

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Harvey Gerber, individually and as co-trustee of the
H&A Gerber Trust U/A dated 7/5/2005
Angelina Gerber, individually and as co-trustee of
the H&A Gerber Trust U/A dated 7/5/2005
Leila Lambert as trustee of The Lambert Family
Trust UAD 11/04/07

Case Number: 14-03220

vs.

Respondents

Charles Acheson Laverty
Oppenheimer & Co., Inc.
UBS Financial Services Inc.

Hearing Site: Los Angeles, California

Cross-Claimant

Oppenheimer & Co., Inc.

vs.

Cross-Respondent

Charles Acheson Laverty

Cross-Claimant

Charles Acheson Laverty

vs.

Cross-Respondents

Oppenheimer & Co., Inc.
UBS Financial Services Inc.

Cross-Claimant

UBS Financial Services Inc.

vs.

Cross-Respondent

Charles Acheson Laverty

Nature of the Disputes: Customers vs. Members and Associated Person;
Member vs. Associated Person;
Associated Person vs. Members; and
Member vs. Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Harvey Gerber, individually and as co-trustee of the H&A Gerber Trust U/A dated 7/5/2005, Angelina Gerber, individually and as co-trustee of the H&A Gerber Trust U/A dated 7/5/2005 (“the Gerbers”); and Leila Lambert as trustee of The Lambert Family Trust UAD 11/04/07 (“Lambert”), hereinafter collectively referred to as “Claimants”: Philip M. Aidikoff, Esq. and Katrina M. Boice, Attorney at Law, Aidikoff, Uhl & Bakhtiari, Beverly Hills, California.

For Respondent/Cross-Claimant/Cross-Respondent Charles Acheson Laverty (“Laverty”): Gary R. Wallace, Esq., Law Office of Gary R. Wallace, Los Angeles, California.

For Respondent/Cross-Claimant/Cross-Respondent Oppenheimer & Co., Inc. (“Oppenheimer”): Robert B. Ericson, Esq., and Angelina T. Evans, Esq., Palmer, Lombardi & Donohue LLP, Los Angeles, California.

For Respondent/Cross-Claimant/Cross-Respondent UBS Financial Services Inc. (“UBS”): Neal S. Robb, Esq., and Ryan S. Lean, Esq., Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

Statement of Claim filed on or about: October 14, 2014.
First Amended Statement of Claim filed on or about: April 15, 2015.
The Gerbers signed the Submission Agreement: October 8, 2014.
Lambert signed the Submission Agreements: October 12, 2014.

Statement of Answer filed by UBS on or about: January 23, 2015.
Statement of Answer and Cross Claim against Laverty filed by Oppenheimer on or about: January 23, 2015.
Statement of Answer and Cross Claim against Oppenheimer and UBS filed by Laverty on or about: January 23, 2015.
Statement of Answer to Laverty’s Cross Claim filed by UBS on or about: February 16, 2015.
Statement of Answer to Oppenheimer’s Cross Claim filed by Laverty on or about: March 5, 2015.
Statement of Answer to First Amended Statement of Claim filed by Laverty on or about: April 29, 2015.
Statement of Answer to First Amended Statement of Claim filed by Oppenheimer on or about: May 14, 2015.
Second Statement of Answer to Oppenheimer’s Cross Claim filed by Laverty on or about: May 15, 2015.
Cross Claim against Laverty and Statement of Answer to First Amended Statement of Claim filed by UBS on or about: January 22, 2016.
Statement of Answer to UBS’s Cross Claim filed by Laverty on or about: February 11, 2016.
UBS signed the Submission Agreement: November 4, 2014.
Laverty signed the Submission Agreement: January 6, 2015.

Oppenheimer signed the Submission Agreement: January 23, 2015.

CASE SUMMARY

In their Statement of Claim and First Amended Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty, constructive fraud, fraud by misrepresentation and omission, breach of written contract, failure to supervise and control, financial abuse, violation of state and federal securities laws, violation of FINRA rules of fair practice and NYSE rules. The causes of action relate to unspecified investments, the use of margin, and personal loans made by Claimants to Laverty.

In its Cross Claim, Oppenheimer asserted a cause of action for indemnity against Laverty.

In his Cross Claim, Laverty asserted a cause of action for indemnity against Oppenheimer and UBS.

In its Cross Claim, UBS asserted causes of action for indemnity and contribution against Laverty.

Unless specifically admitted in their respective Statements of Answer to claims asserted against them, UBS, Laverty, and Oppenheimer denied the allegations and asserted various affirmative defenses.

RELIEF REQUESTED

In their Statement of Claim and First Amended Statement of Claim, Claimants requested:

1. General and compensatory damages in an amount according to proof, but not less than \$1,500,000.00;
2. Lost opportunity costs in an amount according to proof;
3. Rescission;
4. Cost of proceedings;
5. Punitive damages in an amount according to proof;
6. Interest at the legal rate on all sums recovered;
7. Attorneys' fees and costs; and
8. Such other and further relief as this Panel deems just and appropriate.

In its Statement of Answer, UBS requested:

1. Claimants take nothing by this claim and that this matter be dismissed in its entirety, with prejudice;
2. Claimants be taxed with the costs of this suit, including arbitrators' fees and expenses; and
3. Such other relief as the Panel deems just and equitable.

In its Statement of Answer and Cross Claim, Oppenheimer requested an award from the Panel:

1. Dismissing in their entirety all claims in the Statement of Claim against Oppenheimer;

2. Granting an amount equal to all costs of suit incurred by Oppenheimer, including arbitrators' fees and expenses;
3. Directing Laverty to pay Oppenheimer an amount not less than the amount Claimants are entitled to recover from Oppenheimer as well as all attorneys' fees and costs incurred by Oppenheimer in this matter; and
4. Granting such other and further relief as the Panel deems just and equitable.

In his Statement of Answer and Cross Claim, Laverty requested the Panel deny all Claimants' claims and order Claimants, jointly and severally, to reimburse Laverty for all filing, forum, and hearing fees, as well as all attorneys' fees and expenses incurred in this proceeding. Laverty further requested that Oppenheimer and UBS, jointly and severally, be ordered to indemnify Laverty for any liability in connection with this claim and for all attorneys' fees, costs, and disbursements incurred in this proceeding.

In its Statement of Answer to Laverty's Cross Claim, UBS requested:

1. Laverty take nothing by his Cross Claim and that the Cross Claim be dismissed in its entirety, with prejudice;
2. Laverty be taxed with the costs of this suit, including arbitrators' fees and expenses; and
3. Any other such relief as the Panel deems just and equitable.

In his Statement of Answer to Oppenheimer's Cross Claim, Laverty requested the Panel deny all of Claimants' claims and order Claimants, jointly and severally, to reimburse Laverty for all filing, forum, and hearing fees, as well as all attorneys' fees and expenses incurred in this proceeding. Laverty further requested that the Panel deny Oppenheimer's Cross Claim in its entirety. Finally, Laverty requested that Oppenheimer and UBS, jointly and severally, be ordered to indemnify him for any liability in connection with this claim and reimburse him all attorneys' fees, costs and disbursements incurred in connection with this proceeding.

In his Statement of Answer to Claimants' First Amended Statement of Claim, Laverty requested the Panel deny all of Claimants' claims and dismiss the First Amended Statement of Claim in its entirety, with prejudice.

In its Statement of Answer to Claimants' First Amended Statement of Claim, Oppenheimer requested and award from the Panel:

1. Dismissing in their entirety all claims in the First Amended Statement of Claim against Oppenheimer;
2. Granting an amount equal to all costs of suit incurred by Oppenheimer, including arbitrators' fees and expenses;
3. Directing Laverty to pay to Oppenheimer an amount not less than the amount Claimants are entitled to recover from Oppenheimer as well as all attorneys' fees and costs incurred by Oppenheimer in the instant matter; and
4. Granting such other and further relief as the Panel deems just and equitable.

In his Second Statement of Answer to Oppenheimer's Cross Claim, Laverty noted that he and Oppenheimer have agreed that Laverty's Answer to Oppenheimer's initial Cross Claim shall also serve as the Answer to Oppenheimer's Cross Claim contained within Oppenheimer's Answer to Claimants' First Amended Statement of Claim.

In its Cross Claim against Laverty and Statement of Answer to First Amended Statement of Claim, UBS requested that if the Panel issues an award in Claimants' favor, it expressly hold Laverty solely liable. In the event the Panel issues an award in Claimants' favor and assigns joint or several liability against UBS, UBS requested that an award be entered on this Cross Claim against Laverty directing Laverty to pay UBS an amount equal to the amount Claimants would be entitled to recover from UBS on their claim, as well as UBS's forum costs and any other relief the Panel deems just and equitable.

In his Statement of Answer to UBS's Cross Claim, Laverty requested the Panel decline to consider UBS's Cross Claim. In the event the Panel does accept to Cross Claim as part of the record in this proceeding, by this Statement of Answer, Laverty requested the Cross Claim be denied in its entirety and dismissed, with prejudice.

At the close of the hearing, the Gerbers requested \$779,750.73, and Lambert requested \$792,569.31.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On March 20, 2015, Laverty withdrew his Cross Claim against Oppenheimer.

On January 25, 2016, UBS filed a motion for leave to file a Cross Claim for indemnity and contribution against Laverty. On January 26, 2016, Laverty filed a notice of intent to file an opposition. On February 2, 2016, the Panel issued an order granting UBS's motion to file a Cross Claim against Laverty. On February 11, 2016, Laverty filed an objection and Statement of Answer to UBS's Cross Claim.

On January 29, 2016, Laverty withdrew his request for attorneys' fees.

During the recorded evidentiary hearing, Claimants confirmed that they intend only to proceed on claims that relate to the loans provided to Laverty, as well as the claims for failure to supervise and control.

The parties present at the hearing 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 evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Oppenheimer and Laverty are jointly and severally liable for and shall pay to the Gerbers:
 - a.) the sum of \$599,808.25 in compensatory damages; and

- b.) interest on the above-stated sum at the rate of 10% per annum from 30 days after the date of service of this award, until the award of \$599,808.25 is paid in full.
2. Oppenheimer and Laverty are jointly and severally liable for and shall pay to Lambert:
 - a.) the sum of \$306,306.98 in compensatory damages; and
 - b.) interest on the above-stated sum at the rate of 10% per annum from 30 days after the date of service of this award, until the award of \$306,306.98 is paid in full.
3. Oppenheimer and Laverty are jointly and severally liable for and shall pay to Claimants:
 - a.) the sum of \$9,525.00 in expert witness fees; and
 - b.) interest on the above-stated sum at the rate of 10% per annum from 30 days after the date of service of this award, until the award of \$9,525.00 is paid in full.
4. The Panel grants Oppenheimer's Cross Claim for indemnification to the following extent:
 - a.) As the Panel's award in items 1-3 above are made jointly and severally against Oppenheimer and Laverty, Laverty is liable for and shall pay to Oppenheimer the exact amount that Oppenheimer pays to the Claimants in satisfaction of the above stated sums awarded.
 - b.) The Panel has also assessed \$40,350.00 of the hearing session fees noted below jointly and severally against Oppenheimer and Laverty. Accordingly, Laverty is liable for and shall pay to Oppenheimer the exact amount that Oppenheimer pays to FINRA in satisfaction of the hearing session fees assessed below. All other claims for indemnification, including attorneys' fees, are denied.
5. Laverty is solely liable for and shall pay to the Gerbers:
 - a.) the sum of \$179,942.48 in compensatory damages.
 - b.) interest on the above-stated sum at the rate of 10% per annum from 30 days after the date of service of this award, until the award of \$179,942.48 is paid in full.
6. Laverty is solely liable for and shall pay to Lambert:
 - a.) the sum of \$283,262.33 in compensatory damages.
 - b.) interest on the above-stated sum at the rate of 10% per annum from 30 days after the date of service of this award, until the award of \$283,262.33 is paid in full.
7. Laverty is liable for and shall pay to Claimants \$600.00 as reimbursement for the non-refundable portion of the initial claim filing fee Claimants previously paid to FINRA Office of Dispute Resolution.
8. Claimants' claims against UBS are denied in their entirety.

9. Claimants' claims of elder abuse are denied.
10. Claimants' request for attorneys' fees is denied.
11. UBS's claims against Laverty are denied in their entirety.
12. Laverty's claims against UBS are denied in their entirety.
13. Any and all claims for relief not specifically addressed herein, including punitive damages, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 1,800.00
Oppenheimer Cross Claim Filing Fee	= \$ 3,200.00
UBS Cross Claim Filing Fee	= \$ 3,200.00
Laverty Cross Claim Filing Fee	= \$ 1,800.00

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Oppenheimer and UBS are assessed the following:

Oppenheimer	
Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

UBS	
Member Surcharge	= \$ 2,800.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 5,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed or waived:

February 16-19 & 22-24, 2016, adjournment by parties	= \$ 1,200.00
June 6-8 & 13-17, 2016, adjournment by Laverty	= \$ 1,200.00
July 18-22 & 25-29, 2016, adjournment by Laverty	= \$ 1,200.00
December 19-23, 2016, adjournment by Laverty	= \$ 1,200.00

Total Adjournment Fees = \$4,800.00

1. The Panel has assessed \$1,200.00 of the adjournment fees to UBS.
2. The Panel has assessed \$1,200.00 of the adjournment fees to Lavery.
3. The Panel has assessed \$1,200.00 of the adjournment fees jointly and severally to Oppenheimer, UBS, and Lavery.
4. The Panel has waived \$1,200.00 of the adjournment fees.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three calendar days before the start of a scheduled hearing session:

July 18-22 & 25-29, 2016, adjournment by Lavery = \$300.00

Total Last Minute Cancellation Fees = \$300.00

1. The Panel has assessed \$150.00 of the last minute cancellation fees to Lavery.
2. The Panel has waived \$150.00 of the last minute cancellation fees.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with a single arbitrator @ \$450.00/session = \$1,350.00

Pre-hearing conferences: October 15, 2015 1 session
January 6, 2016 1 session
January 11, 2016 1 session

Eight (8) pre-hearing sessions with the Panel @ \$1,200.00/session = \$9,600.00

Pre-hearing conferences: March 10, 2015 1 session
March 30, 2015 1 session
June 2, 2015 1 session
February 11, 2016 1 session
July 15, 2016 1 session
July 18, 2016 1 session
December 15, 2016 1 session
January 6, 2017 1 session

Twenty-five (25) hearing sessions @ \$1,200.00/session = \$30,000.00

Hearing Dates: June 6, 2016 1 session
November 28, 2016 2 sessions
November 29, 2016 2 sessions
November 30, 2016 2 sessions
December 1, 2016 2 sessions
January 17, 2017 2 sessions
January 18, 2017 2 sessions
January 19, 2017 2 sessions

January 20, 2017	1 session
March 13, 2017	2 sessions
April 17, 2017	2 sessions
April 18, 2017	1 session
April 19, 2017	2 sessions
April 20, 2017	2 sessions

Total Hearing Session Fees =\$40,950.00

1. The Panel has assessed \$40,350.00 of the hearing session fees jointly and severally to Oppenheimer and Laverty.
2. The Panel has waived \$600.00 of the hearing session fees.

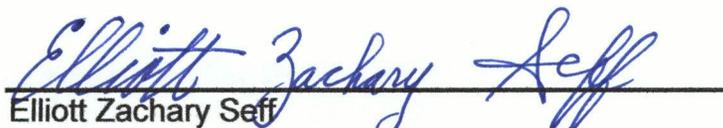
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Elliott Zachary Seff	-	Public Arbitrator, Presiding Chairperson
Arthur T. Berggren	-	Public Arbitrator
Cherie S. Lewis	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



Elliott Zachary Seff
Public Arbitrator, Presiding Chairperson

May 12, 2017

Signature Date

Arthur T. Berggren
Public Arbitrator

Signature Date

Cherie S. Lewis
Public Arbitrator

Signature Date

May 18, 2017

Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATION PANEL

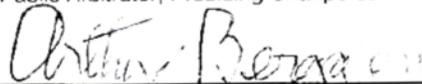
Elliott Zachary Seff	-	Public Arbitrator, Presiding Chairperson
Arthur T. Berggren	-	Public Arbitrator
Cherie S. Lewis	-	Public Arbitrator

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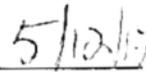
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Public Arbitrator, Presiding Chairperson

Signature Date



Arthur T. Berggren
Public Arbitrator



Signature Date

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Public Arbitrator

Signature Date

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Arthur T. Berggren
Public Arbitrator

Signature Date



Cherie S. Lewis
Public Arbitrator



Signature Date

May 18, 2017
Date of Service (For FINRA Office of Dispute Resolution office use only)