

**AWARD**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Albert V. LaCava, Jr.

vs.

Case Number: 08-04976  
Hearing Site: Cleveland, Ohio

Names of Respondents

UBS Financial Services, Inc.,  
Bruce Dyer, and John T. Egan

and

Name of Counter-Claimant

UBS Financial Services, Inc.

vs.

Name of Counter-Respondent

Albert V. LaCava, Jr.

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**NATURE OF THE DISPUTE**

Associated Person vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Albert V. LaCava, Jr. ("Claimant" or "LaCava") was represented by Roger W. Van Deusen, Esq., Van Deusen & Wager, LLC, Cleveland, Ohio.

UBS Financial Services, Inc. ("UBS"), Bruce Dyer ("Dyer") and John T. Egan ("Egan"), hereinafter collectively referred to as "Respondents," were represented by Joseph S. Simms, Esq., Ulmer, Berne, LLP, Cleveland, Ohio.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 26, 2008. The Submission Agreement of Claimant was signed on or about December 12, 2008.

The Statement of Answer was filed jointly by Respondents on or about March 26, 2009. The Submission Agreement of UBS was signed on or about March 18, 2009. The Submission Agreement of Dyer was signed on or about March 18, 2009. The Submission Agreement of Egan was signed on or about March 18, 2009.

The Counterclaim was filed by UBS on or about March 26, 2009. Claimant filed an Answer to the Counterclaim on or about May 7, 2009.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; breach of covenant of good faith and fair dealing; failure to supervise; tortious interference; wrongful termination; and libel and slander. The causes of action related to the Claimant's allegation that Respondents unjustifiably, unilaterally, and wrongfully terminated his employment on July 17, 2008. Claimant alleged that Respondents engaged in a series of deceptive activities with the intent to harm Claimant's ability to conduct business with his clients in the future and restricting his access to personal and business information necessary in order to continue to service his clients. Claimant further alleged that Respondents' collective behavior caused him to suffer severe emotional distress and economic hardship.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's purported losses, damages and harm were not caused by Respondents' actions or conduct; Claimant's termination was based on legitimate, non-retaliatory factors, including, without limitations, Claimant's repeated misconduct, dishonesty, insubordination, failure to comply with industry rules and regulations; Claimant's Statement of Claim is barred in whole or in part by the doctrines of waiver and estoppel; and Claimant's Statement of Claim is barred in whole or in part by the doctrine of unclean hands.

In its Counterclaim UBS asserted the following cause of action: breach of promissory notes. UBS alleged that on or around August 27, 2004, LaCava executed a Letter of Understanding and received two forgivable loans, which were secured as promissory notes ("the Notes"), from UBS. Under the terms of the Notes, as long as LaCava remained employed with UBS, the loan amounts would be forgiven in equal annual installments on each of the six years following payment of the loan amounts. UBS alleged that the Letters of Understanding each provided that the unforgiven portions of the loans that remained outstanding would become immediately due and payable upon LaCava's termination. UBS alleged that LaCava was terminated on July 17, 2008. LaCava is therefore obligated to repay UBS the outstanding and unforgiven balance of the loans, interest, attorneys' fees, and costs.

Unless specifically admitted in his Answer, LaCava denied the allegations made in the Counterclaim and asserted affirmative defenses including the following: UBS failed to state

a claim upon which relief can be granted; UBS's Counterclaim is barred in whole or in part by the doctrines of waiver and estoppel; the Counterclaim is barred in whole or in part by the doctrine of unclean hands; UBS has failed to mitigate any of its alleged losses, damages and harm; UBS's purported losses were caused by UBS's wrongful conduct and actions, not the Claimant's conduct and actions, therefore, UBS should and ought to be estopped from making such claims; and the claims of Claimant offset and exceed the claims of UBS under its Counterclaim.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$2,719,267.49
Exemplary/Punitive Damages	\$2,000,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the hearing, Claimant amended his damages and requested an award in the amount of:

Actual/Compensatory Damages	\$2,719,267.49
Exemplary/Punitive Damages	\$2,000,000.00
Interest	Unspecified
Attorneys' Fees	\$ 123,780.00
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be dismissed or denied in their entirety and that they be awarded their costs and attorneys' fees. Respondents Bruce Dyer and John T. Egan requested that all references to this matter be expunged from their records maintained by the Central Registration Depository ("CRD").

In the Counterclaim, UBS requested an award in the amount of:

Actual/Compensatory Damages	\$187,226.28
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the hearing, UBS amended its damages and requested an award in the amount of:

Actual/Compensatory Damages	\$196,963.89
Interest	Unspecified
Attorneys' Fees	\$126, 517.95
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Claimant requested that the claims asserted against him be denied in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

At the hearing on February 4, 2010, which was recorded, Albert V. LaCava, Jr., Bruce Dyer and John T. Egan, made an oral Motion for Expungement. After consideration of the parties' arguments and the evidence presented, the Panel denied the Motion.

At the hearing, Respondents made a Motion for Directed Verdict. Claimant argued his position orally at the hearing. After deliberation, the Panel denied the Motion.

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Claimant, Albert V. LaCava, Jr., is liable for and shall pay to Respondent, UBS Financial Services, Inc., the sum of \$196,963.89 in compensatory damages;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages, attorneys' fees, and expungement, is hereby denied with prejudice.

## **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

FINRA Dispute Resolution will retain the non-refundable filing fee\* for each claim:

Initial Claim filing fee	= \$ 1,800.00
Counterclaim filing fee	= \$ 2,125.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party UBS Financial Services, Inc. is assessed the following:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

### **Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on discovery-related motion on the papers with (3) three arbitrators @ \$200.00	= \$ 600.00
<u>Claimant submitted (1) discovery-related motion</u>	
<b>Total Discovery-Related Motion Fees</b>	<b>= \$ 600.00</b>

The Panel has assessed \$300.00 of the discovery-related motion fees to Albert V. LaCava, Jr.

The Panel has assessed \$300.00 of the discovery-related motion fees to UBS Financial Services, Inc.

### **Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each hearing session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing

conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: May 18, 2009 1 session

Eleven (11) Hearing sessions x \$1,200.00 = \$13,200.00  
Hearing Dates: December 7, 2009 2 sessions  
December 8, 2009 2 sessions  
December 11, 2009 2 sessions  
February 1, 2010 2 sessions  
February 2, 2010 2 sessions  
February 4, 2010 1 session

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**Total Hearing Session Fees = \$14,400.00**

The Panel has assessed \$7,200.00 of the hearing session fees to Albert V. LaCava, Jr.

The Panel has assessed \$7,200.00 of the hearing session fees to UBS Financial Services, Inc.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Marc A. Winters - Public Arbitrator, Presiding Chair  
John T. Meredith - Public Arbitrator  
Robert G. Conway - Non-Public Arbitrator

**Concurring Arbitrators' Signatures:**

/s/ Marc A. Winters  
Marc A. Winters  
Public Arbitrator, Presiding Chair

February 9, 2010  
Signature Date

/s/ John T. Meredith  
John T. Meredith  
Public Arbitrator

February 9, 2010  
Signature Date

/s/ Robert G. Conway  
Robert G. Conway  
Non-Public Arbitrator


February 9, 2010  
Signature Date

February 9, 2010  
Date of Service (For FINRA office use only)

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John T. Meredith - Public Arbitrator  
Robert G. Conway - Non-Public Arbitrator

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Public Arbitrator, Presiding Chair

  
\_\_\_\_\_  
Signature/Date

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John T. Meredith  
Public Arbitrator

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Public Arbitrator, Presiding Chair

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Signature Date



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John T. Meredith  
Public Arbitrator

*Feb. 9, 2010*

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Signature Date

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Robert G. Conway  
Non-Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chair

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Signature Date


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John T. Meredith  
Public Arbitrator

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Signature Date

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Robert G. Conway  
Non-Public Arbitrator

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1-9-10  
Signature Date

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Date of Service (For FINRA office use only)