

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Charles A. Lavery (CRD No. 4875386),

Respondent.

Disciplinary Proceeding
No. 2016050205901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During consecutive associations with several member firms, Respondent Charles A. Lavery borrowed \$1,350,000 from an elderly married couple, RO and AO, in violation of each firm's policies. Lavery concealed the loans from his firms and falsely stated on annual compliance questionnaires and on a heightened supervision attestation that he had not borrowed money from customers. Lavery also concealed the loans from FINRA and provided false on-the-record ("OTR") testimony during a previous FINRA investigation into Lavery's borrowing activity. During an OTR taken in that investigation, FINRA staff questioned Lavery about loans from HG and AG, EL and LL, and JA, and then asked, "Mr. Lavery, did you borrow from any other customers?" Lavery answered, "No" and insisted that he had only borrowed from these five customers. His answers were false. He had, in fact, also borrowed from RO and AO. In addition, Lavery willfully failed to update his Uniform Application for Securities Industry Registration ("Form U4") to disclose an unsatisfied judgment and a federal tax lien.

2. By engaging in this misconduct, Laverty violated: (i) FINRA Rules 3240 and 2010 by borrowing impermissibly from his customers; (ii) FINRA Rule 2010 by making false statements to his firms; (iii) FINRA Rules 8210 and 2010 by testifying falsely at an OTR; and (iv) Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010 by willfully failing to disclose reportable events on Form U4.

RESPONDENT AND JURISDICTION

3. Laverty entered the securities industry when he associated with a member firm in 2004 and registered as a General Securities Representative in March 2005. From 2008 through October 2015, Laverty was registered through the following firms as a General Securities Representative:

Firm	Registration Dates
Oppenheimer & Co., Inc. ("Oppenheimer")	Jan. 16, 2008 – May 13, 2010
UBS Financial Services, Inc. ("UBS")	May 13, 2010 – Nov. 22, 2011
Oppenheimer	Nov. 7, 2011 – March 17, 2014
Calton & Associates, Inc. ("Calton")	March 17, 2014 – Feb. 26, 2015
TCFG Wealth Management, LLC ("TCFG")	Feb. 19, 2015 – October 15, 2015

4. Although Laverty is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the filing of an amendment to Form U5 on June 2, 2016, which was filed within two years of the

original Form U5 and disclosed actionable misconduct by Lavery and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member.

FACTS

I. Lavery's History of Borrowing Money from Customers

A. The Cautionary Action – Matter No. 20110302199

5. On May 12, 2012, FINRA issued a Cautionary Action letter to Lavery addressing a violation of FINRA Rule 3240 (borrowing from a customer). The letter noted that Lavery borrowed \$20,000 in 2010 from a UBS customer and warned that the Cautionary Action “will be taken into consideration in determining any future matter should repeat violations occur.”

B. The Prior Action – Matter No. 2014039763101

6. In January 2014, FINRA initiated an investigation of Lavery after Oppenheimer reported in a FINRA Rule 4530 disclosure that it had suspended him for borrowing money from a customer in violation of firm policy.

7. That investigation resulted in a Letter of Acceptance, Waiver and Consent (AWC No. 2014039763101), issued on December 9, 2015, in which Lavery consented to the imposition of an 18-month suspension and a \$5,000 fine. The AWC included findings that Lavery borrowed (i) \$1,205,000 between October 2009 and April 2013 from two married couples—HG and AG and EL and LL—who were his customers and (ii) \$32,500 in the fall of 2013 from another customer, JA. The AWC also included findings that Lavery falsely denied that he had borrowed from customers on annual compliance questionnaires submitted to UBS (in 2011) and Oppenheimer (in 2012 and 2013).

8. As discussed below, Lavery concealed the loans that are the subject of this Complaint—*i.e.*, the \$1,350,000 in loans from RO and AO—from FINRA and his firms during

the investigation leading up to the 2015 AWC. As a result, those loans from RO and AO were not known by FINRA during the pendency of the Prior Action or included in the AWC.

II. Laverty Impermissibly Borrowed Money From RO and AO and Concealed this Activity from his Firms

A. Origin of Laverty's Relationship with RO and AO

9. In 2008, a close friend introduced RO to Laverty. At the time, Laverty was an Oppenheimer representative and maintained an office in Indian Wells, California. RO was a retired physician who, with his wife, AO, resided in Rancho Mirage, California, a nearby community.

10. Laverty established a near-familial relationship with RO and AO; he dined with them, attended holiday celebrations at their homes, and spoke to RO almost daily. RO and AO, in turn, opened brokerage accounts at Laverty's firms and became Laverty's customers.

B. Laverty Borrowed \$750,000 from RO and AO While Registered Through UBS

11. In mid-May 2010, Laverty registered with UBS. About two weeks later, RO and AO opened a UBS account. Laverty was the UBS representative responsible for their account. At the time, RO was 90 years old and AO was 81 years old.

12. UBS prohibited its representatives from borrowing money from any client. Notwithstanding that policy, from October 2010 through November 2011, Laverty borrowed \$750,000 from RO and AO. The following table reflects the dates and amounts of the loans:

Transaction	Date	Amount
Loan No. 1	October 15, 2010	\$550,000
Loan No. 2	February 11, 2011	\$85,000
Loan No. 3	July 20, 2011	\$50,000
Loan No. 4	November 3, 2011	\$65,000

C. Lavery Lied on UBS's Annual Compliance Questionnaire

13. On January 4, 2011, Lavery answered "No" to a question on a UBS compliance questionnaire that asked, "Have you borrowed money from, loaned money to, put up collateral for, or guaranteed a loan from any client or employee of UBS Financial Services Inc. (NOT including an immediate family member)?" His answer was false. Less than three months earlier, in October 2010, Lavery had borrowed \$550,000 from RO and AO.

14. Lavery never disclosed to UBS the \$550,000 loan or the subsequent three loans and never received UBS's approval to borrow any money from RO and AO.

D. Lavery Borrowed \$155,000 from RO and AO While Registered Through Oppenheimer

15. On November 3, 2011, Lavery terminated his employment with UBS and, on November 7, 2011, re-registered with FINRA through Oppenheimer. About one week later, RO and AO opened Oppenheimer accounts. Lavery was the representative responsible for their accounts.

16. Although Oppenheimer prohibited its representatives from borrowing money from their clients, Lavery borrowed \$155,000 from RO and AO while registered through Oppenheimer. The following table reflects the dates and amounts of the loans:

Transaction	Date	Amount
Loan No. 5	December 13, 2011	\$75,000
Loan No. 6	October 4, 2013	\$80,000

E. Lavery Lied on Oppenheimer Compliance Questionnaires and a Heightened Supervision Attestation

17. In August 2012, Lavery answered "No" to a question on an Oppenheimer compliance questionnaire that asked, "Have you made loans to or borrowed from any customer."

His answer was false. About eight months earlier, in December 2011, Lavery borrowed \$75,000 from RO and AO.

18. One year later, in August 2013, although he had not repaid any portion of the \$75,000 loan from RO and AO, Lavery repeated that false response by answering “No” to the same question on an Oppenheimer compliance questionnaire.

19. Lavery never disclosed to Oppenheimer the loans he received from RO and AO and never received the firm’s approval to borrow any money from RO and AO.

20. In December 2013, Oppenheimer learned that Lavery had received two loans from customer JA. Oppenheimer placed Lavery on heightened supervision, suspended him for seven calendar days, and reported the suspension to FINRA pursuant to FINRA Rule 4530.

21. Oppenheimer’s heightened supervision plan required Lavery to attest, on a monthly basis, that he had not borrowed money from any clients. On February 6, 2014, Lavery submitted a signed attestation stating, “I attest that I have not borrowed nor loaned any monies to or from any of my clients nor any other Oppenheimer clients to the best of my knowledge.” That attestation was false. Four months earlier, Lavery had borrowed \$80,000 from RO and AO.

F. Lavery Borrowed \$45,000 from RO and AO While Registered Through Calton

22. On March 17, 2014, Lavery terminated his registration with Oppenheimer and registered through Calton. Two days later, RO and AO submitted an application to transfer their Oppenheimer holdings to their newly opened Calton account. Lavery was the Calton representative responsible for their account.

23. In May 2014, as shown on the table below, Lavery borrowed \$45,000 from RO and AO:

Transaction	Date	Amount
Loan No. 7	May 19, 2014	\$45,000

24. Calton prohibited its representatives from borrowing money from clients except under very limited conditions and only with the Chief Compliance Officer's written approval. Lavery did not obtain the Chief Compliance Officer's written approval. Indeed, Lavery never disclosed the loan he received from RO and AO and never received approval from Calton to borrow money from RO and AO.

G. Lavery Lied on Calton's Compliance Questionnaires

25. On October 8, 2014, Lavery answered "No" to the questions on Calton's annual compliance questionnaire that asked, "Since your last report, have you solicited or accepted a loan from or made a loan to a client for any reason?" and "Since Your last report, have any judgments been entered against you?"

26. Lavery's answers were false. Five months earlier, in May 2014, Lavery borrowed \$45,000 from RO and AO. Moreover, also in May 2014 the Superior Court of California, County of Riverside, entered a judgment against Lavery for \$114,456.25 in a lawsuit captioned *Security Bank of California v. Charles A. Lavery et al*, Case No. RIC 1400198 (the "Security Bank Lawsuit") arising from his failure to repay a promissory note. Lavery was aware of this judgment before October 2014.

H. Lavery Borrowed \$400,000 from RO and AO While Registered Through TCFG

27. On February 19, 2015, Lavery registered with TCFG. About one week later, on February 27, 2015, RO and AO opened accounts at TCFG. Lavery was the TCFG representative responsible for their accounts.

28. Although TCFG prohibited its representatives from borrowing from their clients, on February 27, 2015, the same day that TCFG accepted RO's and AO's accounts, Lavery borrowed \$400,000 from RO and AO:

Transaction	Date	Amount
Loan No. 8	Feb. 27, 2015	\$400,000

RO and AO are Unsuccessful in Trying to Recover from Lavery

29. In late February 2015, Lavery executed a \$1.4 million promissory note for the loans that RO and AO had extended to him from October 2010 through February 2015.

30. The promissory note obligated Lavery to pay RO and AO six percent annual interest on the unpaid balance, make twelve consecutive monthly payments of \$100,000 beginning on or before April 30, 2015, and make a final payment on June 30, 2016 of all remaining unpaid amounts. Lavery quickly breached the agreement; he made none of the required monthly payments.

31. In May 2016, RO and AO filed a Statement of Claim against Lavery and the firms through which he registered. Their Statement of Claim sought, among other things, general and compensatory damages of at least \$1.5 million. On June 2, 2016, UBS filed a U5 Amendment disclosing the Statement of Claim and informing FINRA, for the first time, that Lavery had improperly solicited and accepted loans from RO and AO. Neither RO nor AO lived to see their claims resolved. AO died on September 3, 2016; RO died on April 11, 2017.

32. On or about July 28, 2017, days before a scheduled arbitration, RO and AO, through their successor in interest, DO, settled their claim against Lavery. Soon thereafter, Lavery breached his obligations under the settlement by failing to make a required payment. On December 12, 2017, FINRA suspended Lavery for failure to comply with the settlement.

III. Lavery Lied at his OTR in the Prior Action

33. In January 2014, FINRA opened an investigation in the Prior Action (Matter No. 2014039763101) after Oppenheimer reported that it had suspended Lavery for borrowing money from customer JA. The investigation was expanded to include the approximately \$1.2 million that Lavery had borrowed from HG and AG, and EL and LL. Because FINRA did not know that Lavery had also borrowed money from RO and AO, the investigation in the Prior Action did not include that activity.

34. In connection with that investigation, FINRA staff requested that Lavery appear for OTR testimony on July 16, 2015, pursuant to FINRA Rule 8210.

35. At the July 16, 2015 OTR, the staff questioned Lavery about the loans from HG and AG, EL and LL, and JA, and then asked, “Mr. Lavery, did you borrow from any other customers?” Lavery answered, “No” and confirmed that he had only borrowed from customers HG and AG, EL and LL, and JA. His answers were false. From October 2010 through February 2015, Lavery had also borrowed \$1,350,000 from RO and AO.

36. The staff also asked Lavery about an August 2013 note from EL. The note referenced overdue loans from HG, EL, and “Bob,” suggested a possible extension of time for Lavery to repay loans from EL, and recommended a plan for Lavery to prioritize repayment of loans from HG and “Bob.”

37. Although Lavery knew that “Bob” referenced in the note was RO, he falsely testified that he did not know to whom EL was referring and misleadingly suggested that he was “Bob.” In fact, Lavery had no doubt that “Bob” was RO, knowingly elected not to disclose that “Bob” was RO, and intended to mislead the staff as to “Bob’s” true identity.

IV. Laverty Failed to Update his Form U4 to Disclose a Judgment and a Lien

A. Superior Court of California Judgment (\$114,456.14)

38. On May 22, 2014, the Superior Court of California, County of Riverside, entered a judgment against Laverty for \$114,456.24 in the Security Bank Lawsuit.

39. On June 30, 2014 and on July 1, 2014, Security Bank of California subpoenaed Laverty to appear in the Superior Court on July 16, 2014 and furnish information to aid in enforcement of its judgment.

40. On October 29, 2014, Security Bank of California filed an acknowledgement of satisfaction of Judgment reporting that Laverty had satisfied the judgment in full.

41. While registered with Calton, from March 17, 2014 to February 26, 2015, Laverty never updated his Form U4 to disclose the Security Bank of California judgment. To the contrary, Laverty concealed the judgment. On October 8, 2014, he answered “no” to a question on a Calton compliance questionnaire that asked, “Since Your last report, have any judgments been entered against you?” This answer was false.

B. IRS Lien (\$63,410.90)

42. On February 26, 2015, the Internal Revenue Service recorded a \$63,410.90 tax lien against Laverty in Orange County, California. Laverty knew about this lien while registered through TCFG.

43. While registered with TCFG, from February 19, 2015 through October 15, 2015, Laverty never updated his Form U4 to disclose the February 2015 IRS lien.

FIRST CAUSE OF ACTION
Impermissible Borrowing from Customers
(FINRA Rules 3240 and 2010)

44. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 43 above.

45. FINRA Rule 3240 prohibits registered persons from borrowing money from any customer unless: (a) the representative's firm has written procedures allowing the borrowing and lending of money between registered persons and customers of the firm; and (b) the arrangement meets one of the five conditions specified in the rule. If the borrowing or lending arrangement does not involve a member of the representative's immediate family or a customer who is in the business of providing credit or loans, then the registered person must also notify his firm of the borrowing or lending relationship and receive written pre-approval before entering into the arrangement. RO and AO were not part of Lavery's immediate family and were not in the business of providing loans or credit.

46. From October 2010 through February 2015, Lavery was registered with FINRA through consecutive associations with UBS, Oppenheimer, Calton, and TCFG.

47. During this period, Lavery borrowed \$1.35 million from customers RO and AO in violation of each firm's policies. UBS, Oppenheimer and TCFG prohibited their representatives from borrowing money from their customers. Although Calton permitted loans between representatives and customers under limited circumstances, any such loan required the written approval of the Chief Compliance Officer. Calton's Chief Compliance Officer never provided any such approval to Lavery.

48. As a result of the foregoing conduct, Lavery violated FINRA Rules 3240 and 2010.

**SECOND CAUSE OF ACTION
False Statements to Member Firms
(FINRA Rule 2010)**

49. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 48 above.

50. FINRA Rule 2010 requires FINRA members and their associated person to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business. Making false statements to a member firm violates that standard.

51. Lavery lied on a compliance questionnaire he submitted to Calton in October 2014 and on a heightened supervision attestation he submitted to Oppenheimer in February 2014.

52. As a result of the foregoing conduct, Lavery violated FINRA Rule 2010.

**THIRD CAUSE OF ACTION
False On-the-Record Testimony
(FINRA Rules 8210 and 2010)**

53. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 52 above.

54. FINRA Rule 8210 empowers FINRA, for purposes of an investigation, to require a person subject to its jurisdiction to provide information in writing or orally and requires members and registered persons to respond fully and truthfully. Providing false or misleading information, including false and misleading OTR testimony, violates FINRA Rules 8210 and 2010.

55. At his July 2015 OTR, Lavery testified falsely and misleadingly when: (i) he stated that he had not borrowed money from any customers other than HG and AG, EL and LL, and JA; (ii) confirmed that he had borrowed only from HG and AG, EL and LL, and JA; and (iii) he denied knowing the identity of “Bob” referenced in the August 2013 note from EL and failed to inform the staff that “Bob” was RO.

56. As a result of the foregoing conduct, Lavery violated FINRA Rules 8210 and 2010.

FOURTH CAUSE OF ACTION

**Willful Failure to Disclose Reportable Events on Form U4
(Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010)**

57. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 56 above.

58. Article V, Section 2(c) of FINRA's By-Laws requires that every Form U4 filed with FINRA must be accurate and kept current through supplemental amendments filed within thirty days of learning of the facts and circumstances giving rise to the amendment.

59. FINRA Rule 1122 states "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

60. Question 14M on Form U4 asks, "Do you have any unsatisfied judgment or liens against you?" If an individual is subject or becomes subject to an unsatisfied judgment or lien, he must answer Question 14M affirmatively and provide additional information about them on a "Judgment Lien DRP" including the judgment/lien amount, the identity of the judgment/lien holder, the date the individual learned of the judgment/lien, and whether the judgment/lien is outstanding.

61. While associated with Calton, Lavery willfully failed to update his Form U4 to disclose material information, namely the judgment entered in the Security Bank Lawsuit.

62. While associated with TCFG, Lavery willfully failed to update his Form U4 to disclose material information, namely the February 26, 2015 IRS tax lien.

63. As a result of the foregoing conduct, Lavery willfully acted in contravention of Article V, Section 2(c) of the FINRA By-Laws and violated FINRA Rules 1122 and 2010.

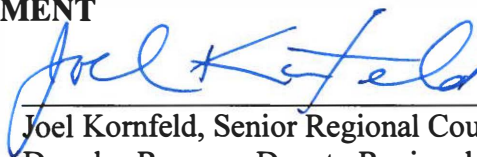
RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Lavery committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Lavery be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Lavery bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Lavery's conduct, as alleged in the Fourth Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 25, 2018



Joel Kornfeld, Senior Regional Counsel
Douglas Ramsey, Deputy Regional Chief Counsel
FINRA Department of Enforcement
300 S. Grand Ave., Suite 1600
Los Angeles, CA 90071
Tel: (213) 613-2643 [Kornfeld]
Email: joel.kornfeld@finra.org
Tel: (213) 613-2616 [Ramsey]
Email: douglas.ramsey@finra.org

Christopher Perrin, Regional Chief Counsel
FINRA Department of Enforcement
100 Pine Street, Suite 1800
San Francisco, California 94111
Tel: (415) 217-1121
Email: christopher.perrin@finra.org

Attorneys for Department of Enforcement