

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION IN CINCINNATI**

UBS FINANCIAL SERVICES INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:09-CV-367
)	
TIMOTHY LOFTON, KYLE POLAND,)	Judge Dlott
and SHAWN ANDERSON,)	
)	
Defendants.)	

ORDER

THIS CAUSE CAME before the Court this 3rd day of June, 2009, Motion of Plaintiff UBS Financial Services Inc. (“UBS”) to Expand the Temporary Restraining Order and for a Preliminary Injunction, and the supporting Affidavits, due notice has been given to defendants Kyle Poland (“Poland”) and Timothy Lofton (“Lofton”) (collectively, “Defendants”), of UBS’s Motion. The Court, having considered the foregoing documents and having heard argument of counsel, hereby finds:

A. Under Section 13804 of the Code of Arbitration Procedure of the Financial Industry Regulatory Authority (“FINRA”), UBS has the right to seek interim injunctive relief pending an arbitration hearing on the merits before a duly-appointed FINRA Panel.

B. UBS’s rights with respect to its property, proprietary and confidential information, competitive interests, and contract rights with Poland are being and will continue to be violated unless they are restrained in the manner set forth below.

C. UBS will suffer irreparable harm and loss if Defendants are permitted to: (a) violate the restrictive covenants contained in the agreement with UBS; (b) convert the property

of UBS to their own personal use and benefit, and that of their new employer; and (c) solicit the patronage of any UBS Defendants' serviced at UBS or whose names became known to them during their UBS employment.

D. UBS has no adequate remedy at law.

E. Greater injury will be inflicted upon UBS if the preliminary injunction were denied than would be incurred by Defendants if the relief requested by UBS is granted.

IT IS HEREBY ORDERED AND DECREED THAT:

1. A Temporary Restraining Order shall issue immediately.

2. Defendants Kyle Poland and Timothy Lofton are immediately enjoined and restrained, directly or indirectly, and whether alone or in concert with others, including any officer, agent, representative, and/or employee of their new employer, Morgan Stanley & Co., Inc. ("Morgan Stanley") until further Order of this Court, from:

(a) soliciting or otherwise initiating any further contact or communication with any client of UBS whom Defendants served or whose name became known to them while in the employ of UBS for the purpose of advising said clients of their new affiliation or for the purpose of inviting, encouraging or requesting the transfer of any accounts or business patronage from UBS (excluding their family members and relatives);

(b) soliciting or otherwise initiating any further contact or communication with any client of UBS whose records or information Defendants used in violation of the agreements and/or applicable Ohio law. This specifically includes any client whom Defendants may have contacted by mail, phone, overnight delivery or otherwise through the use of any information obtained while in the employ of UBS (excluding their family members and relatives);

(c) using, disclosing, or transmitting for any purpose, including solicitation of said clients, the information contained in the records of UBS or concerning its clients, including but not limited to, the names, addresses, and financial information of said clients; and

(d) destroying, erasing, or otherwise making unavailable for further proceedings in this matter, or in any arbitration proceeding between the parties, any records or documents (including data or information maintained in computer media) in his possession or control which were obtained from or contained information derived from any UBS records, which pertain to UBS clients whom Defendants served or whose names became known to them while employed by UBS, or which relate to any of the events alleged in the Complaint in this action.

3. Nothing in this Order prohibits Defendants from communicating with UBS clients who initiate contact (by telephone, email or otherwise) with Defendants.

4. Defendants and anyone acting in concert or participation with them, specifically including their counsel and any agent, employee, officer or representative of Morgan Stanley, is further ordered to return to UBS's counsel any and all records, documents and/or other types of information pertaining to UBS customers ("Customer Information"), whether in original, copied, handwritten, computerized (including computer software, disks, computer hard drive and/or any other type of computer or digital information storage devices) or memorialized in any other form, within forty eight (48) hours of notice to Defendants or their counsel of the terms of this Order. Defendants counsel is permitted to keep a copy of the returned Customer Information for "attorneys' eyes only" for use in defending this proceeding and/or in arbitration before FINRA.

5. Any and all Customer Information within Defendants' possession, custody or control that is contained in any computerized form, including on computer software, disks, computer hard drive, and/or any other type of computer or digital information software device, returned pursuant to Paragraph 4 above shall be permanently deleted by a UBS representative. Such Customer Information shall be permanently deleted, if possible, without affecting any other information or software on the computer. A forensic copy of all electronic information returned shall be created for purposes of preservation of evidence. Defendants, and anyone acting in concert with them, are precluded from reconstituting or in anyway restoring any Customer Information deleted pursuant to this paragraph and returned to UBS pursuant to Paragraph 4 above.

6. This Order shall remain in full force and effect pending further order of this Court.

7. Pursuant to §13804 of the FINRA Code of Arbitration Procedure and §§3 and 4 of the Federal Arbitration Act, the parties are directed to proceed toward expedited arbitration on the merits of the controversy before a full Panel of arbitrators appointed in accordance with §13804 of the Code of Arbitration Procedure.

8. A bond in the amount of \$5,000 has previously been posted in this matter. No additional bond is required. .

DONE and ORDERED in Chambers in Cincinnati, Ohio, this 3rd day of June , 2009.

S/Susan J. Dlott
THE HONORABLE SUSAN J. DLOTT
CHIEF JUDGE