Scotland Group PLC et al*, United States District Court for the District of Connecticut, 3:11-cv-01383 (AWT). (Doc. 29, pp. 96-139).

34. Specifically, in my EWHC Witness Statement and July 19, 2016 letter,

I provided detailed information regarding misrepresentations concerning particular securitizations, such as SoundView Home Equity 2007-OPT5 (“SVHE 2007-OPT5”), which was listed in the Complaint in *Federal Housing Finance Agency v. Royal Bank of Scotland Group PLC et al*, United States District Court for the District of Connecticut, 3:11-cv-01383 (AWT) as a subject securitization in that case. *Id.*

35. By letter dated August 4, 2016, the Commission, Office of the Whistleblower, refused to consider my supplemental application for an award, again writing, **“Accordingly, your client has not submitted a properly filed whistleblower award application and we cannot consider his claim for an award at this time.”** The Commission concluded by writing, “The complete list of eligible Covered Actions can be found at <http://www.sec.gov/about/offices/owb/owb-awards.shtml>. If the SEC does post a notice of Covered Action for the subject matter of your client’s complaint and he believes that his tip led to an SEC enforcement action that garnered over \$1 million in monetary sanctions in that Covered Action, please have your client re-file his application **listing the specific Covered Action to which it relates.**” (Doc. 29, pp. 141-142) (emphasis in original).

36. On August 15, 2016, I filed an Amended Form WB-APP (“August 15, 2016 WB-APP”) with the Commission, newly referencing *U.S. v. Royal Bank of Scotland*, in addition to *Federal Housing Finance Agency v. Royal Bank of Scotland Group PLC et al*, United States District Court for the District of Connecticut, 3:11-

cv-01383 (AWT), and detailing my production to the Department of Justice (“DOJ”) in support of my TCR and Amended TCR filed with the Commission. (Doc. 29, pp. 41-61).

37. By letter dated September 7, 2016, the Commission, Office of the Whistleblower, refused to consider my amended application for an award, again repeating, “The complete list of eligible Covered Actions can be found at <http://www.sec.gov/about/offices/owb/owb-awards.shtml>. If the SEC does post a notice of Covered Action for the subject matter of your client’s complaint and he believes that his tip led to an **SEC** enforcement action that garnered over \$1 million in monetary sanctions in that Covered Action, please have your client re-file his application **listing the specific Covered Action to which it relates.**” (Doc. 29, pp. 165-166) (emphasis in original).

38. On August 14, 2018, the DOJ and RBS entered into a Settlement Agreement (the “DOJ Settlement”), following the U.S. Attorney’s Office for the District of Massachusetts’ investigation in conjunction with the FHFA, with monetary sanctions in the amount of \$4.9 billion against RBS, upon information and belief, based in whole or in part on the original information I produced in connection with my TCR and Amended TCR filed with the Commission. (DOJ Settlement annexed hereto as Exhibit “G”).

39. Specifically, Annex 2 to the DOJ Settlement lists seventy-seven

different “Soundview” RMBS, regarding which I produced significant evidence to the DOJ and FHFA in connection with my TCR, including the underlying loans and securitizations, as I blew the whistle on fraudulently originated loans and overmarked securities being poured into many of these Soundview RMBS products tranche by tranche during the time period covered by the DOJ Settlement. *Id.*

40. The Commission never posted a “Notice of Covered Action” for the DOJ Settlement.

41. On September 3, 2018, I filed a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, with the DOJ seeking records pertaining to the Commission’s involvement in the DOJ Settlement (Request EOUSA-2018-005473).

42. The DOJ issued a blanket denial of FOIA Request EOUSA-2018-005473, explaining, in part: “[ X ] The records responsive to your request **have been destroyed** pursuant to Department of Justice guidelines.” (DOJ Denial annexed hereto as Exhibit “H”) (emphasis added). I appealed.

43. Although the DOJ denied expedited treatment, on February 15, 2019, the DOJ remanded EOUSA-2018-005473 for a search of responsive documents. (Appeal No. DOJ-AP-2019-000175). (February 15, 2019 Responses annexed hereto as Exhibit “I”). This request remains outstanding.

44. On May 8, 2019, I also filed FOIA requests with the Commission

seeking records concerning myself, Victor Hong, RBS, and RBS Greenwich. (*See*, July 11, 2019 Letter from the Commission annexed hereto as Exhibit “J”).

45. The Commission’s FOIA Office informed me that the requested records included seven boxes of records and estimated *thirty-six months or more* before a FOIA officer can *begin* processing the requests, so I narrowed the scope of the request, as suggested by the Commission. *See, id.*

46. By letter dated July 2, 2019, the Commission’s FOIA Office told me that it did not find any responsive emails in the three boxes that it searched. I appealed and challenged the adequacy of this search conducted by the Commission’s FOIA Office. *See, id.*

47. By letter dated July 11, 2019, the Commission denied my appeal and concluded that the search, which uncovered no emails in three of the seven boxes of records regarding myself, RBS, and RBS Greenwich, was reasonable. *Id.*

48. To date, I have received no responsive records from either the Commission or DOJ concerning myself, RBS, or RBS Greenwich, despite numerous FOIA requests and appeals.

49. On September 5, 2019, I filed a Form WB-APP (“September 5, 2019 WB-APP”) with the Commission, newly referencing the DOJ Settlement. (Doc. 29, pp. 63-94).

50. By letter dated September 18, 2019, the Commission, Office of the

Whistleblower, again refused to consider or substantively address my application for an award, repeating, “**Accordingly, your client has not submitted a properly filed whistleblower award application and we cannot consider his claim for an award at this time.**” The Commission further wrote, “The complete list of eligible Covered Actions can be found at <http://www.sec.gov/about/offices/owb/owb-awards.shtml>. If the SEC does post a notice of Covered Action for the subject matter of your client’s complaint and he believes that his tip led to an **SEC** enforcement action that garnered over \$1 million in monetary sanctions in that Covered Action, please have your client re-file his application **listing the specific Covered Action to which it relates** as well as any Related Action for which you believe you are eligible for an award.” (Doc. 29, pp. 167-168) (emphasis in original).

51. By letter dated September 27, 2019, I, through counsel, appealed the Commission’s denial of my September 5, 2019 WB-APP, requested all materials that formed the basis of the Commission’s determination, and requested a meeting with the Office of the Whistleblower pursuant to 17 C.F.R. § 240.21F-10(e). (Doc. 29, p. 169).

52. By letter dated October 18, 2019, the Commission’s Office of the Whistleblower responded that “...there can be no Preliminary Determination and no corresponding right to see the record related to a Preliminary Determination.” (Doc. 29, p. 170).

53. To date, the Commission has refused to process, consider, or substantively address my application for a whistleblower award in connection with my TCR, Amended TCR, and substantial production of evidence to the Commission and the various co-members of the RMBS Group to which the Commission referred the same, and which ultimately resulted in successful enforcement of a “judicial or administrative action brought by the Commission,” or in a “related action,” within the meaning of the Dodd–Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) whistleblower provisions under 15 U.S.C. §78u-6.

*Victor Hong*  
\_\_\_\_\_  
VICTOR HONG

Sworn to before me this  
6 day of FEBRUARY, 2020

*[Signature]*  
\_\_\_\_\_



Notary Public