

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
A.R. SCHMEIDLER & CO., INC., :

Index No. _____

Plaintiff, :

Date Filed: _____

- against - :

SUMMONS

MICHAEL KAHN AND UBS FINANCIAL
SERVICES, INC., :

Plaintiff's principal place of business
is located at: 500 Fifth Avenue
New York, NY 10110

Defendants. :

----- X

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in the above-entitled action and to serve a copy of your answer on the plaintiff's counsel within TWENTY (20) days after service of the Summons, exclusive of the day of service, or within THIRTY (30) days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

This is an action seeking injunctive relief and damages.

Plaintiff designates New York County as the place of trial. The basis of venue of this action in New York County is defendants' reside in or have a principal place of business is in New York County.

Dated: New York, New York
October 18, 2012

WILK AUSLANDER LLP

By: /s/ Timothy Coon
Timothy P. Coon, Esq.
1515 Broadway, 43rd Floor
New York, NY 10036
(212) 981-2300

Attorneys for Plaintiff

Defendants' Addresses:

UBS
1285 Avenue of the Americas
New York, New York 10019

Michael Kahn
1285 Avenue of the Americas
New York, New York 10019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
A.R. SCHMEIDLER & CO., INC., :
Plaintiff, : Index No. _____
- against - :
MICHAEL KAHN AND UBS FINANCIAL :
SERVICES, INC., :
Defendants. :
----- X

COMPLAINT

Plaintiff A.R. Schmeidler & Co., Inc. (“ARS”), by its attorneys, Wilk Auslander LLP, for its Complaint herein, alleges as follows:

PRELIMINARY STATEMENT

1. Defendant Michael Kahn has stolen ARS’s client lists as well as ARS’s trade secrets and confidential and proprietary information concerning its clients. Since he abruptly resigned from ARS last week, Kahn has been using that information to solicit ARS’s clients and unfairly compete with ARS as a current employee of UBS Financial Services, Inc. (“UBS”).

2. The purpose of this action is to enjoin and remedy Kahn’s and UBS’s use of ARS’s trade secrets and confidential and proprietary information in unfair competition with ARS.

3. In his role as ARS’s former Senior Vice President, Kahn was introduced to valuable clients of ARS and allowed and encouraged to work directly with such clients. Nearly all of the clients that Kahn serviced were originated by ARS and not Kahn, at a substantial cost and effort to ARS. Kahn was also privy to confidential client information and trade secrets including client lists, client account values, investment strategies, performance, investments and holdings.

4. Kahn agreed in the Code of Ethics agreement with ARS that, after termination of his employment, he would maintain ARS's confidential client information and not divulge such information to third parties.

5. Since leaving ARS, Kahn has systematically contacted ARS's clients telling them that he has moved to UBS and discussing their specific accounts and performance. Kahn has discussed with them the different investment opportunities available at UBS.

6. In this action, ARS seeks preliminary and permanent injunctive relief in order to stop Kahn from violating covenants in the Code of Ethics, breaching his duty of loyalty to ARS, and stealing ARS trade secrets and proprietary and confidential information by improperly working with UBS to solicit ARS's customers, whom ARS spent years of time and money to cultivate. The Complaint also seeks damages.

PARTIES

7. ARS is an investment management firm. ARS is incorporated in the State of New York, and maintains its principal place of business at 500 Fifth Avenue, New York, New York.

8. Kahn is ARS's former Senior Vice President and is currently a Portfolio Manager at UBS. Upon information and belief, Kahn resides in New York, New York. Personal jurisdiction over Kahn is also appropriate under sections 301 and 302 of the Civil Practice Law and Rules as New York is the site of all alleged conduct and the injury forming the basis for this Complaint.

9. UBS is an investment management firm. UBS is incorporated in the State of Delaware, and maintains a place of business at 1285 Ave of the Americas, New York, New York. Personal jurisdiction over UBS is also appropriate under sections 301 and 302 of the Civil Practice Law and Rules as New York is the site of all alleged conduct and the injury forming the basis for this Complaint and UBS regularly does business in New York.

BACKGROUND

Kahn's Employment at ARS

10. Kahn was first hired to work for ARS in 1999. Kahn's title at the time of his resignation was Senior Vice President.

11. Kahn's duties as an ARS employee were to service ARS's client needs in investment management.

12. Kahn was highly compensated for his work. In the year 2012, ARS paid him an annual salary of \$305,500 plus quarterly bonuses. For the first two quarters of 2012, ARS paid Kahn quarterly bonuses of \$28,500.

13. Nearly all of Kahn's clients were sourced by and provided to him by ARS. In total, Kahn managed \$228,229,408.80 in client funds. Of this amount, dozens of clients, with accounts worth a total of \$219,326,308.90 in assets under management were originated by other employees at ARS, not Kahn. During his thirteen years at ARS, Kahn originated only five client accounts worth a total of assets under management of \$8,903,100.07.

14. ARS sourced these clients at a substantial cost in time, money and resources. The clients were not found through well advertised lists or openly known to the public.

The Code of Ethics

15. During his employment at ARS, Kahn, as well as all other ARS employees, signed a "Code of Ethics." On December 27, 2011, Kahn last signed the ARS Code of Ethics. A true and correct copy of this agreement is attached as Exhibit A.

16. The Code of Ethics "establishes the rules of conduct for all employees of the Company." It is designed to avoid employees "(i) serving their own personal interests ahead of clients; (ii) taking inappropriate advantage of their position with the firm; and (iii) any actual or

potential conflicts of interest or any abuse of their position of trust and responsibility.” Ex. A, p. 2.

17. The Code states, “In the course of investment advisory activities of A.R. Schmeidler & Co., Inc., the firm gains access to non-public information about its clients. Such information may include a person’s status as a client, personal financial and account information, the allocation of assets in a client portfolio, the composition of investments in any client portfolio, information relating to services performed or transactions entered into on behalf of clients, advice provided by the Company to clients and data or analyses derived from such non-public personal information (collectively referred to as “Confidential Client Information.”). All Confidential Client Information, whether relating to A.R. Schmeidler & Co., Inc.’s current or former clients, is subject to the Code’s policies and procedures. Any doubts about the confidentiality information must be resolved in favor of confidentiality.” Ex. A, p. 13.

18. “All information regarding A.R. Scheidler & Co., Inc.’s clients is confidential. Information may only be disclosed when the disclosure is consistent with the firm’s policy and the client’s direction. The company does not share Confidential Client Information with any third parties, except in the following circumstances [which are not applicable here].” Ex. A, p. 13.

19. “All supervised persons are prohibited, either during or after the termination of their employment with the Company from disclosing Confidential Client Information to any person or entity outside the firm, including family members, except under the circumstances described above. A supervised person is permitted to disclose Confidential Client Information only to such other supervised persons who need to have access to such information to deliver the A.R. Schmeidler & Co., Inc.’s services to the client. Ex. A, p. 14.

20. “Supervised persons are also prohibited from making unauthorized copies of any documents or files containing Confidential Client Information and, upon termination of their employment with A.R. Schneidler & Co., Inc., must return all such documents to the Company.” Ex. A, p. 14.

21. The Code of Ethics was designed, in part, to implement S.E.C. Regulation S-P which forbids employees such as Kahn from disclosing client information.

22. The restrictive covenants in this agreement, as set forth above, are reasonable and typical for employees like Kahn working at companies similar to ARS.

Kahn's Resignation and Breaches of His Obligations to ARS

23. On October 9, 2012 at 8:00 a.m. Defendant Kahn entered the offices of ARS at 500 Fifth Avenue, New York and announced to Arnold Schmeidler and Stephen Burke that he was terminating his employment at ARS and would be joining UBS. Kahn gave no prior notice, nor did he agree to any transition time for others at ARS to become familiar with the specifics of each account. Kahn merely stated that the termination was immediate and that he was starting at UBS that same day. Kahn was gone from ARS by 8:20 a.m. and, upon information and belief, he immediately went to UBS and began contacting ARS customers.

24. In the early morning a day or two later, John Wild, a customer of ARS that was provided to Kahn, spoke with Arnold Schmeidler informing him that he was moving his account with Kahn to UBS. This call was only, at most, two days after Kahn first informed ARS of his quitting. Wild holds 21 accounts at ARS with a total asset value in excess of \$32,607,772.99. These accounts generate approximately \$223,149.88 in fees to ARS annually.

25. Kahn also met with a second ARS client on Sunday October 14 in Florida. At that meeting he provided this customer with the historical performance of his investments, which is

information that is proprietary to ARS. Kahn discussed historical performance with a third customer and attempted to convince this customer to move her accounts to UBS. Kahn has also called at least two additional customers and sent marketing materials regarding UBS to them.

26. Upon information and belief, while working at ARS, and at least immediately after commencing work at UBS, Kahn began contacting customers of ARS. Kahn made telephone calls telling the clients that he had moved to UBS and soliciting their accounts. Kahn discussed their ARS account values, performance and investment strategies and the different investment opportunities available at UBS.

27. Kahn is currently engaged in conduct that directly violates the confidentiality provisions of the Code of Ethics as well as S.E.C. Regulation S-P, and he is doing so by disclosing and utilizing ARS's trade secrets and confidential and proprietary information.

**AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)**

28. ARS repeats and realleges each and every allegation set forth above as if fully set forth herein.

29. The Code of Ethics constitutes a valid and enforceable contract between ARS and Kahn.

30. ARS has performed all of its obligations under the Code of Ethics agreement.

31. The Code of Ethics prohibits Kahn from using or disclosing confidential client information, including after his termination from ARS.

32. Kahn is currently breaching the confidentiality provisions of the Code of Ethics by using confidential client information to solicit clients and compete with ARS, as set forth above.

33. ARS is suffering and will continue to suffer irreparable harm if Kahn is not enjoined from breaching the Code of Ethics. Allowing Kahn to solicit ARS's clients through use of

ARS's confidential business information will effectively destroy the benefits of all the resources ARS has invested in its development and growth. No price tag can be placed on the destruction of the benefits ARS has accrued from such efforts, and it is impossible to determine precisely how much ARS stands to lose as a result of Kahn's breach.

**AS AND FOR A SECOND CAUSE OF ACTION
(Unfair Competition)**

34. ARS repeats and realleges each and every allegation above as if fully set forth herein.

35. While still under the employ of ARS and/or immediately upon his resignation, Kahn has entered into direct competition with plaintiff by, among other actions, using ARS's confidential client lists, trade secrets and other proprietary and confidential information to solicit ARS clients to UBS. In so doing, Kahn has also violated the Code of Ethics agreement.

36. ARS's clients that Kahn has solicited were procured, not by Kahn, but by ARS over the course of many years and after a substantial cost to ARS in time, money and resources spent.

37. The client names are not only confidential but are further protected as trade secrets.

38. By reason of the aforesaid, defendant has engaged in unfair competition.

39. ARS is suffering and will continue to suffer irreparable harm if Kahn is not enjoined from engaging in this unfair competition.

40. ARS has no adequate remedy at law for Kahn's unfair competition.

**AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Duty of Loyalty)**

41. ARS repeats and realleges each and every allegation above as if fully set forth herein.

42. As an employee of ARS, Kahn had a duty of good faith and loyalty to ARS.

43. Post-resignation, Kahn is currently using ARS's confidential client information to compete with ARS, including client account values, performance, investments and holdings. In so doing, Kahn has also violated the Code of Ethics agreement.

44. By reason of the aforesaid, Kahn has breached his duty of loyalty to ARS.

45. ARS is suffering and will continue to suffer irreparable harm if Kahn is not enjoined from breaching his duty of loyalty.

46. ARS has no adequate remedy at law for Kahn's breach of his duty of loyalty to ARS.

**AS AND FOR A FOURTH CAUSE OF ACTION
(Misappropriation of Trade Secrets)**

47. ARS repeats and realleges each and every allegation above as if fully set forth herein.

48. ARS has expended large sums of money and devoted great time and effort locating its clients, who are high net worth individuals in need of investment management services.

49. ARS has compiled lists of these clients, including information on their account values, performance, investments and holdings.

50. These client lists were not found openly in well advertised locations and are not publicly available. Only ARS's employees are given access to this information.

51. By reason of the foregoing, ARS's client list is a trade secret of ARS's business.

52. ARS, in pursuance of the conduct of its business, made available to Kahn, these client lists and confidential client information, which Kahn expressly agreed to keep confidential pursuant to the terms of the Code of Ethics. Kahn thus had access to ARS's trade secrets.

53. Since Kahn's resignation, defendants have solicited and are now soliciting ARS's clients, which Kahn had become acquainted while in plaintiff's employ and with whom, except for that employment, Kahn would not have become acquainted, for the benefit of himself and UBS.

54. Upon information and belief, Kahn has disclosed and furnished to UBS and others without the consent of ARS, the names and addresses of the customers of plaintiff with whom Kahn became acquainted while in plaintiff's employ and also furnished and disclosed, other client information and trade secrets developed by ARS.

55. If Kahn continues to divulge the lists of names and addresses of customers and trade secrets in order to poach ARS's clients, ARS will suffer great and irreparable damage and injury, and that it will be impossible to ascertain with any degree of certainty the exact amount in money damages which will be caused to plaintiff and plaintiff will suffer by the continued actions of defendants, in that its customers will be diverted from plaintiff to defendants and others.

56. ARS has no adequate remedy at law for Kahn's misappropriation of ARS's trade secrets.

**AS AND FOR A FIFTH CAUSE OF ACTION
(Tortious Interference)**

57. ARS repeats and re-alleges the allegations in each of the preceding paragraphs.

58. At the time Kahn engaged in the tactics and representations described above, he was aware that ARS had existing business relationships to provide services and products to ARS's customers.

59. Kahn intentionally and deliberately used unlawful or improper means to interfere with ARS's relationships with its customers and prospective customers.

60. Kahn intentionally and deliberately used unlawful or improper means to divert ongoing business from ARS's customers to himself and UBS.

61. Kahn has thus engaged in tortious interference with ARS's prospective business relations.

62. As a direct result of Kahn's tortious interference with ARS's prospective business relations, at least one client has moved his business away from ARS to UBS and Kahn.

63. The actual damages suffered by ARS as a result of Kahn's conduct cannot be adequately ascertained or quantified because, *inter alia*, most of the information needed to calculate these damages are in Defendant's knowledge and control, however, the damages will exceed \$200,000, and also because the loss of ARS's good will cannot adequately be measured in money damages.

**AS AND FOR A SIXTH CAUSE OF ACTION
(Conversion)**

64. ARS repeats and re-alleges the allegations in each of the preceding paragraphs.

65. All information concerning ARS's clients is property of ARS.

66. Kahn has wrongfully converted this property for his own use for the benefit of himself and UBS and to the detriment of ARS.

67. If Kahn continues to use ARS's property that he stole, including the lists of names and addresses of customers and trade secrets in order to poach ARS's clients, ARS will suffer great and irreparable damage and injury, and that it will be impossible to ascertain with any degree of certainty the exact amount in money damages which will be caused to plaintiff and plaintiff will suffer by the continued actions of defendants, in that its customers will be diverted from plaintiff to defendants and others.

68. ARS has no adequate remedy at law for Kahn's conversion of ARS's property.

WHEREFORE, ARS respectfully requests that the Court enter judgment in its favor as follows:

- a. On the first cause of action, a preliminary and permanent injunction restraining Kahn and UBS, from using or disclosing in any way any of ARS's confidential client information, as defined in Code of Ethics plus damages to be determined at trial;
- b. On the second cause of action, a preliminary and permanent injunction restraining Kahn and UBS from competing with ARS by using any of ARS's trade secrets or confidential client information, including client lists, client account values, performance, investments and holdings or by soliciting any of ARS's clients that were procured by ARS, plus damages to be determined at trial.
- c. On the third cause of action, a preliminary and permanent injunction restraining Kahn and UBS from competing with ARS by using any of ARS's trade secrets or confidential client information, including client lists, client account values, performance, investments and holdings or by soliciting any of ARS's clients that were procured by ARS, plus damages to be determined at trial.
- d. On the fourth cause of action, a preliminary and permanent injunction restraining Kahn and UBS from competing with ARS by using any of ARS's trade secrets, including confidential client information, client lists, client account values, performance, investments and holdings or by soliciting any of ARS's clients that were procured by ARS, plus damages to be determined at trial.
- e. On the fifth cause of action, a preliminary and permanent injunction restraining Kahn and UBS, from interfering with ARS's relationships with its clients by using or disclosing in any way any of ARS's confidential client information, as defined in Code of Ethics, or trade secrets or property, plus damages to be determined at trial;

- f. On the sixth cause of action, a preliminary and permanent injunction ordering Kahn and UBS to immediately return to ARS all ARS's property that they converted or that is in their possession, custody or control, plus damages to be determined at trial;
- g. Such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 18, 2012

WILK AUSLANDER LLP

By: /s/ Timothy Coon
Timothy P. Coon, Esq.
Zack Gross, Esq.
1515 Broadway, 43rd Floor
New York, NY 10036
(212) 981-2300

*Attorneys for Plaintiff A.R. Schmeidler &
Co., Inc.*